

PART THREE

FRAMEWORK LAW

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PART THREE

FRAMEWORK LAW

Whether the right to food is recognized directly in a state constitution or can be derived implicitly from other constitutionally recognized human rights, framework laws are useful measures to articulate the right to food in more detail and to provide a means of enforcement at the administrative, judicial and quasi-judicial levels. For example, in several countries, rights and freedoms of national minorities have been established through special framework laws.⁸⁸ In other countries, a trend can be seen towards securing various benefits and services in the fields of, among others, social security, health and education as individual rights through framework laws.⁸⁹

Whereas constitutional provisions are termed quite broadly, a framework law on the right to food can clarify the scope and content of the right, set out the obligations of state authorities, establish the necessary institutional mechanisms and give the legal basis for subsidiary legislation and other necessary measures to be taken by the competent authorities. In this way, a framework law can provide a high level of protection for the human right to food in a country and facilitate its effective implementation.

By clarifying the normative content of the right to food, a framework law would also provide individuals with a legal entitlement that they can enforce before the competent administrative and judicial authorities. In this way, it can also be the basis for strengthening the role of the judiciary in implementing the right to food

88 This is notably the case in countries of Central and Eastern Europe (e.g. Croatia, Hungary, Lithuania, Romania, Ukraine).

89 Notably in North European countries. In Finland, for instance, the right to social assistance and the right to certain services for persons with severe disabilities have been defined as individual rights in Acts of Parliament (see Scheinin, M. 1995).

in a country. In practice, in many countries, national judges will more readily apply provisions of laws than rely directly on constitutional provisions. In addition, the existence of clear legal provisions on the right to food will empower right holders and civil society to require certain actions from their government and to hold it to account for the way it acts or fails to act. The term *exigibilidade* (in Portuguese) or *exigibilidad* (in Spanish) is increasingly used in many Latin American countries to designate the various means and mechanisms of enforcing rights before the competent public institutions – administrative, political or judicial – and for demanding action. This concept thus includes but is not limited to legal action. Various forms of social and political *exigibilidade* include political demonstrations and protests as well as other forms of political participation such as referendums, popular legislative initiatives, popular consultations and public hearings through which people can demand and exert pressure for appropriate changes in state policies and legislation. The concept of *exigibilidade* also includes the right to have a timely and adequate response and concomitant action by competent public authorities. In the case of a judicial *exigibilidade*, this also comprises adequate redress where a violation of a recognized human right has been established.

There are many other advantages to implementing the right to food through a framework law.

Among these is enhanced accountability of the government for its actions or inactions affecting the realization of the right to food (since the framework law clearly sets out the obligations of the various government actors). Given sufficient awareness, an adequate legislative framework can also assist public officials in avoiding possible infringements of the right to food in the first place. The framework law can also establish or provide the basis for the establishment of the institution that will take the lead in the coordination of its enforcement. It can play a key role in defining the entitlement to the minimum amount of food that persons have and that the state is required to provide immediately. Furthermore, a framework law can provide a legal basis for adopting special measures needed to correct the existing inequalities within society with respect to access to food or to means for its procurement. Finally, specific legislation implementing the right to food can stipulate the financial arrangements needed for its realization in practice.

The content of the legislation will depend on the nature of the obstacles existing within any given state, and will change over time. States Parties are expected, however, to develop a legislative agenda addressing the issues as they exist in their own country at any given point in time, with a view to securing access by all to adequate food.⁹⁰

In recent years, a number of countries have begun drafting legislation designed to promote the realization of the right to food – including Argentina, Brazil, Bolivia, Ecuador, Guatemala, Honduras, Indonesia, Mexico, Malawi, Mali, Nicaragua,

90 See Eide, A. 2002, p. 31.

Peru, South Africa, Uganda and Venezuela (Bolivarian Republic of), among others. While several other countries have also taken initiatives related to the realization of the right to food, they do not seem to have undertaken – as yet – specific legislative activities with this aim. A comparative analysis of these initiatives indicates that provisions referring to food *in terms of right* are being incorporated mainly into legislation on food and nutrition security,⁹¹ laws specifically targeting certain groups of population and more general laws on food sovereignty and security. While proclaiming the realization of the right to access food or means of its procurement as their main purpose, most of the examined legislation mainly focuses on establishing or providing for the establishment of the institutions in charge of the adoption and implementation of the state policy on food and nutrition security. More detailed definitions of state obligations to respect, protect and fulfil the right to food and the legal remedies in case of an alleged violation of this right have not yet been sufficiently manifested in all the examined laws.

Following a discussion of the need for legal status and the preparatory process related to adoption of a framework law, the next sections will outline the elements that a more comprehensive framework law should contain. Of course, a single country may decide to address and include all or only some of them or to add others that are more specifically needed in view of its own needs and circumstances. The examples from the existing national laws or draft bills where relevant and appropriate will be given in boxes. They are used for illustrative purposes only; they do not represent suggested terminology or wording to be used.

91 Although some other countries also have national legislation on food and nutrition security, only legislation that actually refers to the “right to food” or define “food security” in terms of rights either in their objectives or purpose, or in their substantive provisions, has been taken into account for the purpose of the present Guide.

3.1

ADOPTION OF A FRAMEWORK LAW

There is probably no country in the world that can claim that it has fully realized the right to food for every person within its territory. The latest figures published by FAO on the state of hunger in the world are alarming. At the same time, according to FAO and the World Health Organization (WHO), the number of overweight or obese persons is constantly increasing.

As we have seen, some countries have enshrined the right to food explicitly in their national constitutions, while others recognize the right to food as part of other human rights. Some countries use statutory legislation to guarantee the right to basic necessities, mainly through social security legislation, defining the right in terms of an adequate standard of living. In such circumstances, public authorities have obligations under the legislation and their action or inaction can be reviewed by courts. Other countries have an active judiciary with a good awareness of human rights and the right to food, and have held public authorities accountable for violations of the right. However, some aspects of the right to food such as adequacy of food (in particular, in terms of its cultural appropriateness) may not be at all or not sufficiently protected.

Other countries, parties to the ICESCR, have not included the human right to food in their national constitution or statutory law and/or have judiciary that is unwilling to broadly interpret guaranteed human rights. This goes against the recommendation of the CESCR that the rights and freedoms guaranteed by the Covenant should be incorporated into domestic law (GC 3).

For all these reasons, there is little disagreement that most countries, developed as well as developing, would benefit from the enactment of a framework law on the right to food. The form of the framework law, its legal status and substance, will vary from country to country, although many broad recommendations can be provided. Each is explored in the next sections.

3.1.1 DECIDING ON THE FORM AND LEGAL STATUS

In its GC 12, the CESCR invited States Parties to adopt a framework law as the main instrument to implement the right to food. The term “framework law” refers to a legislative technique used to address cross-sectoral issues and facilitate a cohesive, coordinated and holistic approach to them. Insofar as it establishes a general frame for action, framework legislation does not regulate the areas it covers in detail. Instead, it lays down general principles and obligations but leaves it to implementing legislation and competent authorities to determine specific measures to be taken to realize such obligations, possibly within a given time limit. Such measures include subsidiary instruments, regulations and administrative decisions, changes in state policies and financial measures. In designing the measures required for implementation, the authorities have to act in compliance with the principles and conditions set out in the framework law.

There may, however, be countries where this particular legislative technique is not known or not commonly used. These countries might opt for drafting a special law on the right to food containing more detailed provisions on all relevant aspects and dimensions of its content or introduce this novel concept while at the same time drafting also the implementing subsidiary legislation and regulations. Even in such cases, information provided in this Guide may be useful to the extent it gives guidance on the key elements that any national legislation on the right to food should address.

Because it is designed to cover the whole subject area and enshrine the human right to food, the framework law will become the reference standard for food issues in the country. The position of the framework law in the national legal order will therefore be of crucial importance for its future interpretation and enforcement, because of its interaction with other sectoral legislation affecting the enjoyment of the right. In those legal systems that provide for a category of laws superior to ordinary legislation,⁹² the framework law on the right to food should be given that form. This will ensure that in case of a conflict with a provision of another, possibly more specific, law, the framework law’s provisions will prevail. For example, inadequate regulatory norms regarding gas emissions (resulting in severe environmental pollution and thus in the reduced availability of food resources) or an enactment of new, strict requirements for cod fishing in certain areas (resulting in quotas or a limited number of fishing licences and thus in the reduced accessibility of fish resources) may affect individuals’ capacity to enjoy their right to food.

92 In some countries, a difference exists between various categories of laws whereby some laws have a higher status than ordinary laws (often called “constitutional” or “organic” laws). This form is usually chosen to stress the social importance of the matter to be regulated, and because the adoption and subsequent modifications of such a “superior” law generally require a stronger majority in parliament, which ensures its greater stability. In some other countries, laws regulating individual human rights and laws implementing international treaty obligations are given higher status. In some constitutions human rights are recognized to have the same hierarchy as the constitution or a supra-constitutional hierarchy (e.g. Ecuador, Colombia, Guatemala, Venezuela [Bolivarian Republic of]).

In other words, the existence of the framework law would facilitate the difficult task of striking a fair balance between different interests at stake when taking decisions: for example, balancing general environmental interests and individuals' effective enjoyment of their human right to food. Provided the framework law has been given a higher legal status, in both examples the concerned individuals could rely on the framework law on the right to food to claim not only that the competent public authorities had the duty to ensure that their action or inaction did not interfere with their right to food, but also that they were under the positive obligation to take steps to ensure that no breach of this right occurred. This would be possible even when such action or inaction of public authorities was fully consistent with relevant legal provisions.

Where the state constitution recognizes the right to food, limitations of the sectoral legislation could of course be challenged by relying on the relevant constitutional provisions. The outcome of such a claim would depend, however, on the interpretation given by the judge called to pronounce. Provided it is given appropriate legal status, the framework law on the right to food would provide more guidance to the national judge, who may be more at ease with applying clear provisions of law than constitutional principles.

The legal status of a framework law in federal and other decentralized states may raise special concerns. Such problems include the breach of central powers: where the subnational authorities (state/provincial/regional) have authority for the right to food (e.g. in Canada), adopting a national framework law on the right to food by central government could be seen as *ultra vires* federal/national powers.⁹³ Conversely, if variegated framework laws are adopted at the subnational level by particular subnational authorities (with some being unlikely to adopt any such law), the possibility is created of very different levels of protection regarding the right to food in a country.⁹⁴ Ultimately, however, the level of protection would have to be measured against a country's international obligations.

In a country where the federal/national government does not have the constitutional authority for incorporation of international treaties alone, some method of obtaining the agreement of and action by regional governments will therefore be necessary. From the perspective of general international law, internal divisions of power within a state provide no excuse for a failure to implement a ratified international treaty.⁹⁵ With regard to rights established by the ICCPR, the HRC considered that establishing federal–regional cooperation and mechanisms for implementation and monitoring is a *duty* of federal states in order to meet their international

93 For example, in Canada, jurisdiction over the right to food is within provincial authorities; the adoption of a national framework law on the right to food would therefore be *ultra vires* the federal powers (comment by Vincent Calderhead (Nova Scotia Legal Aid), made on an earlier draft of this Guide).

94 Personal comment by Vincent Calderhead (Nova Scotia Legal Aid), made on an earlier draft of this Guide).

95 See Art. 27, Vienna Convention on the Law of Treaties.

human rights obligations.⁹⁶ An argument can be made that this applies equally to obligations arising under ICESCR given the indivisibility and interdependency of all human rights (see above, Part One).

3.1.2 ASSESSING THE RIGHT TO FOOD CONTEXT

Before the drafting process starts, it will be useful to identify and assess the existing national environment within which the future framework law on the right to food will be adopted and implemented. Among other issues, this means an examination of a state's international commitments, institutions and legislation.⁹⁷

Ideally, work will begin with a general right to food assessment, i.e. evaluation of the state of the realization of the right to food in the country. This requires identifying and characterizing food-insecure and vulnerable persons and groups that do not fully enjoy their right to food in addition to the underlying reasons for the situation. The *Guide to conducting a right to food assessment*,⁹⁸ prepared by FAO's Right to Food Unit, focuses in some detail on four core elements for a typical right to food assessment:

1. Identification and characterization of food-insecure, vulnerable and marginalized groups that do not enjoy the right to adequate food (and likely other economic, social and cultural rights).
2. Understanding the underlying reasons why each group is food-insecure, vulnerable and/or marginalized.
3. Understanding the legal and institutional environment within which policy and programme measures need to be implemented, and potential risks that could jeopardize the enjoyment of the right to adequate food.
4. Understanding the implementation processes and the impacts of existing (or proposed) policy and programme measures, and appreciating the need for policy and programme redesign to facilitate the realization of the right to adequate food.

96 See HRC. 2004, para. 12: "The State party is reminded of its responsibilities in relation to article 50 (federal states clause) of the Covenant. It should establish proper mechanisms between the federal and Lander levels to ensure the full applicability of the Covenant."

97 Ideally, the national policy on the right to food will have been determined before preparation of the legislation commences. In practice, this is rarely the case, and policy development and preparation of legislation generally proceed in tandem.

98 See FAO. 2009.

Next, the assessment should identify the country's international obligations, i.e. its commitments arising from ratification of international treaties. This is relevant because the framework law will have to be designed to reflect those international obligations. Depending on the country, the international instruments to be taken into account may include human rights treaties such as ICESCR, ICCPR, CEDAW and CRC, the International Labour Organization (ILO) conventions or regional human rights treaties. Other international instruments, including those that are not legally binding, may be relevant. These include those adopted by international organizations of which the country is a member (e.g. FAO Right to Food Guidelines, Codex Alimentarius or Code of Conduct for Responsible Fisheries, WHO Global Strategy for Infant and Young Child Feeding and the International Code of Marketing of Breast-milk Substitutes).

The assessment should then proceed to an examination of the constellation of legal norms relevant for the free enjoyment of the right to food in the country. This will provide an overview of the general legislative context into which the new law will have to be integrated.⁹⁹ The overview of the existing legal provisions relevant to the right to food should cover the national constitution and ordinary sectoral laws, as well as customary law and practice where relevant.

It will be equally important to identify institutions that may be affected by the new framework law. Where they exist, human rights institutions play an important role in supporting the realization of human rights and they are likely to have a role in any framework law. It will be useful to find out what kind of human rights institutions exist (ombudspersons, human rights commissions, etc.), whether their mandate encompasses the right to food, and which tasks and powers they have (e.g. whether they submit *amicus curiae* briefs in court proceedings, etc.). Other institutions will also be relevant, including those having a mandate to deal with food, trade, social security and the like.

3.1.3 DESIGNING A PARTICIPATORY DRAFTING PROCESS

Depending on the country's constitutional and legal system, the initiative to draft a new law can originate from various sources. While in most countries the majority of draft laws are written by government and then submitted to parliament, other possible sources include parliament, a parliamentary committee, a law reform commission, non-governmental organizations (NGOs) or citizens' groups and the president of the state. Whatever its origin, two conditions are necessary for its successful implementation: first, the framework law on the right to food must have the broad support of all relevant parts of society including the government, the general public and the private sector. Second, it must be supported by institutions with sufficient capacities to ensure its enforcement.

⁹⁹ It will also provide a snapshot of the areas that may need to be amended to support the realization of the right to food. The more detailed identification of these areas will take place during the compatibility review (see Part Four).

As to the actual drafting of law, in some countries, the ministry of justice, attorney general or parliamentary draftsman carries out this function; in others, a specially constituted drafting committee may be appointed by the legislature. The relevant ministry or one of its boards or councils may be given the task. Still other countries have a law commission or a similar body to carry out this function. In some countries, civil society organizations CSOs elaborate proposals and bring them to government and legislative bodies.

What matters ultimately is not which body initiates or drafts the legislation, but rather that the resulting draft garners the widest possible support. One way to ensure this is to involve as many stakeholder groups as possible in the drafting process. This fosters a sense of ownership and increases the acceptance of new legislation by society – both those who will be affected by it and those that will be called on to enforce it. Two examples of a participatory drafting process are given in Box 17.

BOX 17. Organizing a participatory drafting process – examples from state practice

In **Nicaragua**, the need for new legislation on food and nutrition security was identified by a group of members of Parliament who sought a holistic response to a problem of food and nutrition security in the country and submitted a proposal for a draft law on food and nutrition security in 1997. A second proposal was submitted to the Parliamentary Assembly in 2000, along with a detailed study on the state of food and nutrition security and an overview of Nicaragua’s relevant international commitments. In 2006, a special parliamentary commission prepared a new version of a draft Law on Food and Nutritional Sovereignty and Security. Since then, discussions of the draft continue with active participation of many NGOs dealing with food security and human rights, grassroots associations and a number of national and international experts, including FAO. The final draft has been submitted to the Parliamentary Assembly in October 2008.

In **Brazil**, the adoption of the National Food and Nutritional Security Framework Law¹⁰⁰ in 2006 is a result of a movement strongly alighted by public pressure and actions at grassroots level. As of 2003, hunger became a federal government priority. The newly elected President Lula da Silva introduced the “Zero Hunger Program”; this brought together several governmental and non-governmental

100 This is the English translation of the title of the law. The original title (in Portuguese) is the following: *Lei cria o Sistema Nacional de Segurança Alimentar e Nutricional – SISAN com vistas em assegurar o direito humano à alimentação adequada e dá outras providências*, or law establishing the national food and nutritional security system ensuring the human rights to adequate food and other measures.

BOX 17. Organizing a participatory drafting process – examples from state practice (cont.)

initiatives aimed at promoting the human right to food. In the same year, the National Council on Food and Nutrition Security (CONSEA) was re-established with the primary responsibility of advising the President of the Republic on right to food related issues. The recommendations of the second National Food and Nutrition Security Conference organized by the CONSEA in 2004 charged the latter with drafting a framework law on the right to food. The draft law was sent to parliament in October 2005 and given priority. The law was adopted a year later, following intense negotiations that involved government as well as civil society groups.

Source: Information presented by Senator Zeledon during a right to food workshop, Nicaragua, January 2008; see also FAO. 2007a. Rome.

A sufficiently broad expertise will ensure that the draft legislation is precise, comprehensive and appropriate, i.e. that it takes into account all relevant interests and contains provisions that reflect local circumstances.¹⁰¹ The composition of the drafting body should thus reflect various interests likely to be affected by the implementation of the law. This includes all the relevant governmental departments and agencies, such as those working in agriculture, social development, health, labour, education, trade and economy, finance and environmental protection, as well as private sector and consumer groups.

Active involvement of all governmental departments that may be affected by the future framework law will assist in identifying the institution that should take the lead in enforcing the framework law. Early consultation among affected government departments will also assist in identifying possible problems early in the development of the draft, and can help identify the groups and organizations outside the government that should be involved in the drafting process. It will also sensitize government authorities to the law they will be called upon to enforce.

Government stakeholders should be balanced by private actors, who should also participate actively in the drafting process. A law on the right to food can affect many different constituencies. Broad participation ensures that a wide range

¹⁰¹ See also WHO. 2005. This resource book discusses in some detail useful strategies to facilitate the development, adoption and implementation of the laws on mental health. While it does not relate to the right to food or any of its aspects, the text contains some useful information as to the procedural aspects of drafting framework legislation.

of interests and concerns related to the realization of the right to food are taken into consideration in the draft law. It helps law and policy-makers to identify all the possible consequences and impacts that enforcement of the framework law may have. It can also reveal weaknesses, gaps and conflicts in the existing legislation, or other possible obstacles to the full enjoyment of the right to food. A well-designed and implemented consultation process can also contribute to improving the credibility and legitimacy of government action, winning the support of groups involved in the decision-making process and increasing acceptance by those affected.

The list of non-governmental stakeholders will vary by country but is likely to include some of the following: affected populations (e.g. women, indigenous and local communities, children, people with disabilities, persons living with HIV/AIDS); concerned groups (farmers' associations, trade unions); CSOs, (NGOs); private sector actors (e.g. agricultural or other agro-biodiversity-oriented businesses); and representatives of the academic community. Where they exist, human rights institutions (i.e. ombudspersons and human rights commissions) should also be actively involved in the process as they will be unique sources of information and expertise. Finding the most appropriate approach to gather and recognize their opinions is crucial to reflecting their points of view. There are various approaches that can be used to consult stakeholders and collect views. These include departmental advisory bodies, public discussion papers, multistakeholder negotiations, surveys, public hearings (with sufficient advance notice and publicity), focus group discussions, roundtables, workshops, role-play, community research and similar. More deliberative mechanisms and oral consultation in general may prove more useful as they involve discussion and debate, and can facilitate forming and changing opinions. Such oral consultations may also be an opportunity to recognize and confront prejudices, discrimination and attitudes at the origin of the inability of persons to enjoy their right to food. Oral consultations may also provide legislators with the opportunity to explain the contents of the framework law.

Which approach to use will depend on each country's legal and institutional system in addition to the nature of the group being consulted, the resources and time that are available. Whatever approach is chosen, consultation must be based on principles of openness, transparency, integrity and mutual respect. This requires that, before the consultation takes place, concerned stakeholders are provided with sufficient background information needed to understand the issues and participate in the consultation in an effective manner. Those consulted must also be in a position to influence policy formulation effectively and they must be given sufficient time to comment. It is equally important, especially in countries with indigenous population groups, that participants are able to use their own language.

It may also be useful to consult and involve foreign or/and international experts who can contribute their knowledge of other countries' experiences and international standards, including case law of the international human rights mechanisms

(e.g. African Commission, European Court of Human Rights, Inter-American Court and Commission).

Parallel to this “official” planning and consultation process, a broad civil society coalition could be established independently, aimed at ensuring broader societal and political acceptance of the objectives to be pursued and achieved through a framework law. Food First Information and Action Network (FIAN), a well-established right to food NGO, proposes four phases of civil society consultation:

1. Developing public awareness about the right to food and the pertinent issues, through a broad campaign of sensitization and information.
2. Stock-taking: all social groups that have an interest in the implementation of the right to food are called upon to assess the realization of this right in the country when measured against the three-level state obligations (to respect, to protect and to fulfil).
3. The legislative process: again, all those concerned should have their say by commenting on draft versions of the law.
4. Once the law has been passed, civil society is called upon to monitor the law’s application.¹⁰²

3.1.4 IMPACT ANALYSIS

The next step is to forecast the budgetary, economic, social and administrative impacts of the new law, in order to increase the chances of the law’s successful implementation.¹⁰³ The effectiveness of the framework law may be undercut by the failure of government officials or implementing institutions to devote sufficient resources or energy to its implementation. While in some cases this may stem from a true lack of capacities, in others this may be the consequence of a lack of firm political will. The process of identifying the parties that will be affected (governmental and non-governmental) and their widespread participation in a drafting process will contribute significantly to an understanding of its relevance and thus also to its better acceptance and enforcement.

Ideally, costs and benefits should be quantified. Quantitative analysis, however, is not always possible – either because it is costly and time consuming to obtain accurate measures of costs or because some costs and especially benefits in the field of human rights are inherently unquantifiable. For example, the feeling of security in one’s ability to acquire enough food every day cannot be measured.

102 See Künnemann, R. 2002.

103 This section draws on the relevant parts of Vapnek, J. & Spreij, M. 2005, pp. 160–165.

On the other hand, as inadequate as the tool sometimes is, costing of legislation has become standard practice in Brazil and South Africa and has begun in other countries through Millennium Development Goal support. Advantages include securing governmental and legislative buy-in early for adequate budgetary allocations, making realistic assessments of achievability of a right and what it would take to realize it fully, spelling out the finer details of such an achievement in terms of institutional funding, subsidies, and so on. One possible solution for addressing the problem of limited resources of a country is to pool them from across the sectors responsible for the implementation of the various dimensions covered by the future law (e.g. agriculture, labour, education, justice). Indeed, as previously underlined, within a country, many different state agencies will have some implementing responsibilities with regard to accessibility, availability, stability, adequacy or utilization of the right to food. The advantages of cooperation, coordination of the relevant activities and their convergence are obvious.

An important question is how high a priority to assign to a potential change. It is often possible to achieve promising results in a less than ideal environment. This calls for a realistic approach to the development of new legislation and new institutional structures. On the other hand, it is important to keep the longer view in mind: in most countries, the full realization of the right to food will be achieved progressively. This should be reflected in the framework law provisions.

3.2 GENERAL PROVISIONS OF THE LAW

According to GC 12, a framework law on the right to food should include “provisions on its purpose; the targets or goals to be achieved and the time-frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures” (GC 12, para. 29). These are only some of the elements that will be covered by a framework law: because the law will be tailored to the particular circumstances of a given country and its legal system, it can contain provisions covering a variety of other issues. Some of these are discussed in the sections that follow. The examples from the existing national laws or draft bills are for illustrative purposes only; they do not represent suggested terminology or recommended wording.

3.2.1 PREAMBLE

The preamble of the framework law would set the context for its enactment, outlining the reasoning of the government in deciding to elaborate the law. The preamble could also usefully refer to the applicable international instruments on the right to food, such as the ICESCR, the CRC, the CEDAW and possibly the Right to Food Guidelines. For example, the Law on Food and Nutritional Security of Ecuador as well as the Law on Food and Nutrition Security of Guatemala refer, in their Preambles, to the Universal Declaration of Human Rights, the ICESCR (Ecuador, Guatemala) and to GC 12 (Guatemala).

3.2.2 TITLE AND OBJECTIVES

In order to distinguish the framework law from other laws on food, such as laws on food safety and quality, it would be advisable to call it “Law on the Right to Food” or similar. The term “framework” need not appear so long as the contents and structure

correspond to this particular legislative technique. Most of the existing laws and drafts do not have the right to food in the title, but food security, which is also acceptable.

The stated objective or purpose of the law guides the competent authorities' actions in its implementation and assists in the interpretation of the law's provisions. The objective of any framework law on the right to food should be the full realization of the human right to adequate food. While a state cannot be expected to achieve the same nutritional level for its population as one that starts from a previously higher level, each is required to make an effort to improve the state of the realization of the right to food for its people. This objective has been included in most of the recently adopted national legislation, although it has not always been referred to in these precise terms (see Box 18).

BOX 18. Objective of a framework law – examples from state practice

Argentina adopted its Law that sets up the National Programme for Food and Nutrition Security in 2003 “to implement a non-derogable duty of the State to guarantee the right to food for all citizens” (Art. 1).

Brazil's National Food and Nutritional Security Framework Law of 2006 “establishes the definitions, principles, guidelines, objectives and composition of the National System of Food and Nutritional Security, through which the public power, with the participation of the organized civil society, will formulate and implement policies, plans, programmes and actions in order to guarantee the human right to adequate food” (Art. 1).

The Law on Food and Nutritional Security of **Ecuador** of 2006 establishes as a policy of the state and priority action of the government the “food and nutritional security understood as a human right that guarantees the stability of supply, physical and economic access of every person to a healthy, sufficient, safe and nutritious food adequate in quality and in accordance to the culture, customs and preferences of the population, for a healthy and active life” (Art. 1).

The draft Planning Law on Food Sovereignty and Food and Nutritional Security of **Mexico** (November 2005) lists among its objectives the establishment of state policy that “guarantees the human right to adequate food and nutrition for all” (Art. 2).

In **Nicaragua**, the purpose of the draft Law on Food and Nutritional Sovereignty and Security (July 2008) is to “guarantee the right of all Nicaraguans sufficient, safe and nutritious food necessary for their vital needs, and that is physically, economically and socially accessible and conform to the culture thus ensuring availability and stability of food through development by the State and public policies linked to sovereignty and food and nutrition security for its implementation” (Art. 1).

BOX 18. Objective of a framework law – examples from state practice (cont.)

