

CONCLUSION

Under international human rights law, states are under a duty to act and are accountable to the international community for the implementation of human rights to which they have committed. At the same time, however, each state has a margin of discretion as to the manner in which it fulfils its obligations under these rights. The margin of discretion given to states acknowledges and takes into account the many cultural, historical, religious, economic and development differences between states that have the same legal obligations. It does not mean that a state is free to pick and choose which rights to implement, or that it might ignore the rights of a particular section of the community.

In the context of the human right to food, while it is up to each State Party to the ICESCR to decide on the types of measures that are most appropriate to ensure the progressive realization of the right to food of its inhabitants, some form of legislative action is necessary and desirable.

Law is needed as a neutral arbiter.³⁵³ It establishes objective principles, rules and criteria to regulate rights, responsibilities and conduct of individuals, communities, private industry, government and administrative agencies. While it is the government's function to design budgets and policies, the law ensures that government's discretion to do so is not abused.

This Guide has examined and discussed three options for legislative implementation of the right to food at the national level: the first is the explicit recognition of the right to food in constitutional provisions; the second is the adoption of a framework law on the right to food; and the third is a review of the relevant sectoral legislation for compatibility with the right to food. In most cases, legislative implementation of the right to food at the national level should comprise all three levels of legislative action.

353 See Tomaševski, K, 2006, p.23.

Constitutional rights carry considerable symbolic weight. In addition, the explicit inclusion of the right to food in the state constitution as a fundamental human right is the strongest form of legal protection as constitutions are considered fundamental or supreme law of the country. It would provide individuals with a legal entitlement on which they could rely to challenge the limitations of state action in protecting their right to food.

Specific framework legislation clarifying various components of the right to food, and setting out the obligations of state authorities under this right, would enable people to understand what rights they are entitled to or are being denied, and would establish clear legal responsibility of public authorities for failure to meet them. It would also provide a basis for more efficient coordination among sectors and between central and decentralized levels. Special provisions could stipulate action in the fields of education and awareness raising, minimum food entitlements and recourse mechanisms. Framework law can provide human rights-based guidance to all authorities responsible for food and nutrition security.

Compatibility reviews of relevant sectoral legislation that affects the various dimensions of the right to food (e.g. accessibility, availability and adequacy of food) and people's capacity to feed themselves in dignity would ensure that a country's legislation as a whole constitutes an enabling legal environment for the progressive realization of the right to food.

This, however, may not be possible in every state. Based on the particular mix of national circumstances and available resources, each country will decide which approach to take. Whatever the preferred approach, under international human rights law, it must be adequate to ensure fulfilment of the obligations under the right to food as established by the ICESCR.

Through theoretical information, analysis and practical "how to" advice for each level of legislative action, this Guide is a tool that contributes to building and strengthening the capacity of countries to make the human right to food a reality. As part of their national planning process, states can draw on information this Guide provides as well as on a growing body of national experiences in legislating for the right to food. The Guide will also be useful for countries to gain understanding of the extent of changes required, and to request technical assistance and advice in the most efficient manner.

As more experiences with revision of other constitutions, adoption of new laws, and compatibility reviews come from various continents, the Guide will be updated and serve those countries that will begin to take legislative action in this important field.

ANNEX

CHECKLIST FOR FRAMEWORK LAW ON THE RIGHT TO FOOD

This checklist accompanies the Guide on Legislating for the Right to Food. Its objectives are to assist countries in the process of drafting a framework law on the right to food. By giving an overview of the key elements discussed in the Guide, it can be useful for countries to assess whether these elements are included in draft legislation, and ensure that the broad recommendations contained in the Guide are examined and considered. Of course, already adopted food security laws can also be measured against the checklist and possibly strengthened.

This checklist should be used in combination with the Guide. Questions included in the checklist are explained in the guide, where the rationale and different options for legislation are also discussed. The checklist is not intended to be a model for reviewers or drafters to follow, as legislation should be designed on the basis of the legal traditions and particular needs of each country. The format of this checklist allows for such flexibility and aims at stimulating debate within countries.

PROVISIONS	QUESTIONS
Legal status	What is the position of the framework law in the hierarchy of national legal sources? Does it have higher status than ordinary law?
Title	Does 'right to food' appear in the title of the law?
Stated purpose and objectives	What are the purpose and objectives of the law? Is the realization of the human right to food among them? Does the law specify that the purpose and objectives should be achieved in a way consistent with human rights principles?
Definitions	Are the terms such as 'food security', 'nutrition security', 'adequacy', 'availability' and 'vulnerability' defined? Is the definition employed for the right to food consistent with international law? Are all the key terms in the law clearly defined?

