



Food and Agriculture Organization
of the United Nations

RIGHT TO FOOD
GUIDELINES

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THE COMMITMENT



LEGAL DEVELOPMENTS IN THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD

THEMATIC STUDY 3

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Foreword

To celebrate the 10th anniversary of the adoption of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (hereinafter “Right to Food Guidelines”), the FAO Right to Food Team has prepared seven thematic studies that document and highlight progress made over the last ten years, while also capturing the challenges ahead in relation to major issues covered by the Right to Food Guidelines (RtFG). The studies are helpful in reflecting upon current gaps and areas of improvement for future implementation of the guidelines and valuable for every person or organization that works in the context of national food security and is interested in realizing the right to adequate food by implementing the RtFG.

The thematic studies¹ cover the following topics:

- 1. THE CURRENT STATUS OF THE RIGHT TO ADEQUATE FOOD IN FOOD SECURITY AND NUTRITION POLICY DESIGNS**
Guidelines 2, 3, 5, 6 and 13
- 2. INSTITUTIONAL FRAMEWORK FOR THE RIGHT TO ADEQUATE FOOD**
Guidelines 5, 18
- 3. LEGAL DEVELOPMENTS IN THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD**
Guidelines 7
- 4. NATURAL RESOURCES GOVERNANCE AND THE RIGHT TO ADEQUATE FOOD**
Guideline 8
- 5. SOCIAL PROTECTION AND AN ENABLING ENVIRONMENT FOR THE RIGHT TO ADEQUATE FOOD**
Guidelines 8, 14
- 6. NUTRITION, EDUCATION AND AWARENESS RAISING FOR THE RIGHT TO ADEQUATE FOOD**
Guidelines 10, 11
- 7. INTERNATIONAL DIMENSIONS OF THE RIGHT TO ADEQUATE FOOD**
Guideline 19, Part III

¹ The views expressed in these thematic studies are those of the authors and do not necessarily reflect the views or policies of FAO. The conclusions given are considered appropriate at the time of preparation. They may be modified in the light of further knowledge gained.

Acknowledgment

This paper was written by Margret Vidar, Yoon Jee Kim and Luisa Cruz, Legal Officers, Development Law Branch of the FAO Legal Office. Research of legislation for the paper was undertaken by Elfriede De Franchis, Dora Egri, Djedje Gnahoua, Romina Faragasso, Vsevolod Gnetii, Sandra Hakim Mikhail, Rudolph Hupperts, Eylul Kocer, Panayota Nicolarea, Peter Pusara, Eloy Sanchez Roman, Monica Simone, Camilla Scott, Mariusz Suchorowski, Alessandra Tomassi and Andrés Vatter Rubio from the FAOLEX team in the Development Law Branch. The authors are grateful for the comments and suggestions received from Sisay Yeshanew, Simon Blondeau and Serena Pepino from the FAO Right to Food Team, Economic and Social Department and for the assistance of Emily Spiegel and Chloe Rose Barakat Devine, interns in the Legal Office. Special thanks go to IDLO for the permission to use its case studies on judicial decisions concerning the right to food. The authors wish to thank Andrew Park, who edited the Thematic Study.

List of acronyms

ACHPR	African Commission on Human and Peoples' Rights
CESCR	United Nations Committee on Economic, Social, and Cultural Rights
FAO	Food and Agricultural Organization of the United Nations
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDLO	International Development Law Organization
PARLATINO	Parlamento Latinoamericano (Latin American Parliament)
RtFG	Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines)

1. INTRODUCTION

Since the adoption of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines), there have been significant legislative and judicial developments in countries around the world. This paper examines such encouraging developments in the legal framework of many FAO Member States that have taken place in the past ten years.

The Right to Food Guidelines (RtFG) are not legally binding, but they do provide guidance on strengthening legal and accountability frameworks of countries, in particular in Guideline 7. The RtFG were designed to serve as a practical tool to guide states seeking to implement the right to food. In the past ten years, an increasing number of states have explicitly or implicitly recognized the right to food in their constitutions and legal frameworks. The RtFG have also served as advocacy tools for other stakeholders, whose actions have further encouraged better implementation of the right to food at the national level. Furthermore, justiciability of the right to food and analysis of the relevant cases demonstrate how, at national, regional, and international levels, states can be held accountable to their obligation to realize the right to food.

These cases further demonstrate how states, citizens and civil society members continue to develop and expand the protection afforded under this right, while also strengthening the relevant legal framework.

GUIDELINE 7. Legal framework

7.1 Invites States to consider incorporating provisions including constitutional or legislative review that could facilitate the progressive realization of the right to adequate food.

7.2 Invites States to include provisions in their domestic law, which may include their constitutions, bill of rights or legislation that directly implement the right to adequate food. States are also encouraged to consider administrative, quasi-judicial and judicial mechanisms to provide adequate, effective and prompt remedies, particularly for members of vulnerable groups.