The draft Law on the Right to Adequate Food of **Peru** (November 2007) states as its purpose “the establishment of the framework for the exercise of the right to adequate food as one of the fundamental human rights recognized in the Constitution and international treaties ratified by the State” (Art. 1)

The draft Bill for a Food and Nutrition Act of **Uganda** (September 2008) states as its purpose “to provide for the enjoyment of the right to food /.../” (Preamble).

In addition to the general objective of the law, a number of specific objectives specifying the right to food policy goals to be achieved through the framework law could also be elaborated. Such objectives will reflect the results of the right to food assessment and what the priorities of a country should be with regard to this right. For example, if lack of access to natural resources and/or extensive discriminatory practices have been identified as being among the main obstacles to the enjoyment of the right to food in a country, a framework law could list undertaking agrarian reform, eliminating and preventing discrimination (i.e. identifying individuals, communities and groups discriminated against and adopting appropriate special measures) or raising level of education, training and access to opportunities for the most vulnerable individuals. Where the situations is particularly difficult, eradication of hunger and malnutrition may be determined as a specific objective to pursue as a priority, or ensuring that emergency situations that threaten mass access to food are anticipated, mitigated and addressed with equity and speed (see Box 19).

BOX 19. Specific objectives of the framework law – examples from state practice

The objectives of **Guatemala**'s Law on the National Food and Nutritional Security System are the eradication of malnutrition, the availability of basic necessities for the most vulnerable part of population and the promotion of the socio-economic development of the country.

The draft Law on Food Sovereignty and Food and Nutritional Security of **Mexico** lists among its objectives the establishment of state policy that guarantees the achievement of food sovereignty and the set-up of a network of economic security for national producers with support, incentives and strategic interventions for increasing domestic food production, processing and distribution.

BOX 19. Specific objectives of the framework law – examples from state practice (cont.)

South Africa's National Food Security Draft Bill has among its objectives “to provide ... for the procurement and maintaining of emergency food supplies ..., to provide for cooperative food security governance ..., to provide for institutions that will promote co-operative governance and procedures for co-ordinating food security functions exercised by organs of state [and] to provide for the environment and capacity to ensure the creation and maintaining of an honest and responsible food trading system ...”.

The **Ugandan** draft Bill for a Food and Nutrition Act states among its objectives “a) to recognize, promote, protect and fulfil the right to food as a fundamental human right; /.../ c) to plan, budget and implement the Uganda Food and Nutrition Policy using a rights-based approach and to ensure the participation of rights holders and the accountability of duty bearers; d) to ensure that food is treated as a national strategic resource; /.../”

3.2.3 SCOPE

The framework law will need to outline its scope, i.e. who is governed by the law and what activities and subject matters it covers.

Under international human rights law, states are the duty bearers with respect to the realization of the right to food (as well as other human rights). Within a state, the obligations under the right to food are binding on all branches of government – executive, legislative and judicial – and other public or governmental authorities, at whatever level (national, regional or local).¹⁰⁴ In states with a federal structure, human rights recognized by a state often extend to all its parts. Thus, the framework law will apply to all these state authorities in the context of their activities affecting availability of food, stability of food supply, access to food, access to means for its procurement, adequacy and cultural appropriateness of available and accessible food.

Human rights obligations do not or not yet, as such, bind non-state actors as a matter of international law. However, the obligation to protect human rights to which they have committed themselves requires states to ensure that the activities of private persons or entities do not impair the enjoyment of the right to food of individuals. Indeed, the international human rights treaty bodies have generally confirmed that adopting appropriate legislation to prevent and address third-party abuse of human rights is among states' minimum obligations under the treaties in order to fulfil the

¹⁰⁴ In practice, the right to food can only be effectively ensured if all branches of government adopt necessary measures that fall within their sphere of competence.

duty to protect.¹⁰⁵ The framework law should thus specifically require competent state authorities to adopt appropriate legislation or regulation of corporate activities under their sphere of competence. It could also impose specific duties on private persons or entities directly, barring them from hindering others' enjoyment of the right to food.

The holders of the right to food are individuals. In general, rules concerning the fundamental rights of the human person are *universal* obligations,¹⁰⁶ that is, they apply to all individuals, regardless of nationality or statelessness; this includes asylum seekers, refugees, migrant workers and other persons who may find themselves in the territory or subject to the jurisdiction of the particular state.¹⁰⁷ This should be stated explicitly in the framework law.

The scope of right holders is typically considered to be limited to persons within the state territory and subject to its jurisdiction. While this is the explicit wording of Article 2.1 of the ICCPR, this view has been transferred also to economic, social and cultural rights although the ICESCR does not mention territory or jurisdiction as delimiting criteria for the scope and application of the treaty.¹⁰⁸ In 2004, the HRC held that ICCPR rights can have extraterritorial application, that is towards individuals outside the territory of a state.¹⁰⁹ The HRC's position was endorsed in part by the International Court of Justice (ICJ)¹¹⁰ with regard to ICESCR application. After noting that Article 2 of the ICESCR does not contain a provision circumscribing the scope of States Parties' obligations, the ICJ found that "it is not to be excluded that it applies both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction".¹¹¹ The CESCR has been more specific on this topic; in its GC 15 on the right to water, it stated that "steps should be taken by States Parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries" (para. 33). Despite this, the geographic scope of the ICESCR remains a disputed issue.

105 See Ruggie, J.G. 2007, para. 41.

106 The United Nations Charter contains an obligation to promote universal respect for, and observance of, human rights and fundamental freedoms (art. 55.c).

107 See the HRC GC 31 on the nature of the general obligations imposed on States parties, paras. 9 and 10.

108 See Skogly, S. & Gibney, M. 2002.

109 The HRC noted in the GC 31, para. 10, that "a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party".

110 Advisory Opinion on *Legal Consequences on the Construction of a Wall in the Occupied Palestinian Territory*. ICJ Advisory Opinion, 9 July 2004. In that case, the ICJ considered that the construction of the wall by the Israeli Government resulted, among other consequences, in the destruction of agricultural land, and means of subsistence for the Palestinian population, which constituted a breach of Israeli's obligations under the ICESCR, notably the right to an adequate standard of living, including adequate food, the right to work, the right to health and the right to education.

111 *Ibidem*.

With regard to private entities or state-owned enterprises, while it cannot be said that there is – as yet – an express duty to exercise extraterritorial jurisdiction over these actors, States Parties are encouraged to regulate corporate acts both within and outside their borders.¹¹² Such state action seems ever more necessary today, in a world of increased globalization and interdependence in which poorer and less powerful states may be unable to take the necessary steps to protect their own people from the activities of third parties – in particular, private companies and transnational corporations based in other countries. From both a moral and practical point of view, all countries should ensure that their policies do not contribute to violations of the right to food in other countries. This can also be seen as a minimum requirement, or minimum content of international cooperation.¹¹³

If the intent of the country drafting and adopting a framework law on the right to food is to address this issue and also regulate the acts undertaken abroad, including activities of private actors, this should be reflected in the provisions on scope of the law as well as in the substantive provisions related to state obligations. This issue, however, will not be examined in further detail as the present Guide focuses on the right to food implementation within a country's territory.

3.2.4 DEFINITIONS

The definitions section ensures an agreed, specific meaning of certain terms that may recur throughout the text. The list of definitions in the framework law is not a glossary of human rights or food-related terms in general, but rather explicates only those terms that appear in the law. At base, the definitions section serves as a reference point for terminology about which doubts may arise in the enforcement of the law. On the other hand, some definitions may be unnecessary if a country has an Interpretation Act that serves to define some terms uniformly for the purposes of interpreting all of the country's legislation.¹¹⁴

In many cases, drafters will not need to invent new terms and definitions; the framework legislation can employ definitions from a number of international instruments related to human rights (such as the ICESCR or the Right to Food Guidelines) or to definitions proposed by the relevant international agencies dealing with food such as FAO, WHO, WFP or Food Insecurity and Vulnerability Information Mapping Systems (FIVIMS). It could also draw on legislative examples

from other states. Using human rights terminology and categories contained in the international standards on the right to food helps to maintain coherence between the law and these international standards and to avoid conceptual confusions.

112 See Ruggie, 2007, para. 87.

113 See Donati, F. & Vidar, M., 2008, pp. 59–60.

114 See Vapnek & Spreij, 2005, p. 167.

Moreover, it can help judges who have to interpret the law systematically or apply it in specific cases of violations of the right to food.

The choice of terms to be defined in a law will of course depend on the specific circumstances and needs of a country in question. This section discusses only the most significant terms that may be included in the definitions section: food, food security, nutrition security, adequacy, vulnerability or vulnerable groups, hunger and undernutrition and public authority. The Guide does not propose definitions of these terms; it only indicates the various dimensions of these terms that should be taken into account when defining them.

Some other terms, such as the right to adequate food, have important substantive implications for the framework law, and therefore are addressed later in this part rather than in the definitions section.

a) Food

Naturally, the definition of “food” is of primary importance for the enforcement of the framework law. While the CESCR discusses access to drinking water as a separate human right (GC 15) – the approach, which also seems to be the trend followed by many within a human rights community – according to the UN Special Rapporteur on the right to food, the concept of “food” should also include liquid and semi-liquid nourishment as well as drinking water.¹¹⁵ This is because drinking water is as important as solid food for a person to be able to enjoy the right to food. An example of the definition of “food” is given in Box 20. On the other hand, some countries may wish not to include drinking water where, for instance, separate national legislation requires that a certain amount of water be provided free of charge to every member of a household (see below, section 4).

BOX 20. Definition of “food” at the national level – examples from state practice

According to the National Food Security draft Bill of **South Africa**, food means “everything originating from biological sources and water, whether processed or not, which is designated as eatables and beverages for human consumption, including food additive material, food raw material and other materials used in the process of preparation, processing and or the making of eatables or beverage” (art. 1).

According to the draft Bill for a Food and Nutrition Act of **Uganda**, “food” includes liquid and semi liquid nourishment and drinking water and everything that originates from biological sources and water, whether processed or not, which is designated as an eatable or beverage for human consumption, including food additive material, food raw material and other materials used in the process of preparation, processing and or the making of an eatable or beverage” (Art. 2.1).

115 UN Special Rapporteur on the right to food, 2001, para. 11.

b) Food security

“Food security” is another term that should be defined in a framework law. When defining this term, states should refer to the internationally agreed definition given by the World Food Summit Declaration in 1996, and reaffirmed by the Right to Food Guidelines, which states that “Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.”¹¹⁶ Food security is said to have four main pillars:

1. *Availability*: The availability of sufficient quantities of food of appropriate quality, supplied through domestic production or imports (including food aid).
2. *Access*: Access by individuals to adequate resources (entitlements) for acquiring appropriate foods for a nutritious diet. Entitlements are defined as the set of all commodity bundles over which a person can establish command given the legal, political, economic and social arrangements of the community in which they live (including traditional rights such as access to common resources).
3. *Utilization*: Utilization of food through adequate diet, clean water, sanitation and health care to reach a state of nutritional well-being where all physiological needs are met.
4. *Stability*: To be food secure, a population, household or individual must have access to adequate food at all times. They should not risk losing access to food as a consequence of sudden shocks (e.g. an economic or climatic crisis) or cyclical events (e.g. seasonal food insecurity). The concept of stability can therefore refer to both the availability and access dimensions of food security.

c) Nutrition security

Nutrition security means that not only can people consume a healthy diet, but that other, non-food related issues, such as health and care, are also assured. To use nutrients efficiently, a person must be well cared for and relatively free of disease. Nutrition security thus depends, among other factors, on food security, disease prevention and control, health care and adequate provision of care at individual, household and community levels. Nutrition security is reflected in the utilization pillar of food security, which brings out the importance of its non-food inputs.

Several countries that have incorporated the human rights approach to food security into their relevant laws or are envisaging doing so refer to “*food and nutrition*”

¹¹⁶ This definition takes up a definition given by the World Food Summit Declaration in 1996. For more detailed information, including definition of the four pillars of food security, see, for example, ftp://ftp.fao.org/es/ESA/policybriefs/pb_02.pdf

security.”¹¹⁷ This can be understood as a broad interpretation of the right to food, i.e. as including also the nutrition aspect. Because ideally both food *and* nutrition security should be ensured for a person to be able to enjoy fully his or her right to food, it might be useful if a framework law defined these two terms separately. In this regard, it will also be relevant, when nutrition security is included, to assess carefully the implications this may have for the scope of the framework law.

d) Adequacy

As noted earlier, this guide proposes a substantive, self-explanatory provision on the right to adequate food. Nevertheless, it might be useful to include the concept of adequacy in the definitions aspect of a framework law. The concept of adequacy is an element of the normative content of the right to food and it overlaps partly with the utilization pillar of food security. The concept is particularly significant in relation to the right to food since it underlines a number of factors that must be taken into account in determining whether particular foods or diets that are accessible can be considered the most appropriate under given circumstances for the purposes of the realization of the right to food. The precise meaning of adequacy is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions (GC 12, para. 7). Food is considered to be adequate in terms of a number of variables, such as food safety, nutritional quality, quantity and cultural acceptability.

e) Vulnerability or vulnerable groups

Although the full realization of the right to food will be a longer-term process, governments must take immediate measures to ensure that those persons that are particularly disadvantaged can access food or the means for its procurement. Such measures may be needed for the period of time for which the vulnerability exists (in the case of vulnerability provoked by natural factors such as drought or earthquakes) or for longer. The framework law can either list “vulnerable groups” in the law or give a definition of “vulnerability”. Listing vulnerable groups in the framework law may not be the most appropriate option, as it risks leaving out of its coverage persons or groups that may become vulnerable. Therefore, while some groups are immutable (e.g. indigenous peoples, ethnic, linguistic or religious minorities, persons with disabilities, individuals living with HIV/AIDS, refugees and internally displaced people, women and children), others may have shifting memberships (e.g. the urban poor, the rural landless or smallholder farmers, urban casual workers, street hawkers, rural seasonal workers, subsistence farmers with less than one hectare in mountainous areas and so on). On the other hand, the advantage of listing vulnerable groups would be that it would force the state to think of entitlements for every single one of these categories and develop them through subsidiary legislation.

117 Brazil, Ecuador, Guatemala and Nicaragua.

Another possibility is to define “vulnerability” by referring to factors that place persons at risk of becoming food insecure. People who are vulnerable (either because of structural factors, e.g. unemployment, declining soil quality, HIV/AIDS, etc. or because of a high risk of external factors, e.g. drought, floods, currency devaluation) generally have a high probability of becoming food insecure and of being unable to enjoy their right to food. Food insecure people are those people who are not able to meet their minimum food needs. For long-term action to eradicate hunger and realize the right to food for all, it is important then to tackle those factors that create vulnerability. This is the approach adopted by the FIVIMS programme, which has also developed a methodology for vulnerability assessment. Box 21 gives a few examples of these two approaches from state practice.

BOX 21. Vulnerability – examples from state practice

In **Guatemala**, the Regulation to the Law on the National Food and Nutritional Security System (of 2006) defines vulnerability to food insecurity as the “probability of an acute diminished access to food, due to environmental, social or economic risks and reduced capacity to cope with them”.

The **Peruvian** Decree establishing the Multisectoral Commission on Food Security (of 2002) defines “vulnerability or risk of food insecurity” as a “combination of factors that determine a tendency to suffer from inadequate nutrition or to an interrupted food supply due to a problem in the provision of food”.

According to the draft Bill for a Food and Nutrition Act of **Uganda**, “‘vulnerable’ includes infants, children, school going children, pregnant and nursing mothers, the elderly, refugees, internally displaced persons, people with disabilities, sick persons with chronic diseases such as HIV/AIDS, victims of conflict, rural people in precarious livelihood situations, marginalised populations in urban areas, groups at risk of social marginalisation and discrimination and any other group that may be identified from time to time”.

For the purposes of FIVIMS, “vulnerability” refers to the full range of factors that place people at risk of becoming food insecure. These can be external or internal. External factors include: trends such as depletion of natural resources from which the population makes its living; environmental degradation or food price inflation; shocks such as natural disasters and conflict; and seasonality, such as seasonal changes in food production and food prices. Internal factors that determine the capacity of people to cope with difficulties include the characteristics of people themselves, the general conditions in which they live and the dynamics of their households. The degree of vulnerability of individuals, households or groups of

people is determined by their exposure to the risk factors and their ability to cope with or withstand stressful situations.

FIVIMS also define “food insecurity”: it is a situation that exists when people lack secure access to sufficient amounts of safe and nutritious food for normal growth and development and an active and healthy life. It may be caused by the unavailability of food, insufficient purchasing power, inappropriate distribution, or inadequate use of food at the household level. Food insecurity, poor conditions of health and sanitation, and inappropriate care and feeding practices are the major causes of poor nutritional status. Food insecurity may be chronic, seasonal or transitory.¹¹⁸

f) Hunger and undernutrition

Understanding the “map” of hunger in a country and its determinants in terms of who are the hungry and undernourished, how its various manifestations affect different groups of people and the underlying reasons, is crucial for designing effective measures to realize the right to food.

No internationally recognized definition of hunger exists. For many, the words “hunger”, “starvation” and “famine” are synonymous. However, it is today widely accepted that hunger goes beyond a minimum calorific package sufficient to prevent death by starvation. The term “starvation” refers to the most extreme form of hunger; death by starvation is the end result of a chronic, long-lasting and severe period of hunger. It is ultimate evidence of a continued right to food violation. To the nutrition community, the term “hunger” includes “hidden hunger” or having inadequate amounts of micronutrients in the body, i.e. iodine deficiency, iron deficiency, zinc deficiency, vitamin A deficiency, etc., and the access to a healthy and balanced diet that leads to optimum nutrition status.

Hunger is thus best defined as covering a spectrum of situations, from starvation, i.e. not having enough food of any sort to eat, to undernutrition, i.e. having enough food to eat, but of inadequate quality.¹¹⁹ In a similar way, the International Food Policy Research Institute (IFPRI) developed the Global Hunger Index to capture various dimensions of hunger defined as: insufficient availability of food, shortfalls in nutritional status and premature mortality caused directly or indirectly by undernutrition.

Over an extended period, hunger, in the sense of insufficient availability of food or insufficient adequate food, is likely to lead to undernourishment and is usually the

118 See www.fivims.net.

119 See United Nations System Standing Committee on Nutrition (UN SCN), 2005.

consequence of extreme food insecurity.¹²⁰ Undernutrition is a general term that indicates a lack of some or all nutritional elements necessary for human health. It concerns not only the quantity and quality of food (not having enough food or the wrong types of food), but also the body's response to a wide range of infections that result in malabsorption of nutrients or the inability to use nutrients properly to maintain health. The World Food Programme¹²¹ defines undernutrition as a state in which the physical function of an individual is impaired to the point where he or she can no longer maintain natural bodily capacities such as growth, pregnancy, lactation, learning, physical work and resisting and recovering from disease. Children are its most visible victims.

Providing a definition of hunger and undernutrition in the framework law will be of crucial importance, most notably for the implementation of the entitlement to a minimum amount of food that persons have under the human right to food, and which the state is required to provide immediately (see below, section 3.5.4.a).

g) Public authority

Certain public authorities will be assigned specific implementation responsibilities in the framework law, but all public authorities within a state – which exercise activities that can affect individual enjoyment of the right to food – will have to act in accordance with the framework law and strive to take the right to food into account in their day-to-day work (in addition to other human rights protected in the domestic legal system). This should be the case whether officials are delivering a service directly to the public (e.g. education, health, social protection) or devising new policies or procedures (e.g. agriculture, land rights, markets or trade) that can affect the availability, accessibility or adequacy of food. All public authorities are under an obligation not to violate the right to food. Therefore, it could be useful to define “public authority” in the framework law.

In general international law, the conduct of any organ of the state constitutes an act of state, provided that it acted in its official capacity, regardless of its position, whether superior or subordinate.¹²² In light of the trend observed in many countries towards outsourcing government activities to the private sector, the definition should make clear whether a public authority must be a government employee or whether the term also covers private actors performing delegated public functions. Box 22 gives three examples of definition of public authority from state practice.

120 See Kennedy, E. 2003.

121 See http://www.wfp.org/aboutwfp/introduction/hunger_what.asp?section=1&sub_section=1
See also <http://www.unicef.org/progressforchildren/2006n4/> and <http://www.worldhunger.org>

122 See, for example, International Committee of the Red Cross (ICRC), 1977.

BOX 22. Public authority – examples from state practice

Under the 1998 Human Rights Act of the **United Kingdom of Great Britain and Northern Ireland**, the “public authority” includes (a) a court or tribunal, and (b) any person certain of whose functions are functions of a public nature (Art. 6).

Under the **Indian** Right to Information Act, “public authority” includes “any body controlled or substantially financed by funds provided directly or indirectly by the appropriate government”. This includes not only bodies owned and controlled by the state, but even NGOs that are substantially funded by the government.

In accordance with the draft Bill for a Food and Nutrition Act of **Uganda**, “public authority” means “a Ministry, department, parastatal agency, local government or public officer in which or in whom any law vests functions of control or management of matters related to food or nutrition”.

3.2.5 PRINCIPLES

A section on fundamental principles that will govern actions of all governmental bodies implementing their obligations under the right to food should be included in the framework law. For example, the law could require that:

- ◆ All public authorities, in the exercise of their functions, apply the stated principles.
- ◆ All subsidiary legislation and measures are elaborated in accordance with the established principles.

Provisions to this effect have been included in some of the existing legislation (see Box 23). The subsections that follow examine in some detail some of the most important principles, following the PANTHER framework (see above, section 1.3).

BOX 23. Principles – examples from state practice

According to the National Food and Nutritional Security Framework Law of **Brazil**, such a system shall be based on the following principles: universality and equity in access to adequate food with no discrimination of any kind; preservation of freedom and dignity of every human being; social participation in formulation, implementation, monitoring and control of policies and plans related to food and nutrition security in every sector of government; transparency of programmes, acts and public and private resources as well as criteria for their allocation (Art. 8).

The Law on the National Food and Nutritional Security System of **Guatemala** states the main principles guiding different institutions in their performance of actions aiming at the promotion of food and nutrition security of the population. These are the principles of solidarity, transparency, protection, equity, integrity, sustainability, food sovereignty, precaution, decentralisation and citizens' participation.

In its provisions on principles that will guide its implementation, the draft Law on Food and Nutritional Sovereignty and Security of **Nicaragua** mentions, among others, the principles of participation, non-discrimination, transparency, equity, sustainability and decentralization (Art. 3).

a) Participation

The principle of participation means that people should be able to determine their own well-being and participate in the planning, design, monitoring and evaluation of decisions affecting them. Individuals must be able to take part in the conduct of public affairs, including the adoption and implementation of state policies.¹²³ Such participation should be active, free and meaningful whether it is exercised directly or through intermediary organizations representing specific interests. It should also be supported by capacity-building where necessary. Civil society participation in the institutions overseeing the realization of the right to food in a country is discussed in some detail later on in the Guide (see below, section 3.13).

In the context of the administration of the framework law on the right to food, this principle requires all public authorities and, notably, those in charge of specific responsibilities (e.g. minimum food entitlements, special measures

¹²³ The right to participation is guaranteed by several international human rights instruments. See, for example, Article 25 of the International Covenant on Civil and Political Rights ("Every citizen shall have the right and the opportunity ... to take part in the conduct of public affairs.... [This includes] all aspects of public administration, and the formulation and implementation of policy.").

for disadvantaged groups, see section 3.5.4 below), to establish appropriate procedures and mechanisms allowing civil society and other concerned stakeholders to participate actively in the process of making and implementing decisions that may affect their right to food (see Box 24).

BOX 24. Principle of participation – examples from state practice

The Law on the National Food and Nutritional Security System of **Guatemala** requires the state to “promote the coordinated participation of the people in the formulation, implementation and monitoring of the National Policy on Food and Nutrition Security as well as of the sectoral policies flowing from it” (Art. 4.j). The government is more specifically required to “promote consultation with organized civil society in order to propose solutions and define strategies aiming at guaranteeing food and nutrition security” (Art. 5).

The draft Law on the Right to Adequate Food of **Peru** requires the state to “guarantee citizens’ participation in the formulation, implementation and monitoring of the state policies aiming at the realization of the right to adequate food” (Art. IX).

b) Accountability

Accountability is one of the main principles of democratic government and means that public officials should be answerable to their superiors and to the people they serve for their actions. Application of the principle of accountability in the context of the framework law requires clear assignment of responsibilities and functions to public authorities for implementation of the framework law and any subsequent measures to be taken. In addition, the expected results must be spelled out clearly and appropriate procedures established (see Box 25)

BOX 25. Principle of accountability – examples from state practice

The draft Law on the Right to Adequate Food of **Peru** provides that the state will “guarantee the transparency and accountability in policies designed to realize the right to food” (Art. XI).

The Law on the National Food and Nutritional Security System of **Guatemala** requires that any intervention is based on objective information and methods and that it is regularly and continually monitored and assessed, thus promoting transparency in public action, social audit and addressing the real needs of the population (Art. 4).

c) Non-discrimination

The principle of non-discrimination is among the most fundamental elements of international human rights law. It requires that the level of protection of a given human right are objectively and reasonably the same for everybody irrespective of sex, age, race, colour, religion or any other ground. In addition to specifically prohibiting discrimination on any ground, this principle requires specific measures aimed at correcting *de facto* discrimination or eliminating conditions that cause or help to perpetuate discrimination as well as measures promoting equality (see section 3.4. below). In the context of the framework law, this will mean paying particular attention to those groups that cannot enjoy their rights as fully as others (see Box 26).

BOX 26. Principle of non-discrimination – examples from state practice

The draft Law on the Right to Adequate Food of **Peru** states that “it is up to the State to respect, protect and fulfil the right to adequate food with no discrimination of any kind” (art. IV). It also specifically requires the state to “especially protect the most vulnerable groups of persons facing food and nutrition insecurity” (Art. V).

Brazil's National Food and Nutritional Security Framework Law requires that the system it establishes is based on “universal and equitable access to adequate food, with no discrimination of any kind” (Art. 8.I).

d) Transparency

Transparency refers to open access by the public to timely and reliable information on the decisions and performance of public authorities. Holders of public office should be as open as possible about all the decisions and actions that they take that may affect the free exercise of the right to food (see box 27)

BOX 27. Principle of transparency – examples from state practice

The National Food and Nutritional Security Framework Law of **Brazil** requires that the system established in the Law is based on “transparency of the programmes, actions and resources – both public and private – as well as of criteria for their allocation” (Art. 8.IV).

BOX 27. Principle of transparency – examples from state practice (cont.)

The Law on the National Food and Nutritional Security System of **Guatemala** requires that “interventions are based on objective information and methods, and monitoring mechanisms and regular evaluation be established, thus ensuring transparency in public management, social audit and taking into account the needs of the population” (Art. 4.b)

Applying the principle of transparency within the context of the framework law means that right holders must be provided with essential information about the decision-making process and who is accountable and responsible for what (see below, section 3.7.). Right holders may also be given the power to demand information on the processes that feed into the achievement of the particular entitlement; this often provides an easy and low-cost corrective check to maladministration.

e) Human dignity

Human dignity refers to the absolute and inherent worth that a person has simply because they are human, not by virtue of any social status or particular powers. The framework law should recognize in an unequivocal form that every person has a right to food. To comply with this principle in the implementation of the framework law, the state, through its public officials, must treat persons equally and respect their human worth and dignity (see Box 28).

BOX 28. Principle of respect for human dignity – examples from state practice

The National Food and Nutritional Security Framework Law of **Brazil** requires that the National Food and Nutrition Security System it establishes is based on “preservation of autonomy and respect of human dignity” (Art. 8.II).