PROVISIONS	QUESTIONS
Human rights principles	<p>Does the law contain a section on fundamental principles that will govern the actions of all governmental bodies in charge of its implementation?</p> <p>Are participation, accountability, non-discrimination, transparency, human dignity, empowerment and rule of law/recourse part of such principles?</p> <p>How are they defined in the law?</p> <p>Does the law specifically require that public authorities in charge of its implementation exercise their functions in accordance with the established principles?</p>
Human rights principles and substantive provisions	<p>Are human rights principles given effect in substantive provisions of the law, other than the section on principles?</p>
Substantive provisions establishing the right to food	<p>Is the right to food explicitly recognized in substantive provisions of the law?</p> <p>Are its elements (accessibility, availability, stability, adequacy and utilization) further elaborated?</p> <p>Does the law also establish the fundamental right of every person to be free from hunger?</p>
Limitations	<p>Does the law contain a limitation clause?</p> <p>Does its wording reflect the general limitation clause established by the ICESCR?</p>
Right not to be discriminated against	<p>Is the right of persons not to be discriminated against explicitly included in the law?</p> <p>Are prohibited grounds of discrimination listed in the law in accordance with international law?</p> <p>Does the law also include the prohibition of discrimination against women?</p>
Special measures	<p>What type of special measures to remedy the effects of discrimination and to achieve formal and substantive equality does the law provide for?</p> <p>Are specific groups identified, such as women and indigenous peoples?</p>
Obligations	<p>How are obligations under the right to food elaborated in substantive provisions of the law?</p>
Respect, protect, fulfil (facilitate, provide)	<p>Does the law contain a general provision on state obligation to respect, protect and fulfil?</p>
	<p>Are specific entitlements to assistance provided for by the law?</p> <p>Is there an entitlement to a minimum amount of food?</p> <p>Does the law outline key elements underlying the minimum food entitlement, to be established through subsidiary legislation?</p>
	<p>Are there provisions on prioritizing the most vulnerable persons and groups?</p> <p>Are specific groups identified, such as children, pregnant and breastfeeding women and persons suffering from debilitating illnesses?</p>
Impact assessments	<p>Does the law contain provisions requiring a prior right to food impact assessment from state and non-state actors?</p>
Information	<p>Does the law stipulate for the right of persons to seek information of relevance to the right to food?</p>
	<p>Are competent authorities required to disseminate information and provide it upon request?</p>
Education and awareness	<p>Does the law include provisions on education and awareness-raising measures?</p> <p>Are there specific provisions for children and for adults?</p>
Emergencies	<p>Does the law include provisions on the right to food in emergencies?</p> <p>Does it contain provisions on institutional arrangements and coordination?</p>
International cooperation	<p>Does the law include provisions on international cooperation?</p>
	<p>Are there any provisions on extraterritorial obligations?</p>



PROVISIONS	QUESTIONS
Coordinating institutions	Does the law provide for the coordination of public activities?
	Does it create new institution(s)? Strengthen existing ones? Dismantle old ones?
	Are functions and mandates clearly spelled out? Is non-duplication among similar institutions ensured?
	What is the membership of the coordination body? Are all relevant public sectors represented? Does the law provide for civil society representation? Do civil society organizations participate in the selection of such representatives?
	Are there provisions on vertical coordination? Does the law provide for coordination bodies at regional or municipal levels?
Roles of other agencies	Are specific roles and responsibilities of different public authorities designated?
Monitoring systems	Does the law elaborate on monitoring the realization of the right to food and the implementation of the framework law itself?
	Are there provisions on human rights based monitoring?
	Is an institution designated for taking the lead in monitoring?
	Are there substantive provisions on benchmarks or indicators, such as who should establish them and how they should be revised?
Civil society participation	Are there substantive provisions on civil society participation: In the coordinating body (see also above)? In the monitoring institutions? In regular consultations processes with public authorities?
Remedies	Are there substantive provisions on remedies for right to food violations? Is the right to a remedy recognized/reaffirmed? Are the types of possible remedies listed?
Administrative complaints	Does the law identify with which authority administrative complaints can be lodged?
Judicial remedies	Does the law explicitly reaffirm the role of courts in upholding the law and providing remedies for violations of the right to food?
Role of national human rights institutions	Does the law contain substantive provisions on human rights institutions and their role in: Monitoring the realization of the right to food. Dealing with complaints of violations of the right to food.
Compliance provisions	Are there specific provisions on compliance? Are deadlines for the adoption of implementing legislation established?
Sectoral review	Does the law provide for the review of sectoral legislation for its compatibility with the right to food?
	Does it list sectoral areas, which must be reviewed as a priority?
	Does it provide for time frames?
Financial provisions	Are there provisions on financing arrangements for the implementation of the law?
	Are there any financial reporting obligations?
	Is the establishment of a special fund foreseen?

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