The Law on the National Food and Nutritional Security System of **Guatemala** provides that “activities aiming at achieving food and nutrition security must give priority to the protection of dignity of the people of Guatemala” (Art. 4.a).

f) Empowerment

The principle of empowerment means that people should have the power, capacities, capabilities and access needed to change their own lives, including the power to seek from the state remedies for violations of their human rights. In a way, this principle is the logical consequence from all the preceding principles.

In the context of the framework law, the empowerment principle would entail including specific provisions on awareness raising, capacity-building and right to food education.

g) Rule of law and access to justice

The rule of law means that governmental authority is legitimately exercised only in accordance with written, publicly disclosed and accessible laws adopted and enforced in conformity with established procedures. The principle is intended as a safeguard against arbitrary use of state authority and lawless acts of both organizations and individuals. In the context of the human right to food, the principle of the rule of law implies that the framework law itself as well as any subsidiary legislation to be adopted for ensuring its implementation must be clear, fair and accessible.

The rule of law also means that no person or body can breach the law with impunity. Therefore, access to justice for the enforcement of the right to food will be of particular importance. Access to justice includes the right to an “effective remedy” for anyone whose rights are violated as well as the guarantee of due process in all legal proceedings.¹²⁴ The framework law could establish a special appeals process and reaffirm the right of all those whose rights are violated to seek redress from the courts. Establishing a special appeals process may be particularly useful in countries where access to justice is a problem (notably for poor people, women, minority groups and others who suffer discrimination) and where judges are not sufficiently trained in human rights. The appropriate structures (e.g. designated human rights chamber of a court, or human rights judge(s)) and procedures could be put in place at various state levels in particular, at *local level* (e.g. municipal or district).

¹²⁴ See, for example, Article 8 of the UDHR, Article 2.3 of the ICCPR and Articles 6 and 13 of the ECHR. The CESCR has made it clear that this important principle of international human rights law also applies to economic, social and cultural rights. In its GC 9 on the domestic application of the Covenant, the CESCR underlined the “need to ensure justiciability ... when determining the best way to give domestic legal effect to the Covenant rights” (para. 7). It also considered that “the adoption of rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of rights are indivisible and interdependent” (para. 10).

3.3

SUBSTANTIVE PROVISIONS ESTABLISHING THE RIGHT TO FOOD

An explicit norm on the right to food is the necessary basis for elaborating its content, for demanding its realization and also for monitoring it. As mentioned earlier, the right to food is a complex right; it implies the entitlement to the bare necessities of life needed for survival as well as the entitlement to a safe, balanced and adequate diet central to a healthy and active life. While in practice the magnitude and content of concrete entitlements that a person can rely on under this right will vary according to the specific circumstances of that individual and the extent of the economic development of the country, it must never fall below the entitlement to the minimum amount of food consistent with the imperative of human dignity.

To make the right to food operational, substantive provisions of any framework law must structure the norm on the right to food into two degrees of its realization – (i) the right to adequate food and (ii) freedom from hunger – and clarify their content and main components. The fully fledged norm on the right to adequate food demands that all dimensions/components of the right be identified and reflected in provisions of the law. The minimum level of the realization of the right to food – freedom from hunger – requires that a minimum standard of the satisfaction of nutritional needs is determined by the framework law itself. By doing so, governments would legally reaffirm their commitment to progressively fully realize this fundamental human right and would establish conditions to ensure access to food needed for everyone to be free from hunger. The following sections will give some guidance as how this could be achieved in the framework law.

3.3.1 RIGHT TO ADEQUATE FOOD

Drawing on international human rights law, the framework law should first expressly state, in the unequivocal form, that:

- ◆ Every person has the right to adequate food.

Such recognition may, however, not be sufficient in itself. As stated above, the framework law should usefully specify in more detail various dimensions of this right. This would facilitate the role of administrative and judicial authorities in applying, interpreting and enforcing this human right and would also allow individuals to better understand their entitlements under this right and claim them in case of denial.

A number of recently adopted and draft human rights-based laws on food and nutrition security moved in this direction, although in some cases the recognized right is not denominated “the right to food” but the right to “food and nutrition security” (see Box 29). The terminology is not as important as ensuring in the framework law that the recognition of the right, its content and main components do correspond to relevant international standards.

BOX 29. Establishing the right to food and defining its content – examples from state practice

The National Food and Nutritional Security Framework Law of **Brazil** states that “adequate food” means “realization of the right of everyone to regular and permanent access to qualitatively and quantitatively sufficient food without compromising access to other basic necessities, taking as a basis food practices that promote health, respect cultural diversity and which are environmentally, economically and socially sustainable” (Art. 3).

The Law on Food and Nutritional Security of **Ecuador** establishes as a policy of the state and priority action of the government “food and nutrition security as a human right that guarantees the capacity of supply, physical and economic access of every person to a healthy, sufficient, safe and nutritious food adequate in quality and conforming to the culture, customs and preferences of the population, for a healthy and active life” (Art. 1).

In **Guatemala**, in the Law on the National Food and Nutritional Security System, “food and nutrition security” means “the right of every person to have regular and permanent physical, economic and social access to food which is adequate, in quality and quantity, and with cultural relevancy, and which is preferably of national origin as well as to its adequate biological use to maintain a healthy and active life” (Art. 1).



BOX 29. Establishing the right to food and defining its content – examples from state practice (cont.)

The draft Framework Law on Food of **Honduras** establishes “the human right of every person to access safe and nutritious food, in conformity with the right to adequate food and the fundamental right of every person to be free from hunger, in order to be able to fully develop and maintain his or her physical and mental capacity” (Art. 10).

In accordance with the draft Law on the Right to Adequate Food of **Peru**: “The right to adequate food is a human right of persons, either in an individual or collective form, to have physical and economic access at all times to adequate, safe and nutritious food of cultural relevance, so that the food can be appropriately used to meet their nutritional requirements, maintain a healthy life and achieve their comprehensive development. This human right comprises access to, and the availability, use and stability of, adequate food supplies” (Art. 2).

The draft Bill for a Food and Nutrition Act of **Uganda** explicitly recognizes that “Every person has a right to food and to be free from hunger and under-nutrition” (Art. 5.1)

The framework law could state for example that:

- ◆ Every person has the right to live in conditions that enable her or him to:
 - i. either feed her or himself directly from productive land or other natural resources or rely on well functioning distribution, processing and market systems, or both;
 - ii. be financially able not only to acquire a sufficient quantity and quality of food, but also to satisfy her or his other basic needs;
 - iii. be safe from risk of losing access to food as a consequence of sudden shocks (e.g. an economic or climatic crisis) or cyclical events (e.g. seasonal food insecurity);
 - iv. have the opportunity of good food utilization through access to an adequate diet, clean water, sanitation and health care to reach a state of nutritional well-being where all physiological needs are met; and
 - v. access foods or diets that are the most appropriate under given circumstances in terms of their nutritional value and cultural acceptability.

Pregnant and lactating women and young children are particularly affected by under- and malnutrition. Inadequate consumption of sufficient quantity and quality of food, combined with health, sanitary and educational factors pose a challenge to the realization of their right to food. As mentioned earlier in this Guide, the utilization aspect of food security, i.e. clean water, sanitation and health care, is particularly important for these two groups of persons (see above, section 1.1). This should be particularly the case in countries that have ratified the CEDAW and the CRC; these provisions would thus also contribute to a better implementation of these international human rights treaties. The framework law should therefore also include a separate, express provision stating that:

- ◆ Every girl and boy has a right to food and nutrition adequate for her or his age, allowing her or him to grow and develop.
- ◆ Every woman has a right to food and adequate nutrition during pregnancy and lactation.

The implications of a broad recognition of the right to food and detailed elaboration on its various dimensions through a framework law are substantial. First, they make clear that the right to food cannot be satisfied fully by the adoption of policies and programmes designed to provide a minimum daily nutritional intake (i.e. through various food safety nets). It is the balance of nutrients in a diet, absorptive capacity of the body, quality of living environment, nature of a person's work, and gender, among other factors, that determine a person's requirements with regard to the right to food. States must therefore act towards creating conditions that enable people either to produce food or to buy it. Such conditions can be created only by taking more far-reaching measures aimed at removing causes of hunger and poverty, eliminating inequalities, improving access to knowledge, resources, skills and opportunities needed to provide food for themselves. Second, they imply corresponding obligations on state authorities; these will be discussed further in section 3.5.

Third, such legislative provisions would also facilitate adjudication and enforcement of this fundamental human right by ensuring that the decisions, actions or inaction of government are measured from the subjective perspective of the claimant of the right. For example, while the right to food does not imply an entitlement to a piece of land allowing one to feed oneself by one's own means, the lack of action on the part of the state to facilitate access to land or an action leading to limiting such access can, in some specific circumstances and for some categories of persons, amount to a violation of his or her right to food.

3.3.2 FUNDAMENTAL RIGHT TO BE FREE FROM HUNGER

As the right to food encompasses freedom from hunger, the framework law should also expressly establish the fundamental right of every person to be free from hunger.

Under this right, state authorities must ensure that no one is purposefully deprived of food or left to starve by actions or omissions of public officials; they must take positive measures to protect persons suffering from hunger or who are at risk of suffering from hunger. Because freedom from hunger is an immediate obligation, the framework law should also establish the specific entitlement to a minimum amount of food that persons have and that the state is required to provide.

The Penal Code of most countries will have provisions relating to the protection of the life and the security of person. Purposeful deprivation of food would generally fall under such provisions. Should this be the case, it might be better not to duplicate such provisions in the framework law, as this could lead to diminished, rather than increased, responsibility.

To give substance to this provision, it will be necessary to establish clearly the content of the right to freedom from hunger. As mentioned earlier, notwithstanding the frequent use of the term “hunger”, this concept is not entirely clear and its definition has not been the subject of consensus; it is commonly used for situations of serious food deprivation as well as for different forms of undernutrition, including a shortfall in access to sufficient food or in essential components of nutritionally necessary food, making an impact on the normal physical or mental capacity of the person (see above, section 3.2.4.f). This explains why there is not yet a general agreement at the international level on the exact meaning of “freedom from hunger” in legal terms. At the same time, it is today widely accepted that it goes beyond a minimum calorific package sufficient to prevent death by starvation. Setting a standard at the level of “starvation” only would clearly go against human dignity. Moreover, because prolonged hunger most often leads to undernutrition, which is a less ambiguous concept, the minimum food entitlements should be defined in terms of freedom from hunger and undernutrition. While very brief spells of shortfalls in dietary requirements would probably not be characterized as hunger, when they last for a sufficient time to induce physical or mental weaknesses, or to slow down the growth of the child, this would constitute hunger.¹²⁵

The framework law should thus state expressly that:

- ◆ Every person has the right to be free from hunger.
- ◆ Every person suffering from hunger or undernutrition or at risk of suffering from hunger or undernutrition is entitled to a minimum amount of food according to his or her age, sex, health status and occupation.

125 See Eide, A. 2007.

The draft Bill for a Food and Nutrition Act of Uganda provides an example that goes in this direction. It expressly states that “where a person is identified as vulnerable under this Act and suffers or is at risk of suffering from hunger or undernutrition, the State shall provide that person with a minimum amount of food” (Art. 5(4)).

In order to realize the fundamental right to be free from hunger through implementing legislation on the entitlement to a minimum amount of food, it might be worth spelling out expressly the appropriate criteria for determining the specific content of the minimum amount of food. Section 3.5 below discusses possible framework provisions on government obligations to provide the minimum amount of food.

3.3.3 PROVISIONS ON LIMITATIONS OF THE RIGHT TO FOOD

For various reasons, a state may have to take decisions or apply laws and regulations in a way that can interfere with the right to food of individuals, in the interest of achieving a compelling public interest. The ICESCR contains a general limitation clause, whereby States Parties may subject the rights affirmed by the Covenant “only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society” (Art. 4). Therefore, it would be useful if the framework law specifically provided that:

- ◆ No limitation to the exercise of the right to adequate food may be allowed unless it is provided by law, is necessary for the purpose of a compelling public interest and is compatible with the nature of the right to food.

This last phrase – compatible with the nature of the right – is crucial; it requires striking a fair balance between the interests of the community as a whole (general well-being of the country) and the individual’s effective enjoyment of his or her right to food. This means that when a measure affecting a person or group’s free exercise of the right to food is necessary for the purpose of serving a compelling public interest, it must be balanced by accompanying measures preventing or minimizing interference with a people’s capacity to feed themselves through their own efforts and by their own means. It is equally important that such accompanying measures be determined through a transparent and participatory process.

A commonly cited example of state interference would be a decision to dispossess a certain number of persons of the land they use for subsistence farming (thus depriving them of their means of subsistence) in order to construct a road or extract natural resources, these latter having been deemed measures promoting the general welfare of the country. In a democratic country, the relevant legislation regulating evictions or land dispossessions normally provides, among other issues, for adequate compensation, including resettlement of the population concerned

on a land or territory of an equivalent value and quality. If a public authority evicted a person or group of persons from the land they used for subsistence farming without providing adequate compensation in the form of alternative equivalent land, from a human rights perspective this would not only be a violation of people's property or land rights under national law but also a violation of their right to food (under the "accessibility" component) even if executed in conformity with the relevant national law related to expropriation.

Another scenario could be a timber-logging project undertaken on the territory traditionally used by a local community for food gathering. A responsible public authority's decision to authorize the logging without taking necessary measures to mitigate its effects on the availability of food for the affected local population could make the persons concerned unable to feed themselves adequately, and thus constitute a violation of their right to food.

Although states are allowed to limit the free exercise of human rights provided that certain requirements are complied with, they must comply with the "principle of non-retrogression". This means that government may extend protection beyond what international standards, constitution or law require, but it cannot as a rule reduce that protection once made. The CESCR has stated that any deliberately retrogressive measures with regard to a guaranteed human right would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the ICESCR and in the context of the full use of the maximum available resources (GC 3, para. 9).

3.4 PROVISIONS ON THE RIGHT TO NON-DISCRIMINATION

The right to food must be realized without discrimination “of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Art. 2, ICESCR). While the causes and consequences of discrimination vary from country to country, one constant is that discrimination against women is widespread. Thus, the framework law should include a general non-discrimination clause (see subsection 3.4.1 below) as well as a specific clause prohibiting discrimination against women (see subsection 3.4.2 below) in matters affecting the realization of the right to food in a country. Also important are provisions that enable the substantive equality of groups, rather than merely formal equality under the law. The framework law should thus also contain provisions on required positive action allowing compensating for effects of past discrimination and establishing true equality (see subsection 3.4.3).

3.4.1 GENERAL NON-DISCRIMINATION CLAUSE

In many countries, national constitutions already contain a general prohibition on discrimination, on the basis of a long list of grounds (most often drafted along the lines of Article 2 of the ICESCR).¹²⁶ Yet in practice inequality persists. Problems are particularly apparent in the areas of: access to and control over land and natural resources; access to employment opportunities and health care, level of wages; access to education; and opportunities to participate in the public and economic life of the country. In some cases, the reason is that some types of discrimination

¹²⁶ “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

are not subject to legal remedies, leading to a sort of legalized discrimination (a typical example is a limited right to access to property for women or limited opportunities for indigenous populations to control their territories effectively). Another reason is that national constitutions generally limit the prohibition of discrimination to acts of public authorities, thereby leaving unquestioned inequalities within the private sphere.¹²⁷ Including a general clause on prohibition of discrimination in matters affecting the realization of the right to food in a country in a framework law can facilitate the application of this fundamental principle also in those various areas.

Discrimination can be direct or indirect, and both should be prohibited. *Direct discrimination* occurs where one person is treated less favourably than another is, has been or would be treated in a comparable situation, because of any of the grounds previously referred to (e.g. sex, age, religion) while *indirect discrimination* occurs where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age or other status at a disadvantage compared with other persons. An example of indirect discrimination is requiring all persons who apply for a certain job to sit a test in a particular language even though that language is not necessary for the job (thus excluding persons or groups who are not or not sufficiently familiar with that language from acceding to that job). The list of discriminatory grounds in the framework law should be left open, rather than attempting to list all possible grounds of discrimination. This could be achieved by not listing any grounds, or by adding “on any ground” or “based on any other status” after a short illustrative list of discriminatory grounds.

The framework law should thus state that:

- ◆ Any distinction, exclusion or restriction made on the basis of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status, which has the effect or purpose of impairing or limiting the capacity of an individual to exercise his or her right to food is unlawful and will be sanctioned in accordance with the law.

Such provisions should be included in the main text of the framework law even when the principle of non-discrimination has been listed among fundamental legal principles that will guide the law enforcement (see above, section 3.2.5). This is because the non-discrimination principle should be followed and respected not only for any process and outcome regarding the implementation of the right to food and the framework law itself but also and above all it should be established as a self-standing legal provision, infringement of which could constitute a violation of the right to food and is subject to appropriate sanction. Box 30 gives two examples of such legal provisions.

127 See Tomaševski, K. 1995, p. 258.

BOX 30. Prohibition of discrimination – examples from state practice

According to Article 2 of the **Guatemalan** Law on the National Food and Nutritional Security System, “discrimination in access to food as well as to means and rights to its procurement, on the basis of race, ethnic origin, colour, sex, language, age, religion, public opinion or other social status, aimed at annulling or obstructing equality in the enjoyment or exercise of the right to food and nutrition security constitutes a violation of the present law”.

According to the draft Law on the Right to Adequate Food of **Peru**, “discrimination on the grounds of ethnicity, colour, gender, language, age, religion, political or other opinions, social background, economic status, birth or any other social condition, in respect of access to food and to the means and rights to obtain it having the aim or effect of preventing or impeding the equal enjoyment of the right to adequate food is a violation of this right, which may be demanded in courts of law and before the administrative authorities through the channels provided by legislation” (Art. 3).

The prohibition of discrimination should apply to all public authorities as well as to all natural or legal persons in the public sector (see above, section 3.2.4.g). With regard to the private sector, it should be ensured that also private actors are bound by the provision prohibiting discrimination at least in certain areas of activity. These should include employment, access to public places and facilities, and provision of goods and services. The framework law should thus also place public authorities under an obligation to:

- ◆ Take all appropriate and necessary measures, in particular legislative measures, to ensure that private actors do not apply discriminative practices in their activities in the specific areas.

Effective implementation of this clause will require undertaking a compatibility review of the relevant legislation, such as labour laws, food safety laws, food labelling and marketing laws and regulations. (see Part Four below).

3.4.2 CLAUSE PROHIBITING DISCRIMINATION AGAINST WOMEN

In all countries of the world, women fare significantly and sometimes dramatically worse than men according to virtually every indicator of social well-being and status.¹²⁸ This is also because discrimination against women is not based

128 See Steiner & Alston, 2000, p. 163.

solely on their sex; it extends to marriage, pregnancy and potential pregnancy, motherhood, childcare and the stereotyping of men's and women's roles in a society. Discrimination against women in many societies results in low socio-economic and educational status and little power over household decisions. One of the consequences of such status is also within-household misdistribution of food leading to undernutrition of women and female children.

The framework law should thus specifically require public authorities:

- ◆ To eliminate and prevent all forms of discrimination against women with regard to the guaranteed right to food, including less favourable treatment of women for reasons of pregnancy and maternity, and to promote equality of opportunities between men and women.

It goes without saying that this obligation should cover discriminatory practices by natural or legal persons, in all areas that could influence the free enjoyment of the right to food.

3.4.3 SPECIAL MEASURES TO REMEDY EFFECTS OF DISCRIMINATION

In many cases, the inability of persons to feed themselves through their own efforts and by their own means is a result of inequalities in access to opportunities. In practice, achieving true equality in access to opportunities will often necessitate special measures (through specific laws, programmes or activities) aiming at eliminating conditions that perpetuate difficulties in realizing the right to food that people face due to discriminatory practices. As noted above (section 1.2.2), under relevant international human rights norms, such special measures will not be considered discriminatory with regard to other persons possibly facing difficulties in fully exercising their right to food when they have been taken to undo existing discrimination and to establish equitable opportunities. The framework law should therefore include specific provisions to this effect. It could specifically state that:

- ◆ The prohibition of discrimination shall not be read to include government action to remedy past effects of discrimination against particular individuals or groups and promote equality of opportunities with regard to the right to food.

Special measures will be particularly needed for persons or groups who most often suffer from discrimination: women, indigenous peoples and minorities, children, immigrants and migrant workers and refugees. In some countries, stronger protection may be needed for persons belonging to specific communities, such as the Dalit community in India, or living in certain geographical areas. Box 31 gives an example of such special measures from state practice.

BOX 31. Special measures for discriminated groups – example from India

Integrated Child Development Services (ICDS) is the major national programme in India that addresses the needs of children under the age of six years. It seeks to provide young children with an integrated package of services such as supplementary nutrition, health care and pre-school education. Because the health and nutrition needs of a child cannot be addressed in isolation from those of his or her mother, the programme also extends to adolescent girls, pregnant women and nursing mothers. While the project started in 1975, its implementation has not been satisfactory. The public interest litigation known as *PUCL vs. Union of India* (see Box 14) related to the lack of enforcement of the ICDS programme. Through the interim orders issued by the Supreme Court of India in this litigation, the court directed the government not only to implement the scheme fully, but also to “universalize” the programme. This means that every hamlet should have a functional ICDS centre (also called *Anganwadi*) and that the full range of ICDS should be extended to every child under six, every pregnant or nursing mother, and every adolescent girl. However, considering the time needed to implement the programme in practice and ensure its universal application, in its Interim Order of 13 December 2006, the Supreme Court ordered the government to give priority to the installation of new ICDS centres in those hamlets or habitations where the most discriminated communities live, namely the Scheduled Castes and Scheduled Tribes.

Source: See Secretariat of the Right to Food Campaign. 2006.

While special measures shall be adopted through subsidiary legislation or regulations, the framework law itself should require competent public authorities to:

- ◆ Adopt regulations related to special measures or introduce in Parliament a proposal for legislation to prevent or compensate for disadvantages due to discriminatory practices with regard to the enjoyment of their right to food for specific groups of persons.
- ◆ Ensure that such special measures shall not entail the maintenance of unequal or separate standards and shall discontinue when the objectives have been achieved.

The list of persons or groups that should be covered as a priority should be expressly included in the framework law or a state body in charge of setting such a list designated.

3.5

PROVISIONS ON GOVERNMENTAL OBLIGATIONS

The main function of a rights-based approach to food security is to address the accountability of the state for its actions or omissions.¹²⁹ Where there is a right there must be corresponding obligations. The framework law will thus next have to set out in detail the applicable government obligations. As outlined earlier, under relevant international human rights law, States Parties to the ICESCR must take steps to the maximum of available resources to progressively realize the right to food, i.e. to ensure that every person is capable of feeding him- or herself in dignity.

It has been noted above that a state must take three sets of steps: (i) to respect the right to food; (ii) to protect it; and (iii) to fulfil it.¹³⁰ The obligation to fulfil encompasses two substeps: the obligation to facilitate and the obligation to provide (see above, Part One). The framework law should specify all these levels of obligations.

There are two main ways in which this could be done. First, the framework law could simply state that it is the obligation of the government to respect, protect and fulfil the right to food. This has been done, for example, in the recently adopted Brazilian legislation (see Box 32).

129 See Eide, A., 2002, p. 30.

130 The so-called tripartite typology of obligations (to respect, to protect and to fulfil) has been used at the international level to clarify and better understand state obligations under the right to food (and other economic, social and cultural rights). At the national level, in the implementation of specific measures, the distinction will often be blurred. Thus, for example, the same measure taken in two different countries (e.g. ensuring minimum food entitlements) can be described in different terms, depending on the particular circumstances in the country. A state that has already enacted minimum food entitlements through social security legislation will need to continue to respect them, while a state that has not done so will have to establish it (thus, implement its obligation to fulfil). See Koch, E. 2005, p. 6.

BOX 32. Legal provisions on general governmental obligations under the right to food – example from Brazil

In **Brazil**, the National Food and Nutritional Security Framework Law expressly states that “it is a duty of public authorities to respect, protect, promote, prove, inform, monitor, supervise and evaluate the human right to adequate food as well as to guarantee mechanisms for its enforcement” (Art. 2.2).

These obligations would then be given more precise content through subsidiary legislation and by national courts and tribunals interpreting the law’s provisions in a wide range of practical situations.

Second, the framework law could define what each of these obligations implies for public authorities in charge of the implementation of the right to food. While such provisions should remain rather general, a country may nevertheless also decide to spell out other, more specific obligations of the most relevant public authorities dealing with matters affecting the realization of the right to food under each of general obligations (respect, protect and fulfil). Box 33 gives an example of such more specific legal provisions from state practice.

BOX 33. Legal provisions on state obligations under the right to food – examples from state practice

According to Article 4 of the draft Law on the Right to Adequate Food of **Peru**:

1. The State shall respect the right to adequate food and refrain from adopting any measures whose result is to prevent the free exercise of this right.
2. The State shall protect the right to adequate food by adopting measures to ensure that no natural person or corporation restricts or prevents the free enjoyment of this right.



BOX 33. Legal provisions on state obligations under the right to food – examples from state practice (cont.)

3. The State shall gradually implement the right to adequate food, foster and establish conditions for social and economic progress, and adopt specific immediate measures to:
 - A) Eradicate chronic malnutrition and anaemia and other diseases connected with malnutrition and food and nutrition insecurity throughout the whole population, according to their life cycle and in particular during pregnancy and the first two years of life.
 - b) Promote a food and nutrition culture which reappraises local knowledge and makes it possible to develop food and hygiene best practices.
 - c) Improve the availability of food, preferably by encouraging competition and the sustainability of the offering of food of national origin.
 - d) Strengthen economic access to nutritious, safe food in adequate quantities by the population prone to suffering from food and nutrition insecurity.
 - e) Create appropriate areas in which to set up local and regional food markets, particularly in the poor urban and rural areas.
4. Food assistance provided by the State shall endeavour to ensure food and nutrition security in the perspective of the free exercise of the right to food. This shall be a temporary measure and be implemented in a planned manner, according to objectives, expected results and indicators which objectively demonstrate the annual progress made in achieving food and nutrition security in every area of intervention.
5. In order to comply with its obligations, the State shall adopt a national strategy to guarantee food and nutrition security based on the right to adequate food and shall draft corresponding policies at the national, regional and local levels.

According to Article 5(3) of the draft Bill for a Food and Nutrition Act of **Uganda**:

For the enjoyment of the right to food, the State shall ensure –

- A) Respect for the right to food by the duty bearers and refrain from actions that undermine access to food.



BOX 33. Legal provisions on state obligations under the right to food – examples from state practice (cont.)

- B) The availability, accessibility and affordability of food by all people in Uganda by making provision of sufficient access to production resources, income and support and maintaining an enabling environment in which household can attain food security through their own efforts.
- C) The provision and maintenance of sustainable food systems and protect the right to food from encroachment by any public authority or any person.

Possible framework law provisions on governmental obligations to respect, protect and fulfil will be discussed in some detail in the following subsections. The obligation to fulfil should not only be equated with providing food (or the money to buy food) directly. It also includes assisting people in providing *for themselves* (i.e. taking measures that will facilitate their access to sufficient and adequate food). These two dimensions of the obligation to fulfil will be explored under separate subsections.

3.5.1 OBLIGATION TO RESPECT

The framework law could first define the obligation to respect the right to food. Generally, the obligation to respect human rights requires a state to respect the human dignity and worth of persons under its jurisdiction and therefore not to interfere with or impair their rights. This obligation to respect has often been described as a “hands-off” duty – so that an individual’s situation is not made worse by depriving him or her of the enjoyment of a given right.¹³¹ The provisions of the framework law could state expressly that:

- ◆ It is unlawful for a public authority¹³² to deprive any person of food or means for its procurement.
- ◆ It is unlawful for a public authority to apply laws and regulations or to pursue a policy or practice in a way that could result in preventing the enjoyment of or infringing the human right to food.

131 See Steiner & Alston, 2000, p. 182.

132 As noted earlier, “public authority” should be defined to include not only any state official (governmental officials at all levels, central and local, police, school teachers, etc.) but also any legal person exercising functions of a public nature.

- ◆ It is unlawful to repeal formally or suspend legislation necessary for the continued enjoyment of the right to food.

As mentioned above in section 3.3.2, using purposeful measures to deprive someone of all access to food might constitute a violation of the right to life and security of that person, and thus fall under the provisions of the penal code of a country. This provision would not be meant to replace or diminish the protection of criminal law, but to cover cases that might otherwise not fall thereunder.

The reference to laws, regulations, policies and practices would naturally include all those affecting the availability, stability, physical or economic accessibility and adequacy of food. Among others, this means legislation and activities regulating: production and distribution of food; food quality and safety; access to, control and use of land, water and biological resources; and labour and education. Thus, for example, in a country where sharecropping¹³³ is practised widely and contributes to enabling people to enjoy their right to food, prohibiting it by law could lead to violating the right to food of the farmers concerned (under the “accessibility” component). Another example would be a government altering legislation or policies guaranteeing minimum prices for certain products or to certain categories of farmers, as these might affect the continued enjoyment of the right to food (GC 12, para. 19).

Respecting the right to food will, in some cases, require balancing various interests and rights. This might be the case, for example, in the field of food safety. In many countries today, street food provides both a means of livelihood and a readily accessible and affordable source of food for many people. Due to the hygienic conditions in which such food is prepared and sold, countries have started enacting special laws or regulations aimed at ensuring the respect of safety requirements. While such regulation of street food is necessary to ensure the quality and safety of food that is sold, setting requirements too high may deprive some people of an affordable source of food as well as limit some sellers’ means of livelihood, and thus possibly violate their right to food.

This means that when taking decisions or drafting regulations, the competent authorities will have to think not only about what requirements are the most suitable to reach the purpose of the regulation, but also whether the implementation of the regulation or decision can affect somebody’s human right to food. Among the relevant criteria will be the importance of the public interest at stake and the likelihood and intensity of harm. When harm is likely (i.e. deprivation of an affordable source of food or someone’s means of livelihood), human rights law requires that the principle of proportionality is respected. In other words, the authority must be sure that the measure affecting an individual’s right is necessary in the interests of the community or society as a whole and proportionate to that interest (see also above, section 3.3.3).

133 Sharecropping is a practice whereby a landless farmer is allowed by a landowner to cultivate part of his or her land, in return for a share in the resulting crop.

As noted above, further to this general obligation to respect the right to food, a country may decide to include more detailed provisions on other obligations of public authorities aiming at preserving the existing right to food. For example, the framework law could explicitly require the competent public authority to recognize customary land rights of indigenous or tribal peoples through legislation, to recognize the peoples' right to seek an income by which they can satisfy their food and other needs through their own free choice of work or to abstain from projects that would undermine peoples' existing access to food or means for its procurement.¹³⁴

3.5.2 OBLIGATION TO PROTECT

A state also has the role of protector with respect to human rights, which are widely acknowledged to be expressions of objective values. Thus, the state's influence is not limited to the sphere of relationships between the individual and the state but extends also to relationships among individuals or between individuals and private entities.¹³⁵ Therefore, whereas the obligation to respect human rights, as just seen, guarantees the individual's protection against the state, the obligation to protect human rights guarantees the individual's protection against threats and risks stemming from private actors or societal forces that are controllable by state action.

The protective role of the state applies to all activities that could affect an individual's enjoyment of the right to food (for example, where a third party reduces food availability or supply, prevents access to food sources, or alters food quality and safety). Some activities calling for heightened scrutiny for the risk of affecting the enjoyment of the right to food include mining, timber extraction, exploitation of other biological resources, construction works, waste management or food marketing. Marketing of food products for children is among the activities that call for protective action of the state as a priority (e.g. competent state authorities should ensure that adequate legislation is in place to ensure that breastmilk substitutes are not promoted but instead strongly regulated and the established rules respected in practice). The obligation to protect can have additional dimensions such as regulating food prices and subsidies, and the rationing of essentials while ensuring producers a fair price.¹³⁶ The primary way to comply with the obligation to protect is through effective regulation and remedies for established infringements.

134 See Eide, A. 2007, p. 150.

135 See Grimm, D. 2005, p. 149.

136 See Eide, A. 2002, p. 38.

The framework law should thus require the competent public authorities to:

- ◆ Criminalize the deliberate deprivation of food by adopting appropriate modifications to the penal code.
- ◆ Take preventive measures necessary to protect persons whose capacity to access sufficient and adequate food or means for its procurement is endangered by acts of others.
- ◆ Review the relevant administrative and legislative framework ensuring that activities within their competence undertaken by private actors do not infringe the right to food of others.
- ◆ Adopt the necessary administrative and legislative framework regulating activities that could affect somebody's enjoyment of the right to food and that are not yet regulated.

The framework law could also designate the authority in charge of listing the areas of activity to be reviewed or regulated as a priority. The right to food authority could be the most appropriate body to be charged with this task (see below, section 3.11). In certain circumstances, failure of a public authority to regulate a given private activity adequately might be considered a violation of the right to food of the affected persons, although how the authority goes about regulating the activity is its own choice. For example, in the field of extractive activities, it might establish a period of public comment before activities can begin; it could elaborate rules and criteria applicable to the grant of concessions (such as geographical limitations or the use of certain methods and technologies); it could establish details for food production, food labelling and food sale (to ensure that available food is adequate). The relevant legislative or regulatory framework should also provide for appropriate sanctions in case of non-compliance. All of these measures are designed to protect the affected populations and guarantee their right to food (see also below, section 4.3).

The obligation to protect extends beyond the duty to put in place effective administrative or legislative provisions. The competent public authorities should also regularly verify whether the adopted regulations are respected and followed by the private sector when undertaking regulated activities. This includes carrying out regular monitoring and control, documenting activities and, in cases of non-compliance, initiating processes leading to punishment under the law.

3.5.3 OBLIGATION TO FULFIL (FACILITATE)

To a large extent, the obligation to fulfil the right to food can be met by adequate facilitation measures, i.e. by the creation of living conditions that allow individuals to feed themselves by their own means. Facilitating the realization of the right to

food thus requires more far-reaching measures on the part of state authorities intended to strengthen people's access and utilization of resources and means to ensure their livelihood, including food security. The exact measures to be taken depend on the situation in the particular country. ICESCR Article 11.2 gives some guidance: it requires states to improve measures of production, conservation and distribution of food by making full use of technical and scientific knowledge and by developing or reforming agrarian systems. Other possible measures include land reform and other means to improve access to natural resources, such as those recommended in Right to Food Guideline 8.

The framework law should thus place public authorities under an obligation to:

- ◆ Act, including by adopting or pursuing appropriate policies and measures, in a manner to foster and promote the human right to food and to create and maintain conditions under which every person can freely and regularly enjoy her or his right to food.

This general obligation could be complemented by more specific obligations of particular public authorities. The framework law can, for example, require the competent public authorities to sustain and expand food production in a country, to strengthen production of healthy and nutritious food, to organize training and education programmes on advantages and importance of diet diversification, and to require that food distributed to the most vulnerable through government social assistance programmes be obtained exclusively through local procurement. Other possible obligations can include establishing incentives for microcredit institutions or adopting measures to support domestic production of certain basic crops (see Box 34).

BOX 34. Obligation to facilitate – examples from state practice

According to Article 13 of *Honduras's* draft Framework Law on Food, “the State shall guarantee physical and economic access of all to safe and nutritious food, through control of autonomous productive process, through promotion and renewed value of traditional and other practices and technologies, which ensure the conservation of biodiversity, support local and domestic production, through ensuring access to land, to forests, to water from rivers, lakes and sea, and through other resources needed to produce or procure food as well as through development of just and equitable markets”. It goes on to specify that “the obligation of the State to fulfil the right to food means that the State must in the first place facilitate access to and security of resources for persons, families and communities who are not able to feed themselves by their own means, in particular access to land and other productive resources which will enable them to provide for themselves” (Art. 18) (*unofficial translation*).



BOX 34. Obligation to facilitate – examples from state practice (cont.)

Article 4.3 of the draft Law on the Right to Adequate Food of *Peru* states: “The State shall gradually implement the right to adequate food, foster and establish conditions for social and economic progress, and adopt specific immediate measures to: ...b) Promote a food and nutrition culture which reappraises local knowledge and makes it possible to develop food and hygiene best practices; c) Improve the availability of food, preferably by encouraging competition and the sustainability of the offering of food of national origin; d) Strengthen economic access to nutritious, safe food in adequate quantities by the population prone to suffering from food and nutrition insecurity; e) Create appropriate areas in which to set up local and regional food markets, particularly in the poor urban and rural areas.”

3.5.4 OBLIGATION TO FULFIL (PROVIDE)

Whenever individuals are unable to feed themselves either because they have lost their pre-existing sources of food security due to a sudden and unexpected event or because they cannot ensure their food security due to sickness, disability or other reasons beyond their control, public authorities are obliged to take care of them directly. In such situations, the state should provide food in a quantity and quality that ensures food and nutrition security. As a minimum the state is always required to provide a quantity of food that ensures freedom from hunger.

The obligation to provide encompasses several types of assistance depending mainly on the level of vulnerability (to food insecurity) of persons in a country; it covers situations of lack of any or enough food as well as of lack of adequate food in terms of safety and nutrition requirements.

Box 35 gives an example of providing measures from state practice.

BOX 35. Providing right to food to children – example from India

In *India*, there is no specific adopted or draft law on the right to food. However, on the basis of the relevant constitutional provisions, the Supreme Court of India recently issued a number of interim orders requiring government to take specific action to comply with its obligations to fulfil the right to food of its people.



BOX 35. Providing right to food to children – example from India (cont.)

The Court wrote that “Every child in every government-assisted primary school should be given a prepared midday meal; with a minimum content of 300 calories and 8–12 grams of protein each day of school; for a minimum of 200 days a year” (Interim Order of 2001). In a later Interim Order, the Court stated that attempts must be made for “better infrastructure, improved facilities (safe drinking water etc.), closer monitoring (regular inspection etc.) and other quality safeguards such as the improvement of the contents of the meal so as to provide a *nutritious meal* to the children of the primary schools”. It also required that the meals are provided free of charge. As to the cost of implementation, the Central Government is asked to “allocate funds to meet with the conversion costs of food-grains into cooked midday meals”.

These Orders were issued within the framework of the *PUCL v. Union of India and Others* case initiated in 2001. The case relates to a number of governmental social protection schemes, including the National Programme of Nutritional Support to Primary Education, also known as the “midday meal scheme”. As a result of these orders, children or their parents from the concerned schools can demand school meals as a matter of right and the government can be held accountable for not providing it. While these Orders contributed to introducing a hot midday meal in Indian schools already, they could usefully be formalized by transforming them into law.

The framework law should thus place a public authority under a general obligation to:

- ◆ Adopt and put in place measures to provide food or means for its procurement to persons who cannot take care of their own needs, due to reasons beyond their control, in particular for children whose parents die or disappear or otherwise no longer take care of them.

In addition to such a general provision on the obligation to provide, especially in countries where financial resources are limited, the framework law should also usefully include provisions on certain priority measures, which will ensure the provision of a minimum amount of food for every person suffering from hunger and undernutrition, and the prioritization of the most vulnerable.

These are further explored in the following subsections.

a) Obligation to provide minimum amount of food

The framework law should define the minimum amount of food entitlement that the state is required to provide to ensure the right of every person to be free from hunger (see above, section 3.3.2). Because framework laws do not enter into details, the actual content of “minimum amount of food”, and the details of eligibility

requirements and procedure for delivery will have to be established in subsidiary instruments, legislation or regulation. The latter might be preferable since, unlike a parliamentary-level law, regulations can be more easily changed and updated. It would in any case be useful if the framework law also set down key elements underlying the minimum food entitlements as well as the basic conditions for its implementation.

First, the framework law should:

- ◆ Designate the competent public authority.
- ◆ Establish its legal responsibility for regular, reliable and timely delivery of the “minimum amount of food” to any person who is suffering from hunger or undernutrition or is at risk from suffering from hunger or undernutrition.
- ◆ Require the competent public authority to introduce in parliament a proposal for subsidiary legislation or regulation on the minimum amount of food by a fixed deadline.

Governmental institutions responsible for dealing with social issues, social development or the fight against poverty exist in almost every country, although their competencies and powers vary. The decision regarding which governmental level or agency to designate is particularly important for federal states and states with strong regional autonomy. One option is to decentralize the responsibility for providing the minimum food entitlements. In recent years, the idea of decentralizing responsibility for social issues has been gaining currency (see Box 36).

BOX 36. Decentralizing implementation of food entitlements – examples from state practice

The Law on the National Programme for Food and Nutrition Security of **Argentina** promotes decentralized implementation by creating a national framework to which the provinces adhere through a pact. Article 8 of the law stipulates the role of the municipalities as the responsible agencies to deliver and strengthen food distribution and supply, to promote participation and to ensure that beneficiaries are entered into the registry created by the provincial government. Article 5 prescribes that, at both central and provincial level, agencies responsible for implementation shall establish regular monitoring mechanisms to ensure that the programme is properly targeting those in need.

In **Colombia**, the State Constitution decentralized social expenditures to departments and municipalities and mandated that about 60 percent of spending be distributed to them according to the number of people with unsatisfied basic needs (Art. 357). A subsequent law defined the distribution formula to be applied. Departments and, especially municipalities, which receive a great part of total social transfers on the basis of the number of poor people living in their territories, are mandated to locate and find those people to target them with the funds received.

BOX 36. Decentralizing implementation of food entitlements – examples from state practice (cont.)

In *India*, the implementation of the Public Distribution System established through the Essential Commodities Act (1955) is delegated to states. According to the Chhattisgarh Public Distribution System Order of 2004, state government shall formulate guidelines for the purpose of identification of families entitled to receive ration cards, while it is up to local government bodies to finalize the lists of the beneficiaries within their respective jurisdiction, as well as to review the lists.

The tendency for decentralization is based not only on a trend towards local autonomy but also on the assumption that local authorities are closer to individuals and thus better able to assess their needs and preferences. Local officials and members of local community councils are involved in extensive local networks of social interaction. This assists in targeting the appropriate beneficiaries and also improves accountability because local persons are known in the community.¹³⁷ Indeed, in the practices of countries as varied as Argentina, Belgium, Canada, Colombia, Denmark, France, Germany, Republic of Korea, Sweden and the United Kingdom, local rather than central authorities determine and/or assess the eligibility of recipients and implement delivery of social assistance support (although the amount of the support is often determined and fully or partly funded by the central authorities).

There are also some challenges for implementation of food entitlements at local level: in some cases, the causes of a person's deprivation are often deeply rooted in local social divisions and the way the community operates and regulates access to resources. Therefore, giving all responsibility to local authorities may induce local elites to monopolize the benefits and it may encourage corruption as it is more difficult for the central government to monitor implementation.¹³⁸ If decentralization is adopted, particular attention must be paid to which tasks are decentralized: for example, local authorities might be given responsibility only for identifying recipients (assessing their eligibility and managing the registries) or for actual delivery of benefits as well. They could also be empowered to set the criteria by which eligibility and the assistance level are assessed. A clear division of competencies and a detailed description of implementation procedures, monitoring and evaluation activities will assist in holding the relevant government units accountable for compliance with the established rules and the effective delivery of the minimum amount of food.

137 See Conning, J. & Kevane, M. 2002.

138 See Alderman, H. 1998.

Second, the framework law should specify the scope of the “minimum amount of food” entitlement. As noted above, the entitlement to a minimum amount of food should be defined in terms of freedom from hunger and undernutrition (see above, section 3.3.2). This means that the minimum amount of food should cover the minimum dietary necessities of an individual allowing him or her to live in dignity, free from hunger and undernutrition. In this regard, it may be useful to spell out in the implementing legislation or regulation that the dietary necessities are those that are required for a person to function physically and mentally, maintain a normal resistance to illness, and for a child to grow in a normal way. When the access and composition falls significantly short of these requirements, hunger exists. The content of the minimum amount of food could also include a certain amount of water.¹³⁹

Once the scope has been determined, a state should decide whether to provide the minimum amount of food in kind (i.e. by providing food products), through cash-like instruments (food stamps, coupons) or through cash transfer.¹⁴⁰ Whatever means is chosen, it must be adequate to relieve persons from hunger and undernutrition. Therefore, before deciding, a country should take into account all factors that will influence the effectiveness of the implementation of this right. Useful information on advantages and inconveniences of in-kind or cash or cash-like transfer can be found in the literature on food safety nets.¹⁴¹

The minimum amount of food should be defined on an individual basis; this means that each *individual* member of the community, not each household taken as a whole, or its head, is entitled to receive it. It should be determined in accordance with age, sex, health status and occupation of the individual. It can be delivered in kind, in an equivalent monetary value, vouchers or may include other features. While it will be for the implementing legislation or regulation to define the appropriate procedure and criteria for determining the specific content of minimum amount of food, the framework law should require that:

- ◆ Subsidiary legislation or regulation on the minimum amount of food shall determine the exact quantity of calories, proteins and micronutrients to which the minimum amount of food should correspond, according to age, sex, health status and occupation of a person.

139 How much water constitutes a “basic human need” is a matter under debate. WHO, the World Bank and the United States Agency for International Development recommend between 20 and 40 litres per person per day – including water for cooking, bathing and basic cleaning – which must be located within a reasonable distance (interpreted as less than 200 m from the household. See UNDP/IFAD. 2006. Chapter 2, p. 63).

140 For more detailed information see FAO. 2006a.

141 See for example, FAO. 2006b; See also Coady, D., Grosh, M. & Hoddinott, J. 2004.

These values should be determined for the listed categories of persons, in function of the specific situation in a country. These categories may include, in particular, children (according to age groups – up to six months of age/ between six months and three years, three to six years, school-age children), adolescents (boys/girls), adults (men/women), pregnant and lactating women, persons with disabilities, persons with illnesses, etc.

Another option, especially for the purpose of cash transfer when the minimum amount of food is to be delivered in cash, is to define a food basket for different categories of persons, on the basis of which to calculate the relevant amount (see Box 37).

BOX 37. Defining minimum food basket – example from Belarus

In **Belarus**, the Law on the Minimum of Subsistence and its implementing regulation (No. 1016) determine the average minimum of subsistence given as a financial benefit. This minimum of subsistence is calculated for an individual and for a number of social-demographic groups (employable population, pensioners and children) based on the pricing of the last month of every quarter of the year for a certain basket of goods including food.

In addition, Regulation No. 1477 of 1999 recognizes the right to receive food products free of charge for families with children (for their first two years of life), under certain conditions linked to the financial status of potential recipients.

There should also be the obligation for a regular review of the minimum amount of food entitlement with reference to internationally developed methodologies and standards.

Third, the framework law should state whether there should be a procedure for applying to receive the established minimum amount of food or not and, if so, how the selection criteria should be determined. One option is to deliver the minimum food via pre-selection of recipients, where those persons who consider themselves entitled to receive benefits would be required to report their income status or inability to provide for themselves. There should also be a provision ensuring that the final decision on whether to provide the benefits is not left to the discretion of the administrative authority; benefits should automatically be delivered in every case fulfilling the eligibility criteria, with no discrimination of any kind.

In some countries where a substantial portion of population lives in poverty or below the poverty line, requiring people to apply to receive minimum food entitlements will simply not be realistic. Furthermore, in many countries, there may be strong cultural reticence, even among the poorest, to speak and acknowledge hunger or undernutrition. It may thus be more appropriate that the minimum food entitlement will be delivered *ex-officio*, i.e. on the initiative of the competent authority. In such cases, the legislation can require the authorities at a local level to establish and maintain registers of recipients residing within their jurisdiction, listing socio-economic criteria and the state of their nutrition and health. Box 38 gives two examples for selecting beneficiaries for food assistance on the basis of the registers prepared by the government.

BOX 38. Selecting beneficiaries for social programmes – examples from state practice

Legislation in 1993 in **Colombia** established a technical, objective, equitable and uniform mechanism for selecting beneficiaries of social programmes in Colombia. The system is designed to be used by all levels of government. It includes a set of norms and procedures defined at central level and operated at municipal level to gather information necessary to calculate the welfare index and select beneficiaries for the numerous social programmes.¹⁴²

In **India**, the Chhattisgarh Public Distribution System Order of 2004 provides for the responsibility of the state government to formulate suitable guidelines for the purpose of identification of families living below the poverty line, including the *Antyodaya* families (the poorest families identified by state government). The beneficiary families are to be identified by the local bodies. State government is in charge of issuing ration cards after the application of the beneficiary family. The ration cards are to be issued jointly in the names of both the eldest male and female members of the family.

It is equally important that if an application procedure is established, it be fair, simple and easily accessible to all. In many countries and communities, the potential recipients will be persons with limited qualifications (literacy, schooling) living in isolated or remote areas, and thus often unable to apply for the available benefits. The legislation should require the authority to provide help and information to any person applying to receive the established

142 See Castañeda, T. 2003.

benefits. Furthermore, the application process should not involve any costs for the potential beneficiaries.

The framework law should thus state that subsidiary legislation or regulation will determine:

- ◆ A simple and accessible application or certification procedure.
- ◆ Transparent, fair and non-discriminatory eligibility or certification criteria.

The subsidiary legislation on the minimum amount of food will indicate who will receive the minimum amount of food entitlement and possibly who must apply for it. In a number of countries, food-based transfer programmes targeting households but actually delivering benefits to the chosen adult person resulted in a very uneven distribution within households.¹⁴³ This led to designating the responsible female in a household as the person in charge of distributing benefits, based on empirical evidence that women spend income differently than men; in particular, women are more likely to spend income on nutrition and children's health.¹⁴⁴

Fourth, the framework law should also require that subsidiary legislation:

- ◆ Establishes fair, independent and accessible recourse procedures for complaints and appropriate remedies in case of a determined violation of the right to food.
- ◆ Provides for an appropriate monitoring and evaluation mechanism and for the duty of the designated competent authority to report to the national authority on the right to food on a regular basis.
- ◆ Requires the minister of finance or the relevant minister to include in the state budget a specific line allocating resources necessary for the implementation of this fundamental right.

Such provisions should lead to ensuring the accountability of the authorities in charge of delivering the minimum amount of food to the entitled persons. Complaint mechanisms and procedures should be in place at all administrative levels and should be accessible to even the most marginalized and isolated persons. Administrative decisions regarding minimum food entitlements should be subject to judicial review before the competent courts or equivalent independent bodies (see Box 39).

143 See FAO. 2006b, p. 27.

144 See Haddad, L., Hoddinott J. & Alderman, H., eds. 1997.

BOX 39. Ensuring accountability of bodies delivering food entitlements – examples from state practice

The *United States of America* Food Stamp Act of 1977 provides that “The State agency of each participating State shall assume responsibility for the certification of applicant households and for the issuance of coupons There shall be kept such records as may be necessary to ascertain whether the program is being conducted in compliance with the provisions of this Act and the regulations issued pursuant to this Act. Such records shall be available for inspection and audit at any reasonable time ...”

In *India*, according to the Chhattisgarh Public Distribution System Order of 2004, in case of any irregularity found in the identification of beneficiaries and the issuance of the ration card and people ineligible for any particular scheme, action will be taken under the provisions of the Essential Commodities Act.

The monitoring and evaluation mechanisms (either legal or administrative) are equally important for guaranteeing regular and timely delivery of the established entitlement, as well as for preventing irregularities, notably in the certification or application process.

As to the cost of the implementation of the minimum food entitlement, it will depend on which benefits, if any, the minimum essential food is to replace. Many countries facing situations of extreme poverty and hunger have put in place the so-called “food-based safety programmes”, which provide food products or cash-like instruments that may be used to purchase food and which target specific groups of the population believed to be the most vulnerable.¹⁴⁵ The minimum amount of food entitlement will thus have to be determined in relation to other benefits provided under various governmental programmes within a country. For states that are unable to cover the cost of the full implementation of a universal right to minimum essential food, implementation can be phased in: the programme should start from the most vulnerable groups of the population (hungry and undernourished), and progressively expand to include also persons at risk of suffering from hunger and undernutrition.

Other elements that should be addressed in more detail in the implementing, subsidiary legislation include: how to calculate the minimum amount of food needed for an individual to be free from hunger and undernutrition; whether and in which

145 For some examples of different types of food safety nets, see, for example, FAO. 2006a, pp. 141–153.

way community organizations or NGOs should participate in the identification of entitlement holders; how the competent authority must identify beneficiaries and notify them and otherwise educate the public about the entitlements; how to provide the food (in kind, cash-like instruments or cash transfer); and for how long the minimum food entitlements will be provided.

b) Provisions on prioritizing the most vulnerable persons and groups

Under international human rights law, states have a duty to prioritize the most vulnerable persons when resources are limited. While special measures to prevent discrimination or remedy its past effects will be of use to many, in other cases – where persons are disadvantaged due to other reasons and circumstances – different support measures will be necessary. As mentioned earlier in this Guide, such measures may be most particularly needed for (a) physiologically vulnerable persons, such as persons suffering from HIV/AIDS and their families, children, pregnant women and lactating mothers, disabled persons, persons suffering from sickness or elderly, (b) geographically disadvantaged persons e.g. persons living in remote and isolated, very poor or underdeveloped areas, and (c) economically vulnerable persons such as landless people, street children, urban poor or unemployed persons. It is to be noted that such measures should be the first to be designed and applied at the national level.

States must therefore primarily seek to identify such persons and groups actively; the Right to Food Guidelines invite states to “establish Food Insecurity and Vulnerability Information and Mapping Systems (FIVIMS), in order to identify groups and households particularly vulnerable to food insecurity along with the reasons for their food insecurity”. They should thus “systematically undertake disaggregated analysis on the food insecurity, vulnerability and nutritional status of different groups in society, with particular attention to assessing any form of discrimination that may manifest itself in greater food insecurity and vulnerability to food insecurity, or in a higher prevalence of malnutrition among specific population groups, or both, with a view to removing and preventing such causes of food insecurity or malnutrition”. The Guidelines also invite states to “develop and identify corrective measures to be implemented both immediately and progressively to provide access to adequate food” (Guidelines 13.1 and 2).

Precise identification of the most vulnerable persons, who they are, where they are located and the particular causes of their vulnerability will be crucially important for designing and implementing appropriate support measures to improve those particular situations and ensure these persons can enjoy their right to food. In most countries, institutions are in place that are charged with doing this work, such as, for example, national statistic services, or special governmental units for food security monitoring or early warning agencies (see below, section 3.12).

Again, specific support measures for the identified vulnerable persons and groups will have to be further regulated and implemented through subsidiary legislation or regulations. Examples of measures to be developed, in addition to targeted transfer schemes, may include: establishing more favourable conditions for women's access to microcredit; ensuring breastfeeding facilities to support women's access to employment; fixing maximum prices for specific food products or for certain segments of the population; implementing employment schemes in areas where there are consistently factors putting people at risk of becoming food-insecure; and tying government procurement to local production or disadvantaged regions. Some examples from the existing state practice are given in Box 40.

BOX 40. Support measures for the most vulnerable – examples from state practice

Farm settlements for the landless – In the *Philippines*, the Republic Act No. 6657 of 1988 on Agrarian Reform provides for the distribution of land to qualified landless people. According to Section 40.2 of the Act, “sparsely occupied agricultural lands of the public domain shall be surveyed, proclaimed and developed as farm settlements for qualified landless people based on an organized programme to ensure their orderly and early development”.

A daily balanced meal for the low-wage workers – In *Venezuela (Bolivarian Republic of)* the Law on Food for Workers (2004) provides for the right to a partial or whole daily balanced meal (to be determined by the National Nutrition Institute) for workers in the public and private sector whose average salary does not exceed two minimum monthly urban salaries and who work for an employer with fifty or more workers (Art. 2).

One hundred days of guaranteed employment for poor rural households – In *India*, the recently adopted National Rural Employment Guarantee Act (2005) is viewed as a major tool in the struggle to secure the right to food. The Act guarantees a right to at least 100 days of guaranteed employment every year to “every household in rural areas of the country” whose “adult members volunteer to do unskilled manual work” at the statutory minimum wage (sec. 3). Any adult who applies for employment must be employed without delay; if employment is not provided the applicant will receive a daily unemployment allowance (sec. 7).

Preferred access to land resources for women, youth and vulnerable groups – In *Mali*, the Agriculture Orientation Act prohibits discrimination “with regard to access to land resources”. Article 83 specifies that “preferences will be given to women, youth and declared vulnerable groups in distribution of land parcels in the public domain”.



BOX 40. Support measures for the most vulnerable – examples from state practice (cont.)

Criteria for allocation of such parcels and for certification of vulnerability are to be determined by regulation (Art. 83.3).

Protection and promotion of breastfeeding – In the United States of America, the state of *Illinois* enacted the Nursing Mothers in the Workplace Act, which has been in effect since 2001. The Act requires employers to provide nursing women with reasonable paid break time each day to express breastmilk, unless the break time would “*unduly disrupt the employer’s operations*”. The break time may run concurrently with any break time already provided to the employee. Additionally, employers must make reasonable efforts to provide nursing women a private room; under the Act a bathroom stall expressly is not an acceptable private location.

In *Uruguay*, workers in the public sector are allowed to work half time so they may breastfeed their infants for the first six months of life.

Brazil’s national breastfeeding programme established a committee to review women’s employment and breastfeeding. The committee surveyed existing legislation and found that it was not uniform across federal, state and municipal levels. It also developed a programme to teach mothers to express their breastmilk in order to take advantage of nursing breaks. *Mexico* offers examples of workers who have negotiated better contracts with provisions for child care.

Sources: See Van Esterik, P. 1992, UN. 1995b.

The framework law should thus require that:

- ◆ Public authorities dealing with assistance measures establish priorities for action, including listing categories of the most vulnerable persons, on the basis of the information provided by the competent technical monitoring institutions.
- ◆ The right to food authority (or the equivalent coordinating body) is competent to review the proposed support measures and, where necessary, gives further guidance so as to ensure that all groups are covered appropriately.

- ◆ Competent public authorities design and adopt specific support measures to prevent or compensate for disadvantages that identified vulnerable persons or groups suffer from with regard to the enjoyment of their right to food, within established deadlines.

Two examples of legal provisions dealing with state obligations to prioritize the most vulnerable persons are given in Box 41.

BOX 41. Obligation to prioritize the most vulnerable – examples from state practice

According to the draft Law on the Right to Adequate Food of **Peru**, “food assistance provided by the State shall endeavour to ensure food and nutrition security in the perspective of the free exercise of the right to food. This shall be a temporary measure and be implemented in a planned manner, according to objectives, expected results and indicators which objectively demonstrate the annual progress made in achieving food and nutrition security in every area of intervention” (Art. 4.4).

The draft Framework Law on Food of **Honduras** provides for the obligation of the state to “ensure, as a priority, the right to food of the most vulnerable groups, that is:

- a) persons below the extreme poverty line: by priority, pregnant women, children from 0 to 5 years of age, adult persons as from 60 years of age who are not covered by the social security regime and persons who suffer from Grade 1, 2, and 3 malnutrition;
- b) persons below the poverty line: girls and boys from 0 to 14 years of age, disabled persons, pregnant and lactating women and elderly persons over 70 years of age that are not covered with social security regime.”

A definition of poverty line given by the National Institute of Statistics will be used for the purposes of the implementation of this aim (Art. 19).

In **Uganda**, the draft Bill for a Food and Nutrition Act contains provisions on special protection for mothers and children. Its Article 34 requires the “Ministry of Health to:

- A) Establish measures to ensure that the special nutrition needs of pregnant and nursing women are met and that assist mothers to provide adequate care for their infants;
- B) Promote and protect the right of infants to breastmilk and to appropriate weaning foods after six months of age, and adopt appropriate measures to ensure the enjoyment of the right to food for children of five years or less;
- C) Adopt measures to provide for food and nutrition needs of orphaned and vulnerable children.”

It may also be possible for the framework law to list out as exhaustively as possible the vulnerable groups for which the support measures must be taken as a priority. For instance, for “children group”, it could go on to include more specifically street children, children in custodial institutions, children working in hazardous industries, children in conflict situations, children of refugees, children with debilitating illnesses, children of parents with debilitating illnesses and so on. The advantage of such a detailed listing would be that it would require the competent state authorities to think of more specific entitlements for each of these categories also.

It is of particular importance that subsidiary laws or regulations establishing support measures for the most vulnerable persons or groups be developed in accordance with right to food standards and human rights principles (see above, section 3.2.5).

3.6

PROVISIONS ON IMPACT ASSESSMENT

Assessing and evaluating the likely effects of a law, policy, programme or project on the availability, accessibility or adequacy of food of the concerned population beforehand can prevent interfering with their enjoyment of the right to food. A duty to undertake a right to food impact assessment can be provided for the relevant state authorities in addition to non-state actors, and further elaborated through subsidiary implementing legislation or regulation.

Including such a duty in the framework law would implement the Right to Food Guideline 17.2, which encourages states to undertake a “right to food impact assessment in order to identify the impact of domestic policies, programmes and projects on the realization of the right to food”. Generally speaking, impact assessment is the process of identifying, predicting, evaluating and mitigating effects of a policy, project or programme proposal prior to taking decisions and making commitments. The objectives of an impact assessment are to ensure that applicable considerations are explicitly addressed and incorporated into the decision-making process, to anticipate and avoid or to minimize the adverse effects of proposals and to ensure equitable balance among the various competing interests involved. Impact assessment first developed in the field of environmental protection but has also been applied widely in the field of health protection, the fight against poverty and human rights (see Box 42).

BOX 42. Undertaking impact assessments – examples from other fields

WHO, the World Bank, the Organization for Economic Co-operation and Development (OECD), and the International Association for Impact Assessment (IAIA) have explored and developed principles for undertaking impact assessments: WHO: Health Impact Assessment; World Bank: Poverty Social Impact Assessment; OECD: Principles for Evaluation of Development Assistance; IAIA: Principles of Environmental Impact Assessment Best Practice.



BOX 42. Undertaking impact assessments – examples from other fields (cont.)

The Contracting Parties to the Convention on Biological Diversity have developed the *Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities* (Akwé: Kon Guidelines, 2004). The guidelines should play a role in providing information on possible impacts of development projects and thereby help to prevent their potential adverse effects on the livelihoods of indigenous and local communities concerned.

In the European context, the European Policy Health Impact Assessment Guide provides useful information on the health impact assessment processes (see IMPACT. 2004.)

In the context of the right to food, impact assessment provisions will be particularly useful with regard to activities such as mining, timber extraction, exploitation of other biological resources, or adoption of support measures for developing biofuels, which can potentially affect the availability or accessibility of adequate food.

Three principal benefits derive from carrying out a prior assessment of the potential impacts of relevant policies, programmes and projects on the enjoyment of the right to food: (i) it can help to design the most appropriate and right to food compliant measures; (ii) it can prevent possible violations of the existing access to food or the means for its procurement; (iii) the existence of a prior impact procedure can serve as a deterrent in that decision-makers will know they should design projects and policies with the least negative impacts on the right to food, as these would be more likely to survive scrutiny.¹⁴⁶

The main steps of an impact assessment process generally include the following:

- Screening (i.e. identifying proposals subject to impact assessment and to what level of detail).
- Scoping (i.e. identifying the issues and impacts that are likely to be significant for the effective enjoyment of a given right).
- Examination of alternatives (i.e. determining other options for achieving the same objectives as the proposal).

146 Adapted from De Schutter, O. 2006.

- Impact analysis (i.e. identifying and predicting the likely social, economic and other related effects of the proposal).
- Mitigation and impact management (i.e. establishing measures necessary to avoid or minimize predicted adverse impacts and incorporate these into the proposal implementation plan).
- Impact statement or report, including simplified summary for public debate.
- Public consultation.
- Review of the impact assessment report (i.e. determining whether the report identifies all relevant information on the possible impacts on the enjoyment of a given right, takes into consideration all potential social and economic effects of the proposal and contains concerns and comments of the potentially affected population and all the information necessary for decision-making).
- Decision-making (i.e. approving or rejecting the proposal and establishing the terms and conditions for its implementation) and evaluation and monitoring.¹⁴⁷

Establishing specific right to food impact assessment procedures will require considerable financial and human resources and may not be realistically possible in many countries. At the same time, in many countries there may be impact assessment procedures that are already in place (e.g. environmental impact assessment, social or health impact assessment, human rights impact assessment). Where this is the case, assessing the possible impacts of policies, projects and programmes on the availability, accessibility, stability, utilization and adequacy of food of concerned populations could be incorporated into these existing processes. The most appropriate home for a right to food impact assessment would be within a human rights impact assessment or, where this does not exist, a social impact assessment.

Accordingly, depending on the particular circumstances of a given state, the framework law could:

- ◆ Require a prior right to food impact assessment from state and non-state actors, either as a stand-alone process or incorporated into existing impact assessment procedures.

The relevant legislation or regulation related to impact assessment processes should be based on and consistent with right to food standards and human rights principles (see above, Part One). Box 43 gives an example of legislative provisions on impact assessment from state practice.

147 Adapted from the IAIA Principles of Environmental Impact Assessment Best Practice.

BOX 43. Impact assessment – example from Uganda

The draft Bill for a Food and Nutrition Act of *Uganda* requires that:

- 1) Prior to a major decision being made, the relevant public authority or concerned person shall carry out an impact assessment to identify, predict, evaluate and mitigate economic, social and other effects as well as the domestic policies, programmes and projects that may affect the realization of the right to food.
- 2) The Council shall cause to be undertaken an annual right to food impact assessment to identify the impact of domestic policies, programmes and projects on the realization of the right to food.

3.7 PROVISIONS ON INFORMATION

The Right to Food Guidelines make several recommendations related to information; for example, they invite states to “inform the general public of all available rights and remedies to which they are entitled” under the right to adequate food (Guideline 7.3), to disseminate information regarding food safety and consumer protection (Guideline 9.6) and marketed food (Guideline 9.7) as well as “the feeding of infants and young children that is consistent and in line with current scientific knowledge” (Guideline 10.6). Information¹⁴⁸ is of fundamental importance for people to be able to enjoy their rights or to make the best possible use of their entitlements; to make more informed choices with regard to food they buy and consume; to avoid risks to their health resulting from the consumption of an imbalanced or inadequate diet or of food contaminated by chemicals or pesticides; to prepare a nutritious and balanced diet for infants and young children; and to seek redress for legal violations including fraud (see Box 44). Information is equally important for government officials to assist them in acting in a way that does not violate somebody’s right to food.

BOX 44. Relevance of information for the realization of the right to food – example from India

The Right to Information Act of *India* (No. 22, 2005) entitles every citizen to receive information from the government. The Act covers central, state and local governments and all bodies owned, controlled or substantially financed by the governmental, as well as non-governmental organizations substantially financed, directly, or indirectly, by funds provided by the appropriate government (sec. 2(h)). It also covers executive power, judiciary and legislature (sec. 2(e)). ▼

148 “Information” here should be understood broadly, including not only all technical information relevant to the availability, accessibility and adequacy of food, but also all activities or measures, including laws, regulations, policies, programmes and projects affecting or likely to affect the effective enjoyment of the right to food.

BOX 44. Relevance of information for the realization of the right to food – example from India (cont.)

People in rural Karnataka used the right to information to realize their entitlement to rice rations at a fixed price, and thus to enforce their right to food. Villagers participated in social audits and public hearings to demand that the rations due to them be allotted at the correct prices. Previously, monthly rations were not given to the people on a regular basis but people had not complained as they did not have the information about how many programmes existed or how much food a person was entitled to request. The public hearing in Karnataka resulted in people claiming their food portions and led to an improvement in the quality of the food grains provided.

The information can also relate to special measures for discriminated persons and groups, support measures for disadvantaged persons, including governmental programmes designed for such persons and groups, to changes in land and water regimes, to credit schemes and school-feeding programmes.

Although the right to information may already be legally recognized in the national context (in the constitution or in legislation), the framework law should reaffirm this right, refer to the existing law where appropriate, and elaborate more on the role of public authorities¹⁴⁹ in ensuring the right to information in the specific context of the right to food.

First, the framework law should require the competent public authorities at all levels to:

- ◆ Inform the population about the rights established in the framework law and about the implementing and subsidiary legislation adopted upon its entry into force, as well as about any other measure taken for the purpose of facilitating and promoting the realization of the right to food.
- ◆ Use the most appropriate ways and methods of disseminating information, including by providing information in oral ways (e.g. rural radio) and in local language(s), notably among the most marginalized areas and among populations with a high rate of illiteracy.

The requirement to provide information in such a way so as to make it clear and easily accessible to all is significant: for example, installing panels with written information about the newly established entitlement to a minimum amount of food in a village where the majority of population is illiterate would go against the basic human dignity of the concerned population.

149 For the meaning of the term “public authority”, see section 3.2.4.g above.

Second, the framework law should also reaffirm the right to access information and the corresponding duty of public authorities to provide the requested information. These are firmly established in international human rights law, where it is considered implicit in the freedom of expression,¹⁵⁰ and in many states.¹⁵¹

For example, the framework law could require that relevant public authorities:

- ◆ Establish a simple, fair and accessible procedure allowing individuals to seek information of relevance to the enjoyment of the right to food.
- ◆ Provide the requested information within an established short deadline.

Information of relevance to the enjoyment of the right to food should include all information held by a given public authority related to its work. For example, where a request for information regards a planned natural resource-based activity, concerned persons should have the right to receive all data concerning the planned activity including information regarding the licence/concession, in addition to the conditions and requirements linked to the exercise of the activity.

The right to be provided with information upon request is not an absolute right; in some situations state authorities may take decisions or employ measures that interfere with or limit the right to information (e.g. protection of the rights of others, protection of public health and public emergency in areas affected by a conflict). The government action is valid where the restrictions are established by law, necessary for the purpose of an overriding interest and proportionate to that interest. Restrictions should only apply where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information (see above, section 3.3.3).¹⁵²

150 On the American continent, the Inter-American Court of Human Rights in its jurisprudence has recognized certain aspects of the state's obligation to provide information. Very recently, the Inter-American Court, in the case *Marcel Claude Reyes and Others vs. Chile*, declared that all people have a general right of access to government-held information (Judgment of 19/09/2006). In Europe, the European Court of Human Rights has recognized a right to access information under circumstances in which the denial of information affects the enjoyment of other Convention rights, such as the right to respect for private and family life (see *Guerra and Others vs. Italy*, Judgment of 19/02/1998) and the right to life (see *Oneryildiz vs. Turkey*, Judgement of 30/11/2004). A similar position has been taken by the African Commission on Human Rights in its recent Declaration of Principles on Freedom of Expression in Africa (adopted at the 32nd Ordinary Session, 17–22 October, 2002, Banjul, Gambia); see www.freedominfo.org/countries/index.htm

151 Over 40 countries have incorporated the right to information into their constitutions while some 60 countries have adopted freedom of information laws that provide for the right to access state-held information; see www.freedominfo.org/countries/index.htm

152 See, for example, *International mechanisms for promoting freedom of expression*, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media and the Organization of American States Special Rapporteur on Freedom of Expression.

3.8

PROVISIONS ON EDUCATION AND AWARENESS RAISING

Like information, education is a key element for the effective realization of the right to food. It is the prerequisite for an individual to be able to understand information and make better use of his or her entitlements and rights. The right to education represents both a human right in itself¹⁵³ and an indispensable means for realizing other human rights, including the right to food.¹⁵⁴ The Right to Food Guidelines acknowledge the important role of education and awareness raising in giving effect to the right to food; they urge states to “strengthen and broaden primary education opportunities, especially for girls, women and other underserved populations” (Guideline 1.2), to “encourage agricultural and environmental education at the primary and secondary levels” (Guideline 11.3), to implement education measures to improve “means for food preparation ... especially in rural households” (Guideline 11.6) and to “promote and/or integrate into school curricula human rights education” (Guideline 11.7).

The framework law can play a role in strengthening this link between right to education and right to food, and include provisions regarding both children and adult education. In the specific context of the realization of the right to food, education enables children to acquire skills and knowledge that contribute to their self-development and help them become self-sustaining adults able to feed themselves by their own means. On the other hand, children who lack certain nutrients in their diet or who suffer from protein-energy malnutrition do not have the same potential for learning as healthy and well-nourished children.

153 Since the Universal Declaration of Human Rights first recognized the right to education (Art. 26), this right has been reiterated in several other instruments such as the ICESCR (Art. 13.1), ICERD (art. 5(e) (v)), CEDAW (Arts 10 and 14.2(d)) and CRC (Art. 28)

154 See Vidar, M. 2005, p. 146.

This link between education and food was acknowledged very early by developed states, which introduced hot meals in many schools to increase enrolment and reduce the drop-out rate.¹⁵⁵ This is particularly important for girls, as women's education has a significant impact on child nutrition and thus infant and maternal mortality and the promotion of health and nutritional safety.¹⁵⁶ Education is also essential for adults to enable them to participate actively in social and political activities and in taking decisions that can affect their livelihoods. Skills development and understanding of human rights are equally relevant and necessary for public officials in order to enable them to implement their obligations and responsibilities under the right to food and the framework law in an effective manner. Accordingly, the framework law could require competent public authorities (e.g. ministry of education) to ensure that:

- ◆ The school curriculum includes material related to food and nutrition education, the right to food and human rights principles.
- ◆ Adult education and training programmes, when relevant, include material related to food and nutrition, the right to food and human rights principles.

The nutrition component of education is particularly important. Because nutrition education can have an impact on people's behaviour and dietary habits, it can strongly affect their enjoyment of the right to food. Nutrition education is also of particular value to children; communicating to mothers the value of exclusive breastfeeding in the early months of a child's life, the importance of energy-dense foods for children and the ways to decrease contamination and the risk of food safety hazards can strongly improve children's right to food as well as their health.

Some examples of legal provisions on education related to the realization of the right to food are given in Box 45.

BOX 45. Education on the right to food – examples from state practice

In **Ecuador**, the Law on Food and Nutritional Security (2006) charges the National Food and Nutrition Security Council with “design[ing] the study programmes on food and nutrition education that will be obligatory in every education establishment – public, private, municipal and semi private schools which partly receives public funding” (Art. 16), in coordination with other competent bodies.

¹⁵⁵ For example, in Scotland, the provision of a hot meal in many schools was introduced along with compulsory education as early as 1872.

¹⁵⁶ See German Federal Ministry of Food, Agriculture and Consumer Protection, German Technical Cooperation (GTZ) and FIAN. 2005.

BOX 45. Education on the right to food – examples from state practice (cont.)

In *Mexico*, education appears in the regulation whose objective is to improve the nutrition status of the population and to prevent health problems related to nutrition (NOM-043-SSA2-2005). The regulation sets out the criteria for education in the field of nutrition: persons working in the field of nutrition are obligated to provide guidance to the public, social and private sectors.

Educational and awareness-raising material related to food and nutrition, the right to food and human rights principles could be integrated into school and university curricula, material aimed at vulnerable population groups and at the most marginalized areas within a country and in training and skills development programmes for persons and groups working in areas relevant for the realization of the right to food (civil servants, lawyers, judges, CSOs, NGOs, farmers and the private sector).

3.9

PROVISIONS ON EMERGENCIES

As a basic human right, the right to food applies at all times and in all situations, in times of peace as well as during armed conflict, in ordinary times and during emergencies.¹⁵⁷ This must be clearly confirmed by the framework law, and appropriate provisions on early warning and food response need to be provided. It would be particularly useful if the relevant provisions of the framework law would address both aspects of a food emergency: preparing for an emergency (i.e. early warning and preparedness procedures and measures) and reacting to an emergency (i.e. organizing and managing an adequate food response).

An emergency can be caused by natural events (drought, floods, storms, earthquakes, crop failures resulting from pests or disease) or by human agency (internal or international armed conflict). In the latter case, in addition to human rights law, international humanitarian law applies. This branch of international law consists of rules regulating the behaviour of parties to an armed conflict:¹⁵⁸ with regard to food, it prohibits certain behaviour such as the starvation of civilians as a method of warfare and it regulates humanitarian assistance activities, including food and food-related programmes.

157 In times of public emergency, states are allowed to derogate from certain human rights, in accordance with the relevant provisions and conditions under the applicable international human rights treaty. For the right to food, the ICESCR only contains a general limitation clause (see above, section 3.3.3) and has no provision on derogations. However, in its minimum core content, i.e. freedom from hunger, the right to food is related to a non-derogable right to life and thus cannot be derogated even in emergencies. See Cotula & Vidar, 2003.

158 The main sources of international humanitarian law are the four 1949 Geneva Conventions and the two 1977 Additional Protocols. Given the nearly universal ratification of the Geneva Conventions, it is widely accepted that their provisions have acquired the status of international customary law, and are therefore binding upon all states regardless of whether they have ratified the treaties. On the other hand, ratification of the two Additional Protocols is less universal, and whether their provisions constitute norms of customary law must be assessed on a case-by-case basis.

In an emergency, people's ability to produce or purchase food and other essentials is significantly reduced. Thus, the state must be prepared to respond adequately to such situations; early intervention can avoid further destitution, suffering and violations of the right to food. To be able to do so, in-country capacity must be such to ensure adequate monitoring, risk assessment, early warning and preparedness for possible crises. While most countries in the world have some kind of intervention system allowing them to react to food emergencies (often through a food reserve), many lack adequate emergency preparedness measures (see Box 46).

BOX 46. Food security reserves – examples from state practice

Most countries susceptible to food emergencies have established strategic food reserves allowing them to cope with an emergency when it occurs, and have set up early warning systems to gather all information having a bearing on the current and expected food situation in the country (e.g. Ethiopia, Indonesia, the United Republic of Tanzania, Ukraine, Zambia).

The **Indonesian** Regulation on Food Security establishes the national food reserve, which consists of “government food reserves and public food reserves”. The government food reserves are to be created at all government levels: central, provincial, regency/mayorality as well as village (Art. 5). Public food reserves “shall be created independently and in accordance with the capacity of the society” (Art. 8). (See Governmental Regulation No. 68/2002 of 30/12/2002.)

The Food Security Act of the **United Republic of Tanzania** (1991) addresses the management of a national food security reserve. Responsibility for the reserve lies within the Food Security Unit of the Ministry of Agriculture. The government has no mandate to intervene to stabilize prices, although it does purchase from more disadvantaged regions, where private traders are less active.

A number of regional initiatives have also been established to cope with food emergencies such as the Southern African Development Community's Regional Food Reserve Facility (www.sadc.int), the East Asia Emergency Rice Reserve (<http://www.eaerr.com>) and the South Asian Food Security Reserve (www.saarc-sec.org).

While direct provision of food will be a primary means to ensure the right to food, other facilitating measures are called for to strengthen the state preparedness to respond to emergencies as well as people's capacity to cope with emergencies. These include establishing procedures to strengthen food reserves (see Box 47) and emergency systems, as well as measures to accelerate food production

and distribution, reforming commercial structures, providing marketing services, employing risk management, providing credit and fertilizers, and revising pricing policies.¹⁵⁹ Therefore, the most appropriate response to emergencies will require an appropriate *combination* of provision and facilitating measures.

The FAO Right to Food Guidelines invite states to “put in place adequate and functioning mechanisms of early warning to prevent or mitigate the effects of natural or human-made disasters” (Guideline 16.7) and to establish “mechanisms to ... gain understanding of the coping strategies of affected households in the event of natural or human-made disasters” (Guideline 16.8). Such mechanisms and procedures, should be laid down through a relevant legislation. In many countries, however, this is not the case. Some countries only have a general policy statement; in some others the existing legislation is insufficient or inadequate for providing necessary legal guarantees for the management and prevention of food insecurity, and for ensuring an appropriate system for emergency response compatible with the right to food and human rights principles. The framework law could play a role in improving this situation.

In addition, while there should be in a country an authority responsible for coordination of the emergency response, such an authority cannot be established through a framework law on the right to food. On the other hand, the framework law can play a role in the establishment or strengthening of institutions dealing specifically with *food response* by providing a legal basis for an organized and prompt state action. It may also be useful if the framework law included provisions on managing emergency (food) response received through international assistance.

The framework law could thus include provisions that:

- ◆ Require the competent public authorities to review the relevant legislative and institutional framework regulating food emergencies so as to ensure that it covers both early warning and preparedness for a crisis as well as organizing and managing food response in the case of a crisis, and that it complies with the right to food and the relevant international standards.
- ◆ Establish or strengthen a national institution responsible for coordinating the emergency food response and ensure that its mandate and functions are compatible with the right to food and international standards regulating emergencies.¹⁶⁰

159 See Chiaradia-Bousquet, J.P. & Morel-Chevillet, L. 1996. See also FAO. 2002a.

160 In 2005, at the World Conference on Disaster Reduction, 168 governments adopted the Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters. One of its strategic goals is “the development and strengthening of institutions, mechanisms and resilience to hazards”. See also FAO, 2007b.

- ◆ Designate the competent public authority responsible for initiating the request for international assistance in the case of necessity and for supervising and coordinating distribution of food response received.

Specific responsibilities and tasks of the relevant public and private actors for carrying out the various phases of risk assessment and risk management could be assigned through subsidiary legislation or regulations, and appropriate coordination procedures and mechanisms could be designed in some detail. Among others, this would include organizing monitoring, risk and hazard-assessment procedures, setting up early warning systems (at local, regional and national levels) actively involving those at risk, identifying response management structures, clarifying the responsibilities of different agencies and organizations in the provision of emergency relief, establishing or maintaining food stocks and relief funds, organizing training and education, and implementing information-sharing and coordination across the affected sectors (see Box 47).

BOX 47. Developing and reviewing emergency management legislation – example from Solomon Islands

The Solomon Islands drafted its first national disaster legislation in 1989. In 2005, under the Solomon Islands Institutional Disaster Risk Management Strengthening Project, the government started a multistep programme to review disaster legislation and plans. The aim of the programme corresponds to recent international trends in dealing with emergencies that indicate that the impact of disasters can be mitigated by human action and puts the focus on an intersection between identified risks and hazards and their management in terms of education, assessment, training, information sharing and cooperation in social organization.

Legislative review is deemed an integral part of updating and strengthening the capacity of the National Disaster Centre and its executive arm to deal with disasters. Mainstreaming disaster risk management through legislation is seen as an integral part of national assurance for risk management and disaster preparedness. The legislative review process will include multiple stages starting with a comprehensive analysis of legislation in efforts to gauge the current state of Solomon Islands disaster risk management.

Source: See Kessler, N. 2006.

As to the management and coordination of international food response, there should be a reporting obligation on assistance received (the form of assistance received and distributed, difficulties encountered, etc.), for example to the national authority on the right to food, as well as on regularly publishing the most relevant data.¹⁶¹ Other provisions of the framework law or subsidiary legislation could include tying food assistance to local and regional procurements of food items needed, requiring respect for people's dietary habits and culture and following international standards for humanitarian assistance.¹⁶²

161 See Report of the German Federal Ministry of Food, Agriculture and Consumer Protection, GTZ and FIAN, 2005, p. 57 (cit., note 156 p. 126).

162 See Cotula, L. & Vidar, M. 2003, Chapter 3.8. See also Right to Food Guidelines 15 and 16.

3.10 PROVISIONS ON INTERNATIONAL COOPERATION

As mentioned earlier, Articles 2.1 and 11 of ICESCR refer to international cooperation and assistance as among the means to achieve the full realization of the right to food. The CESCR considers that the obligation to devote the “maximum of its available resources” in Article 2 of ICESCR was intended by its drafters to refer to both the resources existing within a state and those available from the international community through international cooperation and assistance (GC 3, para. 13). The full realization of the right to food at the national level would be furthered if national efforts are supported by an enabling international environment.

In GC 12, the CESCR underlined the essential role of international cooperation in achieving the full realization of the right to food. In implementing their commitments to international cooperation, states should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required (para. 36). At the same time, states have a joint and individual responsibility to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each state should contribute to this task in accordance with its ability (para. 38). The CESCR has followed up on its opinion by regularly requesting information from wealthier countries on the way they cooperate internationally, including the amount devoted to overseas development assistance.¹⁶³

The UN Special Rapporteur on the right to food has considered that states should “respect, protect and *support the fulfilment* of the right to food of people living in other territories, to fully comply with their obligations under the right to food.”¹⁶⁴

163 See Donati, F. & Vidar, M. 2008.

164 See UN Special Rapporteur on the right to food. 2006, para. 34.

Despite this, there is not a clear consensus among states about international cooperation as an international legal obligation, or about extraterritorial obligations.¹⁶⁵ Nevertheless, a state may decide in its own national legislation to establish standards for its international cooperation and for the extent to which its obligation to respect, protect and fulfil the right to food should be applied extraterritorially.

With regard to international food response more specifically, the Right to Food Guidelines require states that provide international assistance in the form of food to “regularly examine their relevant policies and, if necessary, review them to support national efforts by recipient States to progressively realize the right to adequate food” (Guideline 13).

The framework law can play a role in furthering state action in the field of international cooperation: it should thus usefully include provisions in this regard. For example, it could require that competent public authorities:

- ◆ Ensure that activities undertaken in other countries, including by private actors, do not infringe on the enjoyment of the right to food by people in the concerned countries.
- ◆ Promote international cooperation and provide assistance to ensure the realization of the right to food in other countries if in a position to do so.

BOX 48. Promoting international cooperation – example from Brazil

According to the National Food and Nutritional Security Framework Law of **Brazil**, the State of Brazil shall promote technical cooperation with foreign countries, as a means of contributing to achieving the human right to adequate food at the international level (Art. 6).

Thus, an established obligation to cooperate would also include the extraterritorial dimension of state obligations, i.e. the obligation to contribute to the realization of the right to food in other countries, in as much as they are in a position to do so.

165 See Donati, F. & Vidar, M. 2008 and Cotula, L. & Vidar, M. 2003.

3.11

PROVISIONS ON A NATIONAL AUTHORITY ON THE RIGHT TO FOOD

The proper implementation of the right to food is not possible without interdisciplinary collaboration across sectors, institutions and actors – both public and private – potentially affecting availability, accessibility and adequacy of food in a given country. The Right to Food Guidelines require states to “ensure the *coordinated efforts* of relevant government ministries, agencies and offices” (Guideline 5.2, emphasis added). For the purposes of the framework law on the right to food, coordination would require a strong coordinating mechanism equipped with adequate technical and budgetary capacities and with appropriate powers to link and organize the diverse elements towards the affirmed objective of realizing the right to food.

Such a coordinating mechanism could be one single body (national authority on the right to food) composed of several subbodies charged with specific tasks (decision-making body, technical executive body, advisory bodies).

If a model of one national authority on the right to food is followed, the framework law should:

- ◆ Establish or provide for the establishment of a national authority on the right to food as *the overarching coordinating body* for the implementation of the right at national level.

The law should also require that, in exercising their powers and duties, the national right to food authority:

- ◆ Applies the human rights principles established by the framework law (see above, section 3.2.5).
- ◆ Works in close cooperation with representatives of civil society and takes their views into consideration.

- ◆ Uses, to the fullest possible extent, the services, facilities and information (including statistical information) of the relevant public and private bodies and organizations to prevent duplication of effort and expenses.

The framework law should not itself provide details on the functioning of the coordination bodies: these would appear in implementing legislation to be adopted within deadlines set in the main law. However, the mandate, composition and main functions as well as provisions for ensuring that the established institutions are given the financial and human resources required to fulfil their mission should be given in the framework law itself.

Recommendations regarding the main elements of a national right to food authority and a technical body/secretariat follow in the next sections. These recommendations are by nature general, as the legal status, mandate, functions and composition of these institutions will vary from country to country depending on specific legal traditions, policies and other particular characteristics. Box 49 gives a brief overview of different models of national food and nutrition security coordination in the most relevant existing or draft laws.

BOX 49. Models of national food and nutrition security organization and coordination – examples from state practice

Throughout the Latin American region, coordination of national food and nutrition security policy seems to rely on a model of a *system* on food and nutrition security open to participation of various governmental and non-governmental institutions and bodies (this is the case in Brazil, Ecuador, Guatemala and Nicaragua). The legal status, composition and functions of various bodies that the system differ from country to country.

In 2006, **Brazil** adopted the Law establishing the National Food and Nutritional Security System (SISAN) to guarantee the human right to adequate food (National Food and Nutritional Security Framework Law No. 11.346 of 15 September 2006). SISAN comprises a group of organs and entities from all state levels, as well as private profit and non-profit institutions that are dedicated to food and nutrition security and have an interest in the system. The main bodies in charge of the implementation of food and nutrition security are the following: (a) the National Conference on Food and Nutrition Security, a body responsible for indicating to the National Council on Food and Nutrition Security (CONSEA) directives and priorities for the national food and nutrition policy and plans as well as for evaluation of the SISAN; (b) CONSEA, an advisory body assisting the Presidency of the state on food and nutrition security; and (c) the Inter-Ministerial Chamber for Food and Nutritional Security, a body responsible for elaborating the

BOX 49. Models of national food and nutrition security organization and coordination – examples from state practice (cont.)

national policy on food and nutrition security, for coordinating its implementation and for harmonizing the policies and plans of its counterparts at state and district levels, to be created by an act of the Federal Executive. Participation of various bodies and institutions in SISAN shall be defined according to the criteria set by the CONSEA and the Inter-Ministerial Chamber for Food and Nutritional Security.

Ecuador adopted the Law on Food and Nutritional Security in 2006 (Law of 27 April 2006). The law creates the national system on food and nutrition security with the purpose of coordinating, promoting and ensuring the production, distribution, availability, stability of supply, access and utilization of food in a holistic and adequate manner at all levels of state, and in accordance with intercultural and gender requirements. Participation in the system is open to public, private and community institutions and organizations. The system is composed of two main bodies: (a) the National Food and Nutrition Security Council (CONASAN), the main decision-making body and (b) the Executive Secretariat, which is the technical advisory body to the CONASAN.

In 2005, **Guatemala** adopted the Law on the National Food and Nutritional Security System – SISAN (Decree No. 32-2005). The SISAN comprises various government authorities and non-governmental bodies. It is structured on a three-part model of activity: (a) National Food and Nutrition Security Council (CONASAN), responsible for management and political decision-making; (b) Food and Nutrition Security Secretariat (SESAN) in charge of coordination and technical planning; and (c) various institutions or agencies at every level of state, responsible for implementation of the activities related to food and nutrition security. In addition, the SISAN shall also comprise two other organs; (d) a consultation and social participation body; and (e) a group of support institutions comprising institutions that are not formal members of CONASAN and international cooperation agencies able to provide technical, financial and operational support.

In **Nicaragua**, Decree No. 03-2007 established the National Commission on Food and Nutritional Sovereignty and Security within the Presidency of the Republic, as a decision-making body charged with coordinating government activities designed to combat poverty, hunger and undernutrition. The draft Law on Food and Nutritional Sovereignty and Security of July 2008 provides for the establishment of the National System on Food and Nutritional Sovereignty and Security (SINASSAN) to promote, protect and fulfil the right to adequate food as a fundamental human right inherent to human dignity. Participation in SINASSAN is open to various government authorities and non-governmental bodies dealing with issues affecting food sovereignty and security in Nicaragua.



BOX 49. Models of national food and nutrition security organization and coordination – examples from state practice (cont.)

The draft Law provides for a six-part structure of the SINASSAN: (a) the National Commission on Food and Nutritional Sovereignty and Security (CONASSAN), as a decision-making body; (b) the Food and Nutritional Sovereignty and Security Secretariat, a technical executive body in charge of promoting coordination, execution and intersectoral and interinstitutional collaboration; (c) Sectoral Technical Committees on Food and Nutritional Sovereignty and Security, the scientific and technical advisory bodies in charge of coordination with representatives from regional, departmental and municipal levels, and providing support to them; (d) Regional Commissions on Food and Nutritional Sovereignty and Security in the autonomous regions of Atlántico Norte and Sur; (e) Departmental Commissions on Food and Nutritional Sovereignty and Security; and (f) Municipal Commissions on Food and Nutritional Sovereignty and Security.

Honduras, Peru and **Uganda** are examples of a two-part model of a national authority responsible for food and nutrition security.

A draft Framework Law on Food of **Honduras** (of 2007) provides for the establishment of the National Commission on the Right to Food as a decision-making coordinating body. The Commission will be assisted in its work by a technical unit, to be created and regulated through implementing regulations.

Supreme Decree 118-2002-PCM (of 13 November 2002) of **Peru** established the Multisectoral Commission on Food Security within the Presidency of the Council of Ministers (PCM). The Commission is charged with coordinating, evaluating and prioritizing policies and sectoral measures aimed at guaranteeing the food security of the population. The Technical Committee of the Multisectoral Food Security Commission is an operative and decision-making body itself subordinated to the Technical Secretariat of the Interministerial Commission of Social Affairs of the PCM. A draft Law on the Right to Adequate Food of Peru (of 2007) does not give rise to any new institutions: it reiterates the responsibility of the PCM for the implementation of the National Food and Nutrition Security Policy, and establishes the restoration of a technical multisectoral food security group, under a new structural dynamic in order to improve its effectiveness.

The draft Bill for a Food and Nutrition Act of **Uganda** (of September 2008) provides for the establishment of the Uganda Food and Nutrition Council as a coordinating, monitoring and advisory body on food and nutrition security. It will be seconded in its work by the Secretariat, to be designated by the Office of the Prime Minister or Minister (to be defined).

Some of the systems established for coordinating national food and nutrition security mentioned in Box 49 involve many different bodies and are rather complicated; the involvement of numerous different bodies leaves room for overlapping responsibility, and excessive bureaucracy that may undermine the transparency in practice. While this option may be appropriate in certain countries, establishing one single body, composed of two to three organs, charged with specific tasks (such as examples of a two-part model mentioned in the box), may be a better option for many countries.

The possible structure, mandate and functions, and composition of such a body will now be addressed in turn.

3.11.1 STRUCTURE OF THE RIGHT TO FOOD AUTHORITY

The national right to food authority can take two principal forms: it can be established within an existing ministry or as a separate, self-standing authority established at the highest level of government.

In most countries, national councils or commissions have been established to deal with issues related to food and nutrition security. In practice, many such institutions are ineffective due to unclear mandates, differences in priorities, system rigidities, lack of communication among various government sectors involved, lack of follow-through or insufficient human and financial resources. In addition, such institutions are generally attached to one line ministry (which is most often the ministry of agriculture, although sometimes the ministry of social development or ministry of health).

Enhancing coordination within the existing structure may be the only politically palatable choice within a national context, and it can lead to some improvements. This will be the case where the roles of the various entities are better defined and concrete mechanisms are established to improve coordination. On the other hand, having a national right to food authority attached to one line ministry can exacerbate problems of fragmentation and duplication in governmental activities related to the right to food, as it may skew priority setting and resource allocation. More importantly, because it is attached to one line ministry, the coordinating mechanism would not enjoy the political authority necessary to ensure active collaboration on the part of other actors.

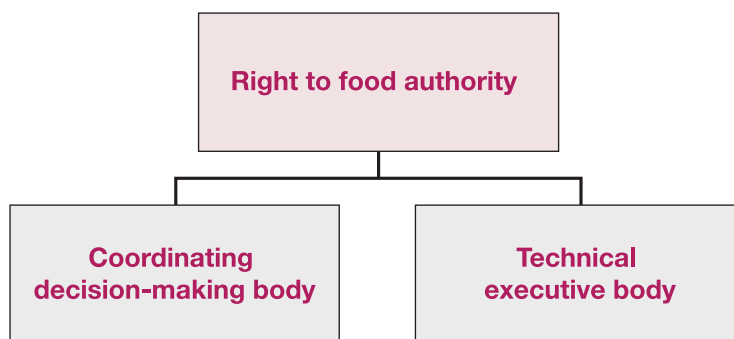
For these reasons, setting up a stand-alone national authority for the right to food or food security at the highest level of government or transforming existing structures into such a national authority (in the president' or the prime minister's office) is a better strategy for ensuring a clear view across ministries and divisions, and the authority needed to guarantee collaboration by all relevant state and non-state actors. The high hierarchical position of the authority and its exclusive focus on the realization of the right to food would facilitate systematic consideration

of the right to food or of its relevant components when decisions are made on economic, social, financial, agricultural, trade and other state policies. In addition, it would place the realization of the right to food and effective coordination higher on the political agenda.

While there are certainly difficulties involved in establishing a single government agency mandated to ensure cross-sectoral coordination, a number of countries have adopted this strategy in the field of food and nutrition security (see above, Box 49) and it should remain the ideal goal. The easiest path is to build on existing institutional structures. An existing commission or council on food and nutrition security could be strengthened: it could be detached from the line ministry and have its mandate, functions and composition reviewed and outlined in the framework law. In such a case, it is crucial that it be entirely absorbed into the newly established authority.

Such a coordinating mechanism for the right to food could be a two-part model of coordination composed of a coordinating decision-making body and a technical executive body (see Figure 1). Of course, the technical executive body would be subordinated to the coordinating decision-making body.

Figure 1. Two-part model of coordination



a) Coordinating decision-making body

A coordinating decision-making body should be established at the highest level of government (in the president's or the prime minister's office). A number of countries that have recently adopted or are envisaging the adoption of human rights-based legislation on food and nutrition security have followed this approach (see Table 1).

Table 1. Main coordinating decision-making body and its location within governmental administrations – examples from state practice in the field of food and nutrition security

COUNTRY	COORDINATING DECISION-MAKING BODY	LOCATION WITHIN GOVERNMENTAL ADMINISTRATIONS
Brazil	Inter-Ministerial Chamber for Food and Nutritional Security	To be established by an Act of Federal Executive.
Ecuador	National Food and Nutrition Security Council (CONASAN)	Ministry of Public Health.
Honduras	National Commission on the Right to Food	Presidency of the Republic.
Guatemala	National Food and Nutrition Security Council (CONASAN)	Presidency of the Republic; General Cabinet, the Social Cabinet and the Rural Development Cabinet.
Nicaragua	Food Security and Sovereignty Council	Presidency of the state (Art. 1.4. Decree No. 03-2007).
	National Commission on Food and Nutritional Sovereignty and Security (CONASSAN)	Presidency of the state (Art. 12. draft Law on Food and Nutritional Sovereignty and Security).
Peru	Multisectoral Commission on Food Security	Presidency of the Council of Ministers (Supreme Decree 118-2002-PCM of 13 November 2002).
	Interdepartmental Committee for Social Affairs	Presidency of the Council of Ministers (draft Law on the Right to Adequate Food, 2007).
Uganda	Uganda Food and Nutrition Council	Prime Minister or Minister for Agriculture (two options are still open)

b) Technical executive body

The second part of the national right to food authority should be represented by an executive unit composed of technicians and professionals. Its role should include preparing and proposing a national right to food strategy, coordinating technical food security monitoring and exchange of information, assisting the members of a national right to food authority to enable them to carry out their functions, and supporting and facilitating the activities of the authority. A number of countries that have recently adopted human rights-based legislation on food and nutrition security have given the power to formulate and propose the national right to food policy to the technical executive body (e.g. Brazil, Ecuador and Guatemala).

A technical executive body could also be given a more important role, i.e. the responsibility for coordinating the day-to-day implementation of the right to food strategy and the framework law, leaving a national right to food authority to make the strategic and political decisions.

A technical body should consist of professionals appointed on the basis of their expertise and capacities in various fields relevant to the realization of the right to food. Considering the complexity of the right and its implementation, the secretariat should also be able to consult independent expert bodies (institutes, universities, or even international agencies and organizations) to draw upon their knowledge when needed.

3.11.2 MANDATE AND FUNCTIONS

The mandate and functions to be assigned to the national right to food authority in the framework law will vary depending on national circumstances, but some of the principal functions will undoubtedly be the same.

The primary task of the authority will be to advise the government on and coordinate all the many activities related to the right to food at national level. This means coordinating the many agencies and actors whose activities have an impact on the realization of the right to food. The authority should also be charged with regularly reviewing the national policy on the right to food to ensure that it is evidence-based. That means that the policy must be based on all relevant and available information on the state of the realization of the right to food in the country and be consistent with the real needs and demands of the affected populations.

The right to food authority could also be assigned the task of providing advice on harmonizing sectoral policies relevant to the realization of the right to food. To this end, it should ensure that the right to food, in all its components, is systematically considered when decisions are made on economic, social, fiscal, agricultural, trade and other state policies. The authority should thus have the mandate to demand and collect information from various governmental and non-governmental actors. Timely and precise information is critical for the decision-making process. The better the quality of its information, the better its decision-making. To have an impact on the implementation of the framework law and the right to food in general, information obtained must be shared and disseminated widely within government (at central, local and regional levels) and outside government (to other state bodies such as parliament, to civil society and the media).

The right to food authority could also be assigned a mediating role, i.e. with the duty to settle differences of opinions and positions with respect to conflicting policies (e.g. land or biological resources use, institutional responsibilities, etc.). Recommendations to line ministries and other governmental bodies should be based on data and information received from the relevant bodies in charge of monitoring progress on the realization of the right to food (see below, section 3.12). Considering the complex relationship between

this right and the necessary resources and the diversity of means by which it will be put into practice, the authority should also be charged with setting benchmarks for measuring progress in the implementation of the framework law and the realization of the right to food¹⁶⁶ (see below, section 3.11.2).

Full realization of the right to food will require time and resources. The national authority should be given the mandate to ensure that priorities are properly set and that the available financial resources are allocated correspondingly and used properly. This will be crucial for the effectiveness of the framework law.

Another important function of the national authority on the right to food will be to devise proposals for amendment of laws, regulations or policies relevant for the realization of the right to food and submit those to the relevant minister. Similarly, the authority should have the power to recommend to state agencies the adoption or modification of various policies or measures relating to the right to food or to one of its components (accessibility, availability and adequacy of food). A corresponding requirement on the bodies receiving such proposals to act on them within a specified time period or to justify in writing the actions taken or not taken in response to the national authority's recommendations should also be established by a framework law or implementing regulations.

The national right to food authority should report to parliament, at regular intervals, on the state of implementation of the right to food and the framework law itself. This report should include the evaluation of its own institutional functioning and performance in order to provide information about constraints faced. Such reporting would contribute to the accountability of the members of the coordinating body. As it will include all or most relevant sectors affecting the realization of the right to food in a country (see below, section 3.11.3), the national authority may also be the appropriate institution to review and comment on the observations of the relevant international human rights bodies related to a state's performance in the implementation of the right to food at the national level. It could also be given a mandate to report on such observations to parliament.

In light of the above, the framework law should thus include among the principal functions of the right to food authority:

- ◆ Advising the government and coordinating the many activities and actors involved in the facets of realization of the right to food at national, regional and local levels.

166 The CESCR stressed the importance of providing "a basis on which the State Party itself ... can effectively evaluate the extent to which progress has been made towards realization of the obligations contained in the Covenant" (see GC 1, para. 6). Benchmarks should be established in relation to each of the obligations under the right to food that apply in a given state. The level at which right to food benchmarks are set is important; there should also be ongoing adjustment of the level of the benchmarks, particularly if they were set unrealistically high or low.

- ◆ Formulating, negotiating, adopting and reviewing the national policy on the right to food to ensure it adequately addresses the evolving needs and concerns of the population.
- ◆ Determining appropriate benchmarks for measuring progress in the implementation of the framework law and the realization of the right to food. Established benchmarks should be specific, time-bound and verifiable.
- ◆ Collecting information relevant for the realization of the right to food and ensuring information sharing and dissemination among all relevant actors, in the proper format and content for various users.
- ◆ Providing advice on harmonizing sectoral policies relevant for the realization of the right to food and making recommendations for change, on the basis of data obtained through technical and human rights monitoring.
- ◆ Setting priorities and coordinating the allocation of resources according to those priorities.
- ◆ Submitting to a minister concerned or state bodies proposals for amendment of a law, regulation or policy, or for new legislation, policies or measures relating to the right to food or to one of its components (accessibility, availability and adequacy of food).
- ◆ Reporting to parliament on the state of implementation of the right to food and the framework law itself, as well as on the Concluding Observations of all international human rights treaty bodies that have addressed a country's performance in the area of the right to food.

3.11.3 COMPOSITION

The composition of the coordinating decision-making body should reflect the multisectoral nature of the right. Ideally, the appointments should ensure representation of all sectors and social forces involved in the realization of the human right to food: governmental representatives and representatives from other state organs (research and statistic institutes, public universities) as well as representatives from civil society, the private sector and academia. This guarantees input from different stakeholders and improves the likelihood that laws, policies and programmes implemented by the national right to food authority are adapted to the real needs of a population suffering from hunger, malnutrition and food insecurity.

For governmental representatives, the framework law should require that they be the highest level officials (ministers or vice-ministers) in order to ensure that they are able to set the right to food as a priority in their sector and also

capable of motivating all units in their ministry. The chair of the authority could be the president or prime minister. The alternative – making one minister the chair – poses the risk of raising interministerial conflicts. The relevant sectors to be represented in a national right to food authority should correspond to the multisectoral and complex nature of the right to food. They should thus include, in addition to traditional ministries and agencies dealing with food and agriculture issues, the ministry of finance, the ministry of education, the ministry of justice and the ministry of health.

With regard to participation of representatives from civil society, the framework law should specify whether they should enjoy “full member” or “observer” status. This is of crucial importance for the effects of their participation.

Furthermore, the framework law should not only determine the number of representatives but also outline procedures to optimize their participation. These should include transparent and non-discriminatory selection criteria, clear consultation processes and identified working methods (see below, section 3.13.3). Some examples from state practice regarding composition of analogous bodies (i.e. institutions working in food and nutrition security) can be seen in Box 50.

BOX 50. Composition of the national coordinating bodies on food and nutrition security – examples from state practice

The National Food and Nutritional Security Framework Law of **Brazil** leaves to subsidiary legislation the details on criteria for membership in the National Council on Food and Nutrition Security (CONSEA) and the Inter-Ministerial Chamber for Food and Nutritional Security. It does require, however, that the CONSEA includes one-third of governmental representatives and two-thirds of civil society representatives. As to the composition of the Inter-Ministerial Chamber, its members will be “Ministers of the state and Special Secretaries responsible for food and nutrition security” (Art. 11.III). There is no provision for direct representation of civil society or the private sector in the Chamber itself.

In **Ecuador**, the National Food and Nutrition Security Council (CONASAN) is composed of the Minister of Health (who will also be the President of the Council), the Minister of Agriculture (Vice-President), the Minister of Education and Culture, the Minister of Social Welfare and the President of the Ecuadorian Intellectual Property Institute. The Law also provides for membership for one representative of the national consumer organization, one delegate of the Ombudsperson and one representative of the National Federation of Production Chambers.



BOX 50. Composition of the national coordinating bodies on food and nutrition security – examples from state practice (cont.)

In **Guatemala**, the National Food and Nutrition Security Council (CONASAN) has representatives of the following ministries: Agriculture, Economy, Education, Environment, Finance, Health, Natural Resources and Work and Social Protection. In addition to the government representatives, two representatives from the private sector and five from civil society serve on the Council. As to the Food and Nutrition Security Secretariat, it will include technical personnel from the sectors represented on the CONASAN, consultation and social participation branch advisers and the participation of technical personnel from the group of support institutions, when required by SESAN.

In **Uganda**, the Food and Nutrition Council shall consist of a Chairperson (a person of distinguished personality with qualifications and experience in food and nutrition matters) and sixteen members representing the following: the Office of the Prime Minister; the Ministry responsible for agriculture; the Ministry responsible for health; the Ministry responsible for gender; the Ministry responsible for planning; the Ministry responsible for disaster preparedness; the Ministry responsible for education; the Ministry responsible for trade and industry; the Ministry responsible for local governments; and the Director of the Plan for Modernisation of Agriculture Secretariat. In addition, it will also include: a representative of universities and other tertiary institutions; a representative of the Uganda Human Rights Commission; the Director of the Uganda National Bureau of Standards; a representative of the civil society organizations dealing with food and nutrition security; a representative of the farmers' associations; and a representative of the food processing industry.

The framework law should also expressly provide for the need to appoint persons who will act as focal points responsible for ensuring the follow-up to actions and recommendations of the national authority, within each member ministry of the coordinating decision-making body. The focal points could be appointed by the minister who sits on the coordinating body among senior level officials.

3.11.4 VERTICAL COORDINATION

The authority will have to coordinate not only horizontally (across sectors) but also vertically, i.e. among the various layers of government. This will be especially important in federal or highly decentralized states. In federal states, replication of coordinating mechanisms will probably be inevitable, while in decentralized states coordination could be ensured through the establishment of coordinating offices and committees within the districts or municipalities.

When local entities are called upon to implement national policies, the need for their activities to be coordinated by the national body will be greater. In such cases, active participation of local government representatives in the membership of the national coordination authority will have to be ensured (see Table 2).

Table 2. Vertical coordination of food and nutrition security – examples from state practice

COUNTRY	REPRESENTATION IN THE COORDINATING BODIES	SEPARATE BODIES AT SUBNATIONAL LEVEL(S)
Brazil	Inter-Ministerial Chamber on Food and Nutritional Security shall include: <ul style="list-style-type: none"> representatives of the bodies and authorities concerned with food and nutritional security of the union, states, federal districts and municipalities (Art. IV). 	National Food and Nutrition Security Conferences shall be held at the state, district and municipal levels, at which the delegates to the national conference will be chosen (Art. V.1).
Ecuador	National Food and Nutrition Security Council (CONASAN) shall include among its members: <ul style="list-style-type: none"> one delegate of the Association of Municipalities; one delegate of the Consortium of Provincial Councils and one representative of the National Rural Parochial Councils (Art. 9). 	Councils on food and nutrition security to be established at the provincial, cantonal and parochial level (Art. 7).
Guatemala	National Food and Nutrition Security Council (CONASAN) shall include as one of its members: <ul style="list-style-type: none"> the President of the National Association of Municipalities (Art. 13). 	Food and Nutrition Security Commissions to be established at the departmental, municipal and community levels (Art. 34).
Honduras	National Commission on the Right to Food will include as one of its members: <ul style="list-style-type: none"> the President of the National Association of Municipalities. 	
Nicaragua (draft Law on Food and Nutritional Sovereignty and Security, 2008)	National Commission on Food and Nutrition Sovereignty and Security (CONASSAN) will include among its members: <ul style="list-style-type: none"> the President of the Association of Municipalities in Nicaragua, as a representative of municipal governments; one representative of regional governments of autonomous regions of Atlántico Norte and Sur (Art. 13). 	Equivalent commissions will be created for the autonomous regions of Atlántico Norte and Sur (Art. 22). Equivalent commissions will also be established at the level of department (Art. 23-24) and at the level of municipality (Art. 25-26).
Peru (draft Law on the Right to Adequate Food, 2007)	The Technical Multisectoral Food Security Group, to be established within the Interdepartmental Committee on Social Affairs. The Technical Secretariat, will include among its members: <ul style="list-style-type: none"> a representative of the National Assembly of Regional Governments; a representative of the Association of Peruvian Municipalities. 	

3.12 PROVISIONS ON A MONITORING SYSTEM

Monitoring is central to a state's compliance with its obligations under the right to food and thus to the realization of this fundamental human right. The importance of monitoring is recognized by the CESCR and also by most human rights treaties, which have established monitoring committees at the international level to which States Parties are obligated to report periodically on progress made towards the implementation of guaranteed rights and freedoms. The Right to Food Guidelines specifically invite states to establish mechanisms to monitor the realization of the right to food (Guideline 17).

Generally speaking, monitoring is the process of systematically tracking and assessing state performance against clear benchmarks and targets. The FAO Right to Food Unit has developed a working definition of monitoring as a process consisting of “periodic collection, analysis and interpretation, and dissemination of relevant information to assess the progress in the realization of the right to adequate food among all members of society, and whether this is achieved in ways compatible with human rights principles and approaches”.¹⁶⁷ Because monitoring is the measurement of a situation in a time series, reports must be submitted at regular intervals.

¹⁶⁷ *Methods to monitor the human right to adequate food*, 2008, was prepared by the FAO Right to Food Unit in cooperation with International Project on the Right to Food in Development (IPRFD) in two volumes. It provides the most current and relevant methodological and operational information related to rights-based monitoring. This Guide summarizes information regarding specific methods and provides references to easily accessible sources of technical and methodological documentation. Available at: www.fao.org/righttofood

The framework law can play a role in clarifying the distinction between technical monitoring and human rights monitoring, and building an integrated monitoring system in a country (subsection 3.12.1), including through designating a lead monitoring institution (subsection 3.12.2).

3.12.1 TECHNICAL AND HUMAN RIGHTS MONITORING

In the right to food context, monitoring takes two forms:

1. Monitoring government compliance with its obligations necessary to realize the right to food

Monitoring here assesses government's willingness and effort (expressed through adoption of primary and subsidiary legislation, regulations, policies, programmes, projects, etc.) to implement the framework law.

2. Monitoring progress in the realization of the right to food

Here, monitoring covers the degree to which the right to food is effectively enjoyed by the people and the impacts of national, local and community measures designed to contribute to the realization of the right to food.

At country level, institutions exist with responsibilities for "technical" monitoring (i.e. collecting monitoring information on food security issues) and for "human rights" monitoring (i.e. evaluating the realization of human rights). The first group includes governmental bodies and public agencies. National statistical services conduct periodic censuses and surveys while line ministries, such as those responsible for agriculture, health, education, labour, industry, trade, environment or finance often maintain subject matter databases that contain information related to the implementation of their policies and programmes. Some countries have also established special governmental units that assess the food security situation, provide early warning or monitor the health and nutrition status of the population.

The monitoring information generated by these institutions, although not specifically directed at the right to food, nonetheless covers various components of right to food in a country: availability, stability of food supply, accessibility, utilization and adequacy of food. The institutions' reports contain information on issues such as: arable land per capita; per capita water availability; daily per capita calorie and protein supply; the percentage of hungry or undernourished; infant mortality rate; per capita food production; public expenditure per capita in education, health and nutrition; unemployment rates; and coverage of social security schemes, all of which are relevant to assessing the implementation of the right to food at

country level.¹⁶⁸ Apart from the governmental bodies, several other actors such as universities, research institutions and non-governmental organizations also maintain databases and information systems regarding their respective fields of action or interest. The principal characteristic of these “technical” institutions is that they do not monitor from a human rights perspective: they monitor not the degree of enjoyment of the right to food, but the status of the object of that right, i.e. food security.¹⁶⁹ And an improvement of the food security of the population, in aggregate data, does not reveal the status of the enjoyment of the right to food at the level of the individual (as it does not reveal existing inequalities and leaves out culturally determined patterns, and individual differences and preferences).

Institutions responsible for “human rights monitoring”, on the other hand, include independent bodies and human rights institutions with the duty to review the operation of legislation from a human rights perspective. For example, a discrimination commission, data protection commission or HIV/AIDS commission, where they have been established, would evaluate government activities and programmes in its specific area. National human rights institutions such as human rights commissions or ombudspersons, by contrast, are specifically mandated to monitor and promote the realization of human rights.¹⁷⁰ In monitoring government compliance and performance in the realization of human rights, human rights institutions rely, among other sources, on information generated by the “technical” monitoring bodies mentioned above. However, monitoring progress in the realization of human rights also requires analysis of other types of data, such as events-based data, data based on expert judgement and household perceptions. Events-based data refer to the reported acts of violation committed against individuals and groups by state and non-state actors. Such data generally give information about the act or omission that led to the violation, who was or were the victims and who committed the violations. This information is complementary to information gained through other sources. Data based on the experts’ judgement involve the use of diverse sources of information, including the media, government reports and reports from NGOs by independent experts (advocacy groups, academic researchers) who are asked to evaluate the state’s performance. Such data are generally used for cross-national

168 National census data, where available, can be particularly useful sources of information, in particular when the census has been designed and conducted in a way that allows for disaggregation of data, e.g. by marginalized group status such as women or indigenous populations, or by geographic regions, and urban and rural areas.

169 See Vidar, M. & Immink, M. forthcoming.

170 Human rights institutions have developed mainly starting from the 1990s precisely in response to a growing recognition of the importance of human rights in building democratic societies. While in 1990 there were 8 national human rights institutions worldwide, by 2002 there were 55; today there are 123 (See Kjærsum, M. 2003, p. 1). For the list of all human right institutions, see <http://www.demotemp360.nic.in/NationaldataList.asp>

ranking and comparisons over time.¹⁷¹ Further to governmental bodies, some non-governmental actors such as NGOs and academic institutions are also active in monitoring state compliance with human rights standards and governmental performance in the realization of human rights (see Box 51).

BOX 51. Role of civil society organizations in monitoring – examples from Brazil

In **Brazil**, a network of NGOs, social associations and institutions called the Brazilian Forum for Food and Nutrition Security undertakes research and field work to generate and analyse information related to food and nutrition security. The outputs produced by the network and individual members are used for policy and programme proposals and for monitoring.

Another interesting initiative in terms of monitoring the right to food in Brazil has been the establishment of the National Rapporteur on the Human Rights to Food, Water and Rural Land in 2002, coordinated by the Economic, Social and Cultural Human Rights Platform, a network of civil society organizations.

Source: See Valente, F.L.S. & Beghin, N. 2006. See also Bruera H.G. 2004.

While in most countries there exist institutions responsible for generating monitoring information and monitoring progress in the achievement of food security on the one hand, and in the realization of human rights recognized by domestic law on the other, in most cases what is lacking is an integrated and human rights- based approach to monitoring, characterized by: (i) access and information sharing among government institutions at all levels and among governmental and non-governmental institutions; (ii) multisectoral analysis of available data and information; (iii) use of right to food indicators; (iv) a comprehensive interpretation and analysis of the information from a human rights perspective; (v) broad dissemination of monitoring outputs to public and private actors and civil society; and (vi) a guarantee that government will rely on the monitoring information in the development and implementation of policies relating to the right to food.

171 On various methods used for human rights monitoring see, among others, UNDP. 2006.

The framework law can play a role in establishing such an integrated monitoring system by requiring the relevant authorities and bodies at all levels to:

- ◆ Collect data related to food and nutrition security using monitoring methodologies and processes consistent with human rights principles as established by the law (see above, section 3.2.5).
- ◆ Disaggregate collected data by age, sex, status and group.
- ◆ Monitor progress achieved in the realization of the right to food in a country.
- ◆ Establish or identify an early warning mechanism.

From an institutional point of view, to facilitate the functioning of a viable monitoring system for the realization of the right to food at national level, the framework law should identify or establish a lead monitoring institution (see below).

3.12.2 IDENTIFYING OR ESTABLISHING A LEAD MONITORING INSTITUTION

The framework law will have to establish or designate a lead monitoring institution for the right to food at national level, taking into account the types of institutions already existing, their mandates and capabilities. While a lead monitoring institution should be focused on human rights monitoring, it must be able to identify correct indicators, to interpret the monitoring information obtained from “technical” monitoring from a human rights perspective and above all to coordinate the assessments of all different monitoring stakeholders in a participatory way.¹⁷² The law should set out key elements of the mechanism and its functioning, leaving the details of its operation to subsidiary legislation to be adopted within established deadlines, if necessary and appropriate.

The choice of institution will depend on its authority to access and demand information from governmental bodies and its capacity to analyse and interpret relevant information and to transform it into policy recommendations. Above all, the institution should be independent from direction by the government as this will determine the credibility of its recommendations. Indeed, one of the fundamental principles of monitoring is that its effectiveness depends on separating the monitor from the monitored. Only in this way can measurement of progress in the realization of the right to food be undertaken objectively. Such an institution could possibly be an institution within government, provided it does not have itself any operational responsibilities or powers in the field of the right to food, and is not subject to pressure from other governmental agencies. The FAO Right to Food Unit

¹⁷² The lead institution should rely on information and work of other monitoring agencies within a state. See FAO. 2006c, p. 43.

has developed a checklist against which to evaluate attributes and responsibilities of an institution to be given primary responsibility to monitor the realization of the right to food. These include the following: clear mandate; adequate and identifiable human and financial resources; work plan that specifies time-bound outputs; strong dissemination plan targeting different stakeholders; high level of credibility; good access to all relevant sources of information; advisory committees with human rights and technical expertise; good advocacy and communications capacity.¹⁷³

Depending on the national context, some possible choices for the lead institution include:

- a) The national right to food authority where established or, where it does not exist, an inter-ministerial coordinating body such as a national commission or council on food and nutrition security.

If the framework law has created a national right to food authority or has co-opted an existing interministerial body for that function, it might seem logical to designate that authority or body to take the lead in monitoring implementation of the right. The advantage is that by convening representatives of different sectors, it would ensure a holistic view of government activities and maximize cross-sectoral interpretation of the monitoring outputs. It should also facilitate information sharing among various governmental bodies at all levels of government. Where established at the highest level of government, the institution would also have the political authority needed to access or demand all the information it may need as well as to influence policy-making based on its monitoring of information collected. On the other hand, a right to food authority or a transformed food and nutrition security commission or council with representatives of various ministries may not have the necessary independence from interference by those ministries needed to achieve this task objectively and thoroughly. Moreover, separating coordinating and monitoring functions makes it more likely that the established benchmarks have a real impact on future governmental action.

- b) A specialized independent body or national human rights institution.

Given sufficient resources, the framework law could establish a specialized independent body to monitor government compliance and performance in the realization of the right to food (such as a commission on racial equality or on HIV/AIDS). A more realistic option may be to assign the monitoring role to an existing, independent body such as a national human rights institution. Right to Food Guideline 18 recognizes the importance of human rights institutions in this

173 This checklist is based on the so-called “Paris Principles”, the Principles on the status and functioning of national human rights institutions, adopted by General Assembly Resolution A/RES/48/134 of 20 December 1993 (see Office of United Nations High Commissioner of Human Rights Web site: <http://www2.ohchr.org/English/law/parisprinciples.htm> See FAO, 2008, Vol. I, Chapter 5.

area and recommends that their mandate “include monitoring the progressive realization of the right to adequate food”.

This option would have many advantages. National human rights institutions such as human rights commissions or ombudspersons are institutions *par excellence* mandated to monitor and promote the realization of human rights.¹⁷⁴ While their mandate and functions vary from country to country, it can be said that this development can be seen as global in that all regions have seen an increase in the number of new institutions.¹⁷⁵ While many national institutions are attached, in some way or another, to the executive branch of government, they generally enjoy independence from governmental interventions, which is often assured through legal, operational and financial means, democratic and open appointment and dismissal procedures, and the manner in which they operate. National human rights institutions have status and credibility because of their established legal mandate; they also have the knowledge and competence to comprehensively interpret and analyse monitoring information related to human rights. Even if these bodies have for the most part focused on civil and political rights, in many countries their mandate has expanded and they are the natural home for human rights monitoring of all kinds. Some examples of human rights institutions monitoring progress in the realization of economic, social and cultural human rights are given in Box 52.

BOX 52. Role of human rights institutions – examples from state practice

The National Human Rights Commission of **India** was established under the Protection of Human Rights Act 1993. Its mandate is to protect and promote rights guaranteed by the Indian Constitution or embodied in the ICESCR. The Commission has been very active in monitoring government compliance with human rights, including economic, social and cultural rights; it has often made recommendations for changes to existing or proposed legislation. Thus, for example, the National Rural Employment Guarantee Act guaranteeing a minimum of 100 days of employment per year has been modified so as to delete the reference to “one able bodied person” in every household, on the urging by the Commission. Another important amendment to the Hindu Succession Act awarding equal rights of females in all property, including agricultural land, will go a long way towards empowering women and removing gender discrimination. ▼

174 See above, note 168.

175 While human rights commissions have been established in common law countries (for example, Australia, India, Ireland, New Zealand and South Africa), and in African and South Asian countries (some of these being common law countries as well), human rights ombudspersons have obtained formal status as national institutions in Northern Europe, in Latin America and some Eastern and Central European countries.

BOX 52. Role of human rights institutions – examples from state practice (cont.)

The National Human Rights Commission of the **Republic of Korea** has recently listed the implementation of economic, social and cultural rights (ESCR) among its priorities. For this reason, the Commission has established a research society on ESCR with academics, lawyers and human rights activists and launched a full scale analysis of ESCR in the country. The Commission is preparing policy recommendations, for example with regard to forced eviction (which implicates the right to housing).

The **New Zealand** Human Rights Commission's continuing work on implementing the Action Plan for Human Rights involves a significant monitoring component. The Commission maintains an active legal and policy programme, providing advice and submissions to central and local government on the compliance of policy and legislative proposals with human rights. The Commission's comments on ESCR implications are vital, because current government processes require policies to be formally checked for compliance only with the civil and political rights contained in New Zealand's human rights legislation.

The **South African** Constitution explicitly mandates the South African Human Rights Commission to monitor ESCR, including the right to food. The Commission must investigate, report and carry out research on the observance of economic and social rights, take steps to secure appropriate redress where these rights have been violated and educate state organs on the need for the protection and promotion of these rights. Every year the Commission must request relevant state organs to provide it with information on the measures taken towards the realization of socio-economic rights including the right to food. On the basis of this input, a report on the state's realization of economic and social rights in South Africa is published. The Commission has also held public hearings in many parts of the country, as well as several consultative and educational workshops for government officials and CSOs.

The Human Rights Commission of **Uganda** is mandated under the 1995 Constitution to report annually to Parliament on the status of civil, cultural, economic, political and social rights in the country. The reports have analysed the state of some ESCR in Uganda. The Commission is currently developing monitoring tools on the right to adequate food, the right to adequate housing, the right to education and the right to adequate shelter. The Commission is actively engaged in monitoring state compliance with human rights: it has made various recommendations to Parliament, for example suggesting that these rights form part of the Constitution, which guarantees fundamental human rights and freedoms.

Sources: See NHRC and OHCHR India, 2005. See <http://www.nhrc.nic.in/publications/escr.pdf>.

Whatever the option chosen, the key is that the lead monitoring institution has the human and financial resources, and the credibility, to monitor and promote the human right to food independently and effectively. Further, where appropriate, CSOs should also be represented in the lead monitoring institution established or designated in the framework law (see below, section 3.13.2).

3.13

PROVISIONS ON CIVIL SOCIETY REPRESENTATION AND PARTICIPATION

The Right to Food Guidelines invite states to “ensure that relevant institutions provide for full and transparent participation of the private sector and of civil society, in particular representatives of the groups most affected by food insecurity”. Actors external to government (farmers, local communities, NGOs/civil society organizations [CSOs], the private sector) should be able to communicate their concerns to the government and give their inputs to policies and programmes that will affect them.¹⁷⁶ As noted above, the right to participate in public life is recognized in several international human rights instruments.¹⁷⁷ The principle of participation should be included under the chapter on principles in the framework law, as discussed above in section 3.2.5a.

The legitimacy of CSOs derives from their origins: they are generated by a real need in the community or the society, which they strive to fulfil. Their capacity to influence and effect social change enables them to be the main means of participatory and not representative democracy; civil society representation is not the representation of the interests of the “people”. In reality, various civil society groups always represent a particular interest in society, and many times these interests are competing.

176 “Civil society is about participation, while parliamentary democracy is about representation ... civil society is complementary, not a rival, to representative democracy” (see Marschall, M. 2001. See also Boyer, B. 2001).

177 The right to participation is implicit in the ICESCR (Art. 8 (on freedom of association), 13 (on education), and 15 (on cultural life) and explicit in the ICCPR (Art. 25.1 on the right to take part in public affairs). It is spelled out in the 1986 UN Declaration on Development and in the 1993 Vienna Declaration and Programme of Action.

Civil society participation in decision-making is meant to improve transparency, efficiency and effectiveness of government. It also lends credibility and legitimacy to government decisions. Active involvement of all stakeholders interested in the realization of the right to food would provide information “from the ground” and ensure that policies are based on real needs and that local concerns are put on the agenda. It would also bring the perspectives and ideas of those affected directly into the discussion. The active involvement of civil society in the work of the institutions charged with overseeing the realization of the right to food in a country may also have the advantage of imparting a sense of ownership and responsibility on the part of these civil society actors; i.e. they would distance themselves from unrealistic demands and expectations while becoming increasingly involved and invested in those actual governmental policies and programmes they helped shape.

On the other hand, the active participation of civil society in the institutions established by the framework law could bring a number of challenges. The first might be how to integrate a diverse array of interests into the policy-making process. Neither the process nor the results should be disproportionately influenced by one or a few sectors. A related question of who decides which representatives of civil society can participate may also be a challenge (see below, section 3.13.3).

Second, there may be a lack of capacity on the part of civil society groups in some countries – making meaningful participation more difficult. Participation requires knowledge and the ability to contribute to discussions, priority setting, analysis and evaluation of policies and programmes. Finally, where there is no culture of collaboration between governments and civil society, or where existing government structures do not allow for the full involvement of civil society groups and associations under terms of equality and respect, participation may be difficult to engender.

For these reasons, the institutional mechanisms and consultation processes must be defined clearly in the framework law. The following sections examine some of the main areas that the framework law should address, in order to improve the likelihood of effective and meaningful participation by civil society groups.

3.13.1 AREAS FOR CIVIL SOCIETY PARTICIPATION

The framework law should identify the areas in which the competent public authorities – at all levels – must or should seek and consider the contributions of civil society. Some of these could include policy- and law-making, establishing benchmarks and evaluating progress in the realization of the right to food. Also, their contributions can be ensured in administrative decision-making, where necessary and appropriate.

CSOs are by definition closest to those whose right to food must be respected, protected and fulfilled. The framework law should thus require the competent public authorities at all levels to establish consultation processes ensuring that the views of concerned CSOs are taken into account in the elaboration of policies or programmes that could influence the realization of the right to food or some of its components.

However, it is at local level that people can best define their priority concerns and articulate how to deal with them. Local governments can be a crucial source of empowerment, by ensuring concrete opportunities for people to participate in the local decision-making processes, acting as a voice for local needs at higher levels, and providing adapted support for local people's initiatives.¹⁷⁸ Civil society involvement at the subnational and local levels of government would bring a double advantage: on the one hand, governmental decisions could be better adapted to the actual needs and concerns of the population; and on the other, civil society groups could take responsibility and use their networking structures to build capacity and increase public awareness of the right to food and government activities in the field.

Civil society should also be actively involved in establishing appropriate benchmarks and measuring progress in the realization of the right to food in a country. Their participation in the monitoring activities would contribute to preventing the targets from being set too low and would assist in achieving the broadest possible agreement on what constitutes an adequate rate of progress.

It is unlikely that the framework law will identify the precise consultation processes to be employed (leaving this to implementing instruments). Some of the possible mechanisms include soliciting written submissions from interested individuals and groups, holding public hearings with various constituencies and convening round table discussions among different constituent groups. In rural and remote areas or areas inhabited by minority ethnic groups, oral hearings in local languages will be particularly desirable for enhanced participation.

In order to guarantee public participation and ensure that the state plays a dynamic role in this area, the framework law could require that:

- ◆ Consultations on specific areas of implementation of the framework law are guaranteed.
- ◆ A national public hearing is held every two years, at which the state is required to report on progress made with the implementation of the framework law and the progressive realization of the right to food in a country.

An equivalent duty could also be established for subnational public authorities.

178 See IFAD. 1995.

3.13.2 INSTITUTIONAL MECHANISMS AND FORMS OF CIVIL SOCIETY REPRESENTATION

Various mechanisms could be deployed to ensure civil society representation in decision-making, planning and implementation processes affecting their right to food.¹⁷⁹ The framework law could institutionalize public participation in three ways: (i) including civil society representatives in the national right to food authority; (ii) establishing an advisory panel to advise the right to food authority; and (iii) both.

In recent decades, many countries have formalized public consultation in governmental decision-making by *opening national coordinating bodies to civil society representation*: civil society representatives have been involved in the work of coordinating national authorities on environmental protection, HIV/AIDS, drugs, corruption and criminal justice, for example. A number of recently adopted laws on food and nutrition security also provide for the participation of civil society representatives in the national councils on food and nutrition security (see Box 53).

BOX 53. Civil society representation in national coordinating bodies – examples from state practice

In **Ecuador**, **Guatemala** and **Nicaragua**, the national councils on food and nutrition security include members coming from CSOs (one, five and two respectively).

In **Uganda**, the draft Bill for a Food and Nutrition Act provides for the participation of one representative of the CSOs dealing with food and nutrition security, and of one representative of farmers' associations.

The framework law will have to identify the precise role of civil society representatives in the national coordination body, i.e. whether they sit as full members or act as observers only. Even where they are full members, their numbers may limit their ability to affect decision-making within the right to food authority. Thus, their representation within the right to food authority should be complemented by other “diffuse” processes of consultation (see above).

Another possibility is simply to convene a *separate advisory panel* attached to the coordinating decision-making body or to the technical executive body.

179 For an interesting analysis of forms of government–civil society cooperation in Europe, see Bullain, No. & Toftisova, R. 2005.

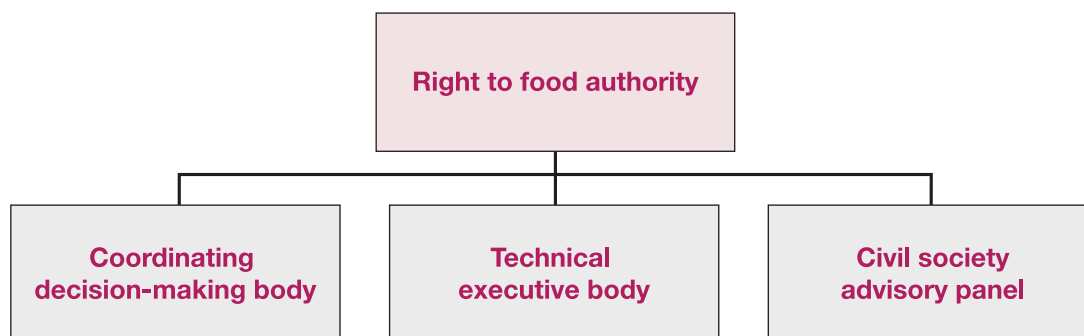
This mechanism could ensure that the demands and interests of the most affected populations are heard and taken into account when relevant decisions and policies are taken at the level of government. Such an advisory body could be composed of representatives of civil society only or could have a balanced representation of government and civil society groups. The first option has been followed in Guatemala's Law on National Food and Nutritional Security System while the second option was chosen in Brazil (see above, Box 49).

The advisory body could either be a separate body or attached to the national right to food authority. One advantage of the latter is that it would allow civil society representatives to work directly with high-ranking members of government and thus potentially have a stronger voice in decision-making. This should be facilitated by defining clearly the legal force of the panel's contributions, its working methods and the selection criteria for its members.

Another important point for the framework law to resolve is the legal force to be given to the contributions of civil society participants. The law could indicate, for example, that the competent public authority "shall" or "should" take their contributions into consideration, or that it must clearly justify departing from those recommendations.

The most appropriate form of civil society representation will of course depend on specific circumstances in a given country. However, in most cases the best solution may appear to be a combination of the two options: representation in the national coordinating decision-making body as well as the establishment of an advisory panel to that body, as shown in Figure 2. Such a structure of the right to food authority would have the potential to ensure the fullest and broadest participation of civil society representatives in the process of realization of the right to food in practice.

Figure 2: Three-part model of coordination



3.13.3 SELECTION CRITERIA AND REPRESENTATION

Ideally, all CSOs with an interest in the right to food or some of its components should be consulted where their interests are affected. However, this is not likely to be possible in practice. Therefore, to ensure effective representation by civil society representatives, clear definitions of the selection process and the selection criteria are essential (see Box 54).

BOX 54. Selecting civil society representatives – examples from state practice

In **Brazil**, the law requires the National Conference on Food and Nutrition Security to determine the criteria and the procedures for selecting members of the National Council (Art. 12).

In **Guatemala** (Agreement N. 75 that sets a Regulation to the National System on Food and Nutritional Security), the list of sectors to be represented within the national coordinating body is determined in advance: they include indigenous populations, farmers, private industry, churches, academia, NGOs, women's organizations and professional councils (Art. 31).

According to the draft Bill for a Food and Nutrition Security Act of **Uganda**, the Prime Minister/Minister (to be defined) will be given the power to appoint a representative of CSOs and of farmers' associations. He or she will do so "in consultation with such organisations and authorities as may appear to the Prime Minister/Minister to be appropriate, and from among persons who are qualified for appointment by virtue of their professional qualifications and experience in food and nutrition matters. He or she must also take into account the organisational capacity of the organisation, and ensure effective representation and gender equity" (Art. 13. (2-4)).

The selection process should be participatory, non-discriminatory and transparent. For example, the framework law should identify how the various groups will participate, i.e. whether they are always represented or serve on a rotational basis. On the other hand, neither the framework law nor its implementing instruments should specifically identify the civil society groups that can be represented, as this risks excluding groups that have not been mentioned or accorded "recognition" by the government. Similarly, the framework law should guarantee that the civil society representatives are selected by civil society itself, rather than through invitation by the government.

To ensure a fair representation, the framework law could require that the civil society groups reflect a balance among areas of expertise, regions of the country or other criteria. Some of these other criteria could include:

- ◆ The ability of a group to represent the relevant communities.
- ◆ The size of the group they represent.
- ◆ The type of geography (urban, rural, forest).
- ◆ The expertise of the organization as it relates to the right to food.
- ◆ The organizational capacity of the group.
- ◆ Gender balance.
- ◆ The balance in representation of the relevant communities and interests within society (farmers, indigenous populations, fisherman, local communities, forest communities, etc.).

The most important factor is that the criteria do not exclude a particular group from representation. The body in charge of appointing the nominated civil society representatives should assess whether the relevant criteria have actually been met in each case.

A final consideration is whether civil society groups have in place their own systems to ensure effective and democratic consultation. The framework law may not have a real impact, but implementing instruments might assist by indicating how exactly the selected persons will be truly representative (e.g. how will they consult the communities whose interests they support) and accountable (e.g. how will they report back to the local level).

3.14

PROVISIONS ON REMEDIES

Key factors that significantly influence the realization of human rights guaranteed by law are the availability and accessibility of mechanisms that allow people to complain in the event that their rights are violated. Together with the fundamental principle of the rule of law and as an integral part of it, access to justice for the enforcement of the right to food is thus of crucial importance. Under international human rights law, access to justice includes the right to an “effective remedy” for anyone whose rights are violated.¹⁸⁰ While the justiciability of economic, social and cultural rights has long been subject to argument,¹⁸¹ several authors have sought to demonstrate the unfoundedness of such positions.¹⁸² The notion of justiciability generally refers to a possibility for an individual to complain before a court or other independent authority about an alleged violation of his or her human right (e.g. the right to food), and obtain adequate remedy where a violation is found. It is today widely acknowledged that domestic protection of human

180 See, for example, Article 8 of the UDHR, Article 2.3 of the ICCPR and Articles 6 and 13 of the ECHR.

181 The notion of “justiciability” generally refers to the capacity of a right to become subject to a dispute before a court and be enforced. See for example, Vierdag, E.G. 1978.

182 See, for example, Van Hoof, G.J.H. 1984; Eide, A. 1993; Scheinin, M., 1995. International recognition of justiciability of economic, social and cultural rights is widely based on the frequent consideration of matters affecting these rights by domestic courts in many states as well as by international and regional human rights mechanisms. See, for example, Eide, A. Krause, C. & Rosas, A. 2001 and Borghi, M. & Postiglione Blommestein, L. eds. 2006.

rights cannot be fully assured without the judiciary which is the ultimate guarantor of rights,¹⁸³ although the argument that economic and social rights lack the qualities of justiciability is still sustained by some¹⁸⁴.

The right to an effective remedy need not be interpreted as requiring a judicial remedy in each and every case; administrative remedies are often cheaper, speedier and more accessible to individuals than formal court proceedings. Any such administrative proceedings and remedies should, however, be accessible, affordable, timely and effective. An ultimate right of judicial appeal from administrative procedures of this type would also be appropriate. However, there are some obligations, such as those concerning non-discrimination, in relation to which the provision of some form of judicial remedy seems indispensable in order to satisfy the requirements of the ICESCR (GC 9, para. 9). As to the Right to Food Guidelines, they invite states to ensure administrative, quasi-judicial and judicial mechanisms that provide adequate, effective and prompt remedies accessible, in particular, to members of vulnerable groups (Guideline 7.2).

The application of the principle of rule of law and access to justice in the context of the framework law thus requires clear provisions on recourse mechanisms in case of an alleged violation. Such provisions would also contribute to the application of the principle of accountability of the competent public authorities for the respect and enforcement of the framework law provisions. Ideally, such provisions would include administrative appeals, judicial appeal and also quasi-judicial mechanisms such as human rights commissions or an ombudsperson.

These will now be discussed in turn.

3.14.1 ADMINISTRATIVE REMEDIES

In practice, in many national systems, the requirement of exhaustion of administrative review procedures is a precondition for recourse to judicial proceedings. Administrative decisions, acts or omissions can generally be challenged before a higher administrative authority (see Box 55).

183 In terms of the CDESCR, any person or group who is 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. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition (GC 12, para. 32).

184 See, for example, Dennis, M.J. & Stewart, D.P. 2004, p. 515.

Thus, for example, with respect to the minimum amount of food entitlement, an individual could challenge the non-delivery of the benefit he or she is entitled to or its delivery in an inadequate form (e.g. food not corresponding to established requirements either qualitatively or quantitatively).

The framework law could state that:

- ◆ Any administrative decision or action taken in breach of any of the provisions of the framework law or its subsidiary legislation or omission to act in accordance with such provisions can be challenged before the higher administrative authority.

The competent higher authority should have the power to impose all measures it deems necessary for redressing the violation.

A country may also opt for simply introducing a provision referring to the existing legislation dealing with the responsibility of the civil servants. Box 55 gives a few examples of legal provisions dealing with administrative remedies from state practice.

BOX 55. Administrative remedies for enforcing the right to food – examples from state practice

In **Mexico**, the 2004 Law on Social Development provides for the “right of any person or civil society organization to make a formal complaint for any act or omission which prejudices or could prejudice the exercise of any of the rights established by the Law” (Art. 62), thus including the right to food guaranteed in Article 4 . The law also guarantees the right to make a public complaint (*denuncia popular*) as a means of access to justice in the field of social development. Thus, any person has the right to complain, before the state inspectorate, about any action taken by the competent authorities, which he or she considers a violation of any of the rights established by the law (Arts 64 to 67).

The National Food Security Draft Bill of **South Africa** provides that “any affected person may appeal to the Minister (of Agriculture) against a decision taken by any person acting under a power delegated by the Minister under this Act” (Art. 39.1).

The draft Law on Food and Nutritional Sovereignty and Security of **Nicaragua** states that “any violation by action or by omission of the provisions established in the present law constitutes administrative infraction by the public authorities on the basis of the Law on Civil Service. The regulation to the present law will establish, on a case by case basis, the application of administrative sanctions (Art. 34). It also specifically establishes administrative revision claims and appeals claim for any person who considers that her or his rights have been violated as a result of an administrative act issued by an administrative authority on the basis of the present law (Art. 36).”



BOX 55. Administrative remedies for enforcing the right to food – examples from state practice (cont.)

The draft Law on the Right to Adequate Food of *Peru* states that “Officials of public agencies and the National Government and the Regional and Local Governments which prevent the exercise of the right to adequate food shall be punished according to the provisions of the Framework Law on Public Employment, Law No. 28175” (Art. 16).

The framework law should also require that the implementing legislation or regulation provides for effective administrative procedures and for adequate remedies. Purely administrative appeals should be complemented by the right to subsequent judicial review by the competent court.

3.14.2 JUDICIAL REMEDIES

In most countries, guaranteed human rights are safeguarded by ordinary courts. Although specific remedies may be available elsewhere in the national legal system (e.g. under specific sectoral laws or a state constitution), a framework law should introduce a general judicial remedy in the field of food. This would enable the persons concerned to complain not only about a breach of the law provisions, but also and above all, to challenge the limitations of a given legislation *in ensuring their right to food*. For example, on the basis of the social security law, a person could not only challenge a non-delivery of benefits, but also the level of benefits allocated on the basis of social security law as insufficient to ensure access to sufficient and adequate food or, in the case of the food safety legislation, the level of established safety requirements as inappropriate to ensure the protection of the existing right to food.

The framework law could include provision stating that:

- ◆ Any person who considers that her or his right to food, as defined by the framework law, has been violated, shall be afforded access to a review procedure before a court.

The right of access to a court includes the right to the enforcement of a court’s decision. Without it, the right to judicial review would be meaningless. Thus, the court does not only determine whether there has been a violation of a human right, it also grants an appropriate remedy once a violation has been found.

Judicial remedies for human rights violations vary according to the country's legal system (common law/civil law), the type of human right invoked (civil and political/economic, social and cultural)¹⁸⁵ and the type of court with jurisdiction to decide (supreme/constitutional/ordinary courts). Considering the complex and multifaceted nature of the right to food, possible judicial remedies to redress violations of the human right to food¹⁸⁶ may include:

- ◆ Restitution of the right (e.g. implementing an entitlement, restoring access to means of subsistence, removing unsafe food from the market).
- ◆ Cessation of the violation or guarantees of non-repetition (e.g. stopping logging activity, barring mining in a certain area to prevent further interference with the right to food).
- ◆ Rehabilitation (e.g. carrying out a thorough and effective investigation for establishing liability of state officials or bodies as well as of private actors for acts or omissions that have led to a grave violation of the right to food such as starvation deaths or a death caused by unsafe food); rehabilitation is generally combined with compensation for the damage suffered from the violation of the right.
- ◆ Compensation, in kind or in cash, for the (material and moral) damage caused by the violation of the right to food (e.g. offering alternative land suitable for agriculture in case of an eviction necessary for using the relevant land for another compelling public interest or compensating a loss of harvest due to an unregulated industrial activity).
- ◆ Ordering of systemic remedies that have as their orientation the mitigation or amelioration of patterns of entrenched rights violations or the need to reorganize government programmes, etc. (e.g. reforming legislation detrimental to right to food such as laws pertaining to oil deregulation or mining, and setting programmes for gender equality in order to prospectively redress and prevent future violations).

Box 56 provides an example of a general legal provision on remedies for the right to food violations.

185 International recognition of the justiciability of economic, social and cultural rights is based on the frequent consideration of matters affecting these rights by domestic courts in many states as well as by international and regional human rights mechanisms. See, for example, Liebenberg S., 2001, p. 25, and Borghi & Postiglione Blommestein eds. 2006.

186 The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997) provide that "All victims of violations of economic, social and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition" (Guideline 23).

BOX 56. Judicial remedies for the right to food violations – example from Honduras

A draft Framework Law on Food of **Honduras** contains rather detailed provisions on justiciability: Article 20 establishes that “every person or group of persons who considers that his or her right to adequate food has been violated or is in conditions of an imminent risk, has the right to access effective judicial or other appropriate recourse for the protection and redress of a right in conformity with the rules of due process.

The *onus probandi* in procedures relating to violations of the right to food will rest on the defendant (para. 1).

In those cases in which a violation is not yet established, but there is an imminent risk of such a violation, judicial authorities can adopt interim measures necessary to guarantee the integrity of a right and to prevent a violation before the adoption of a judicial decision having the force of *res iudicata* (para. 2).

All victims of a violation of the right to food have the right to an adequate redress through restitution, indemnity, compensation and guarantee of a non-repetition or a combination of those (para. 3).

Furthermore, in view of the possible grave consequences of a violation of the human right to food, courts should also have the power to grant interim relief measures, when necessary, until final judgment is given. Box 57 gives a short overview of interim orders issued by the Indian Supreme Court in a major right to food case, which have had (and continue to have) a determinant influence on both the legal recognition and the realization of the right to food in India.

BOX 57. 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

While economic, social and cultural rights are enshrined in the Indian Constitution as “directive principles of state policy” and thus non-binding on national judges, since the late 1970s, the Indian judiciary has begun to refer to the directive principles when interpreting civil and political rights. The Supreme Court has thus explicitly stated several times that the right to life should be interpreted as a right to “live with human dignity”, which includes the right to food and other basic necessities. ▼

BOX 57. 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 (cont.)

The landmark case concerning the right to food was the People's Union for Civil Liberties' (PUCL) petition to the Supreme Court filed in 2001, in response to starvation deaths in rural areas, especially in the drought-affected areas of Rajasthan and Orissa (see also Box 14). The petition focused on the general need to uphold the right to food, which follows from the fundamental "right to life" enshrined in Article 21 of the Indian Constitution. Supreme Court hearings have been held at regular intervals since April 2001, and the case has attracted wide national and international attention.

Although the "final" judgment has not been issued, significant "interim orders" have been passed from time to time. For instance, the Supreme Court has passed orders directing the Indian Government to: (i) introduce cooked midday meals in all primary schools; (ii) provide 35 kg of grain per month at highly subsidized prices to 15 million destitute households under the Antyodaya component of the Public Distribution System; (iii) double resource allocations for Sampoorna Grameen Rozgar Yojana (India's largest rural employment programme at that time, now superseded by the Rural Employment Guarantee Act); and (iv) universalize the Integrated Child Development Services (ICDS).

Source: <http://www.righthtofoodindia.org/index.html>

Judicial proceedings dealing with the alleged right to food violations will have to comply with the general basic principles underlying the system of protection of human rights (e.g. burden of proof, legal standing). As these may vary according to a country's specific legal tradition, it may be useful if the framework law referred to the relevant principles as recognized and established in domestic legal systems. In such cases, the law-makers should ensure that the relevant references do not lead to duplication and confusion.

Some of the relevant principles may include the following: legal aid for those who lack sufficient resources; the burden of proof on the public authority to demonstrate that there has been no breach of the given right in a particular case; legal standing for associations, organizations or other bodies (NGOs, CSOs and human rights institutions) having a legitimate interest in the defence and promotion of the right to food; and a duty for the judges to interpret legal provisions in question with reference to the ICESCR and other relevant international human rights instruments.

3.14.3 QUASI-JUDICIAL REMEDIES

Although courts are the basic national mechanism for the protection of human rights, they generally depend upon matters being brought before them and have no independent research capacity. National human rights institutions, on the other hand, when endowed with quasi-judicial competence, can initiate action on their own motion and can recommend innovative and far reaching remedies to address not only the particular circumstances of a case before them but also the broader systemic causes and consequences of the violations of human rights (see Box 58).¹⁸⁷ In addition, procedures before national human rights institutions are generally simpler and cheaper and may be of easier access for the poor.

Because violations of the right to food (and of most other economic, social and cultural rights) most often originate in systemic or structural problems (arising, for example, from legislative gaps or government policies), national human rights institutions have an important role to play in the enforcement of the right to food.

Remedies for such systemic failures may include adoption of appropriate legal and other measures or both, and securing mechanisms maintaining a fair balance between the general interest of the society as a whole (e.g. economic development) and the interests of guaranteeing the human right to food of individuals. This kind of redress can be recommended by national human rights institutions, which have competence to deal with human rights violations.

BOX 58. National human rights institutions with quasi-judicial competence – examples from state practice

In a number of countries, national human rights institutions have been given quasi-judicial competence with the mandate to hear and consider individual complaints and petitions. This is the case, for example, in **Canada, Ghana, India, Ireland, Latvia, Mexico, Mongolia, Nepal, South Africa** and the **United Republic of Tanzania**. Furthermore, most ombudspersons established in Latin American countries also have the mandate to investigate and hear complaints of human rights violations. They recommend settlements of disputes or make decisions on complaints to be implemented by public authorities.

In **Brazil**, there are several quasi-judicial bodies competent for dealing with right to food complaints: the National Commission for Monitoring Human Rights Violations has a mandate to receive and investigate complaints of violations of the human right to food. The public ministry is an autonomous body endowed with a duty to care for constitutional rights, protecting them from the public power's actions and omissions. Civil inquiry and the public civil action are among the instruments given to it by the Constitution.

¹⁸⁷ In some countries, the public ministry (office of public prosecution), which is traditionally in charge of criminal prosecution only, is also given the power of ensuring the good administration of the rule of law, including protection of guaranteed human rights. Thus, it conducts investigations concerning individual and systemic violations. In this regard, it is especially important that such an institution enjoys the status of a judiciary body, which would make it more independent and impartial.

BOX 58. National human rights institutions with quasi-judicial competence – examples from state practice (cont.)

In **Guatemala**, the mandate of the Office of the Human Rights Ombudsperson includes the protection of human rights, including the right to food. Its tasks, among others, are mediation, conciliation, quasi-judicial decision-making, legal assistance and the recording of violations. The ombudsperson can give recommendations to public authorities towards better protection of guaranteed human rights, and those authorities are required to give effect to the recommendations.

In some countries, national human rights institutions competent to deal only with civil and political rights have nonetheless interpreted and implemented their mandate as including economic, social and cultural rights as well. Thus, for example, in late 1990s, despite a Supreme Court ruling confirming that it could only investigate civil and political rights violations, the **Philippines'** Commission on Human Rights developed a system of "investigative monitoring" of economic, social and cultural rights based on the constitutional requirement that it monitor government compliance with international treaty obligations including the ICESCR.

In the **Republic of Korea**, the National Human Rights Act clearly establishes limitations on the investigation of complaints, which should be, in principle, complaints regarding alleged violation of civil rights. In addition to revising the statute, the Commission is addressing limited violations of economic, social and cultural rights by broadly interpreting Article 10 of the Constitution guaranteeing the right to human dignity.

Sources: See Kjærum, M. 2003; Beurten de França, A. 2006; Valente, F.L.S., Franceschini, T. & Burity, V. 2006 and Chan-Un Park, 2005.

The framework law on the right to food should thus usefully assign the mandate to the national human rights institution, where it exists, to mediate, to provide legal assistance and to record and investigate violations of the right to food (see Box 59). In addition, it could also usefully take from the OHCHR handbook for strengthening national human rights institutions: accuracy and objectivity; timeliness; diversity of information; adherence to human rights standards; and respect for all parties.¹⁸⁸

188 See UN. 1995a.

BOX 59. Quasi-judicial recourse for the protection of the right to food – examples from state practice

A draft Framework Law on Food of **Honduras** requires that “The National Commission on Human Rights and other organizations dealing with protection of human rights, must act to collect, document and denounce violations of the right to food” (Art. 20.9).

The draft Law on Food and Nutritional Sovereignty and Security of **Nicaragua** requires the Attorney General for Defence of Human Rights to designate a Special Attorney on Food and Nutritional Sovereignty and Security (Art. 39a).

The national Attorney General for the Defence of Human Rights is also required to report before the National Assembly on the state of the right to sovereignty and food and nutrition security as well as on the progressive achievement of the right to food to the National Assembly annually (Art. 39.b).

The draft Bill for a Food and Nutrition Act of **Uganda** provides for the right of “a person whose right to food is violated to refer the matter to the Uganda Human Rights Commission for redress” (Art. 40.1).

The experience of many national human rights institutions dealing with individual complaints and petitions shows that this is an extremely challenging task in terms of time, resources and knowledge. If such an institution is to deal successfully with individual complaints and petitions in a timely and effective manner, it should be given sufficient resources and powers to fulfil its mandates and perform its functions. On the other hand, a national human rights institution should, on its part, develop mechanisms and strategies that will enable it to respond in a timely and effective manner, strictly set its priorities and adhere to fixed and approved strategic plans and budgets.

It is also important to build a good relationship between national human rights institutions and the judiciary, and stress the complementarities in protecting the right to food. National human rights institutions can play a role in improving a greater understanding within the judiciary of international human rights norms and thus ensure their application in national jurisprudence; on the other hand, judgments of the courts can be used in the daily work of national human rights institutions in the protection of the right to food.

3.15

PROVISIONS ON IMPLEMENTATION

To have a real impact, the framework law on the right to food should contain provisions on its implementation. As noted above, implementation of the framework law will call for the elaboration and enactment of a series of other legal instruments (secondary legislation, regulations, decrees of the cabinet of ministers, etc.). The framework law should thus require:

- ◆ The government to adopt the necessary implementing legal instruments within a precise time period.
- ◆ Relevant future laws affecting the realization of the right to food to be compatible with the right to food and the framework law.
- ◆ Other relevant laws to be interpreted in a way compatible with the right to food.

Because implementation of the framework law is likely to require amendments to a variety of sectoral laws and enactment of subsidiary instruments in those sectoral areas, it should also:

- ◆ List the sectoral areas that must, as a priority, be reviewed and modified as necessary, to ensure that they are compatible with and conducive to the realization of the right to food in a country.
- ◆ Require that any law that the body in charge of its review finds incompatible with the right to food and the framework law is repealed.

Box 60 gives some examples of similar legal provisions from state practice.

BOX 60. Provisions on implementation of framework legislation – example from state practice

The Agriculture Orientation Act of **Mali** is an example of “framework” legislation, meaning its application and implementation require adoption of other, subsidiary legal instruments. To facilitate this process, the law requires that “laws regulating the agricultural sector notably agriculture, water, fisheries, animal farming, environment, forestry, hunting, land planning, social protection, plant protection, animal health, grain and soil be reviewed and, where necessary, amended in accordance with the present law” (Art. 199).

The Law establishing the National Food and Nutritional Security System of **Guatemala** requires the CONASAN, through SESAN, to issue the corresponding draft regulation, and submit it to the Presidency of the Republic for adoption, within a maximum period of 90 calendar days following the date of enactment of this law (Art. 42).

The draft Law on Food and Nutrition Sovereignty and Security of **Nicaragua** provides that “Ministers of State shall propose the revision of the sectoral laws relevant for availability, access, consumption and biological use of food, in order to guarantee the implementation of the System of Sovereignty and Food and Nutrition Security. It is up to the President of the State to present to the National Assembly, within one year of the publication of the present Law, the proposals of the modifications of such legislation for the approval” (Art. 38a).

It also states that “the present law repeals all existing norms of equal or lower status that are contrary to its provisions” (Art. 43).

The framework law should also require competent ministers and other executive authorities to report, at regular intervals, to the national right to food authority, notably on:

- ◆ Legislative and regulatory measures that have been elaborated and adopted and the time frames within which it is envisaged that their objectives will be achieved (see Box 61).

BOX 61. Legal provisions on reporting – examples from state practice

The draft Law on Food and Nutritional Sovereignty and Security of **Nicaragua** requires the Attorney General for Defence of Human Rights to report annually to the National Assembly “on the state of the right to sovereignty and food and nutrition security as well as on the progressive realization of the right to food” (Art. 39b).

The draft Framework Law on Food of **Honduras** requires in its Article 22 that the “National Commission on the right to food nominates an independent rapporteur on the right to food /.../ who will report to the Commission and other related bodies, on the situation of the right to food in a country”.

The draft Law on the Right to Adequate Food of **Peru** requires “the ministries sitting on the Interdepartmental Committee on Social Affairs to submit a six monthly progress report to the Presidency of the Council of Ministers on the attainment of the food and nutrition security goals and objectives. The Presidency of the Council of Ministers shall submit an annual report to the Congress of the Republic on progress with relation to compliance with and the protection and establishment of the human right to adequate food, consistently with the goals defined in the National Food Security Strategy and the priorities laid down by the interministerial committee” (Art. 13). In addition, the *Defensoría del Pueblo* (ombudsperson) “shall ascertain respect for, and the protection and attainment of the right to adequate food, and shall present progress reports on performance in his annual report to the Congress of the Republic” (Art. 14).

3.16 FINANCIAL PROVISIONS

The progressive implementation of state obligations under the right to food as defined by the framework law and its monitoring will require adequate financial resources. The Right to Food Guidelines encourage states to “allocate resources for anti-hunger and food security purposes in their respective budgets” and requires them to “ensure transparency and accountability in the use of public resources” (Guidelines 12.1 and 12.2).

The framework law could stipulate the financing arrangements necessary for the implementation of this fundamental human right as well as the principles that will govern the allocation and spending of resources. According to CESCR general comments, the principle of progressive realization means that cutbacks that are sometimes unavoidable must be conducted on a rational and equitable basis. At the same time, the minimum core content of the right to food consistent with the imperative of human dignity must always be ensured, regardless of resource constraints (see above, section 3.3.2). For example, the framework law could thus include provisions that:

- ◆ Require the minister of finance to allocate in the annual budget specific and sufficient resources for the purposes of the implementation of the right to food, in accordance with priorities set by the national right to food authority.
- ◆ Require that allocation of those resources be aimed at the progressive realization of the right to food over the long term.
- ◆ Reaffirm that the obligation to ensure every person’s right to be free from hunger can never be deviated from by temporary or permanent cutbacks.

The framework law could also include provisions relating to other possible sources of financing for right to food activities, such as special funds, tax interventions, and so on. Box 62 gives some examples of such provisions from state practice.

BOX 62. Financial provisions – examples from state practice

In **Ecuador**, the Law on Food and Nutritional Security provides for the establishment of a national food and nutrition security fund financed with, among others: money allocated from the national budget; economic resources from national and international institutions; and resources originating from the exchange of public external debt for food and nutrition security projects (Art. 20).

The **Guatemalan** Law on the National Food and Nutritional Security System requires the Minister of Finance to allocate in the general budget, an average of 0.5 percent to be used specifically for food and nutrition security programmes and projects for the most affected populations (Art. 38). In addition, every year, CONASAN shall request the Ministry of Finance to provide an estimate of VAT revenues in order to be able to take account, in the budget management and planning process, of the resources available to the institutions forming part of the National Food and Nutrition Security Strategic Plan (Art. 39). Finally, when drawing up the general budget of state revenues and expenditure for each financial year, the Ministry of Public Finance must make provision for the appropriations required for the implementation of SINASSAN as a whole as formulated by the Secretariat through the relevant channels (Art. 40).

The Agricultural Orientation Act of **Mali** requires the Government “to provide, in the law on finances and in the legislation on planning of spending and public investments, for adequate budgetary resources in accordance with the objectives and ambitions of the law” (Art. 196).

According to the draft Law on the Right to Adequate Food of **Peru**, “the Presidency of the Council of Ministers and the Ministry of the Economy and Finance shall direct food and nutrition security investment and expenditure towards the priorities laid down at all tiers of government, using the “results based budgeting’ methodology” (Art. 11). In addition, “The *Contraloría de la República* (Comptroller’s Office) shall audit the use of the resources for food and nutrition security to guarantee their efficient use” (Art. 14.1).

“The Presidency of the Council of Ministers shall, through the Interdepartmental Committee on Social Affairs (coordinating body) and the Ministry of the Economy and Finance, lay down a system to provide incentives for local and regional governments to perform actions and direct resources for the implementation of the right to adequate food” (Art. 15).

Adequate financial resources should also be provided to ensure the effective functioning of the institutional framework for the realization of the right to food (i.e. to fund the national authority on the right to food and the lead monitoring institution). The resources should cover meeting costs, secretariat, information dissemination, capacity-building activities, programmes (such as the minimum food entitlement)¹⁸⁹ and evaluation. Funds may also be needed to access external expertise for research, surveys and assessments. Naturally, adequate and effective accountability mechanisms should be in place.

189 The cost of the minimum food entitlement will depend on which benefits, if any, the minimum essential food is to replace. Supporters of the idea of introducing a Universal Basic Income (going much beyond the “minimum food”) sustain that it could be afforded by most developing countries in the world although for some countries, international co-financing would be necessary. See Haarmann, C. & Haarmann D., eds. 2005 and Künnemann, R. 2005.

3.17

CONCLUDING REMARKS

In a multisectoral and complex field such as the right to food, legislative action is necessary to allow the state to take coherent action to realize this human right fully.

It is today widely acknowledged that a piecemeal approach to addressing hunger and food insecurity makes it more difficult and costly to achieve in a sustainable way. The preceding sections have attempted to demonstrate the usefulness of a framework law on the right to food. Framework law allows better articulation of the contents of this fundamental right, clarification of government obligations, and the provision of means of enforcement at the administrative, judicial and quasi-judicial levels.

Framework law can provide a conceptual framework and legal basis to organize the various sectors of the state with minimal institutional arrangements. It can facilitate and articulate various activities related to availability and stability, accessibility, adequacy and utilization of food. It can serve as an anchor for an integrated policy for the progressive realization of the right to food in a country. It can provide the basis for a more efficient distribution and expenditure of state resources.

Insofar as a framework law would set out goals and mechanisms for monitoring and controlling the implementation of right to food, it can also significantly contribute to decreasing favouritism and corruption, common in many places where food insecurity is significant.

In a given country, the elements to be included in a framework law on the right to food will of course be determined by its specific legal and political context. The characteristics of hunger, food insecurity and vulnerability, the level of realization of

right to food, and the understanding of the underlying reasons for that situation will also influence the content. National priorities and resources are also determining factors. Some countries may choose to follow the present Guide and include all the elements discussed here, while others may include only some of these elements. Some other countries may also decide to go beyond the Guide and address additional issues that have not been discussed here.

Whatever the final outline of a national framework legislation on the right to food and its level of detail may be, an explicit legal norm establishing the right of every person to adequate food will provide individuals and groups with the necessary basis for demanding its realization and for monitoring progress achieved.