7.3 Focuses on informing the general public of all available rights and remedies within states that have already established a right to adequate food within their legal system.

2. LEGAL ASPECTS OF IMPLEMENTING THE RTFG

There are three main ways in which legislative action on the right to food can be taken at the national level. First, through the creation of a constitutional right to food; second, through the adoption of a framework law on the right to food or food security and nutrition; and third, by ensuring that sectoral legislation is conducive to the realization of the right to adequate food (FAO, 2009). Another legal element, albeit not necessarily legislative, is how courts and quasi-judicial mechanisms deal with violations of the right to food at national, regional and international levels. Each of these will be addressed in this paper.

FAO has developed several indicators as part of its assessment framework measuring Member States' progress on food security. The legal indicators concern ratification of the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, constitutional provisions on the right to food, and legislation on food security and nutrition or on the right to food. A methodology for scoring countries based on the indicators was developed by the FAO Legal Office, and its FAOLEX² is in charge of monitoring progress.

3. CONSTITUTIONS

The constitution affords the strongest legal protection of human rights, as constitutions are considered the fundamental or supreme law of the land. All legislative actions contrary to the constitution will be void. The constitutional provisions equally limit the executive branch and all administrative authorities. Through judicial review, the highest courts of the state can declare certain laws unconstitutional if they are in violation of the right to food provisions. Incorporating the right to food in the constitution also represents a strong statement that a state wishes to progress towards the realization of the right to food for its citizens.

On the other hand, constitutional provisions alone normally do not suffice to ensure concerted action for the realization of the right to food. For this there is a need for implementing legislation, such as framework laws on food security and nutrition and sectoral legislation that advances the right to food, as well as adequate programmes that support its realization for all.

Many states have recognized the right to food in their constitutions in different ways. Such constitutional recognition and inclusion of the right to food can be organized into four broad categories: 1) explicit and direct recognition, as a human right in itself or as part of another, broader human right; 2) implicit recognition in a broader human right; 3) explicit recognition as a goal or directive principle within the constitutional order; 4) indirect recognition through interpretation of other human rights by the judiciary (FAO, 2011a). This paper reviews progress in the first three categories, and also briefly reviews the direct applicability of the right to food through ratification of relevant treaties.³

3.1 Explicit and direct recognition, as a human right in itself or as part of another, broader human right

Direct recognition of the right to food has the advantage of avoiding the uncertainty of judicial interpretation, as the right is stated explicitly. Countries with constitutions that explicitly recognize the right to food for all, or for certain groups such as children or indigenous peoples, include the following: the Republic of Belarus (art.21), the Plurinational State of Bolivia (art. 16), the Federative Republic of Brazil (title 2/ chapter 2 art. 6), the Republic of Colombia (art. 44, 46, 65), the Republic of Costa Rica (art. 82), the Democratic Republic of the Congo (art. 47), the Dominican Republic (art. 57) the Republic of Ecuador (art. 13, 32, 45, 66), the Arab Republic of Egypt (art. 79), the Republic of Fiji (chapter 2,

2 FAOLEX is an online database of national legislation related to food and agriculture (available at <http://faolex.fao.org>).

3 Not all constitutions are published with accurate information about when constitutional amendments were introduced, so it is not possible to clearly identify developments pre- and post-2004. It should also be noted that a number of countries have provisions falling into more than one category.

section 36; chapter 2, section 41), the Republic of Guatemala (art. 51), the Republic of Guyana (art. 40), the Republic of Haiti (art. 22), the Republic of Honduras (art. 123), the Republic of Kenya (art. 43), the Republic of Malawi (art. 30.2; 42), the Republic of Maldives (art. 23), the United Mexican States (art. 4), the Republic of Moldova (art. 47(1)), the Federal Democratic Republic of Nepal (art. 18(3)), the Republic of Nicaragua (art. 63), the Republic of Niger (art. 12), the Republic of Panama (art. 56; art. 110; art. 118), the Republic of Paraguay (art. 54), the Republic of the Philippines (art. 15), the Republic of South Africa (art. 27, 28, 35), the Republic of Suriname (art. 24), Ukraine (art. 48), and the Republic of Zimbabwe (art. 77, 19-2, 81-1, 50-5).

Since 2010, the Constitution of the Republic of Niger provides for the “[r]ight to life, to health, to physical and moral integrity, to a healthy and sufficient food supply, to drinking water, to education.” (Article 12)

Since 2008, the Constitution of the Republic of Maldives calls for the State to “achieve the progressive realization of these rights by reasonable measures within its ability and resources” which include the right to “adequate and nutritious food and clean water”. (Article 23)

Since 2009, the Constitution of Bolivia states that “every person has the right to water and food” and that “the State has an obligation to guarantee food security, by means of healthy, adequate and sufficient food for the entire population.” (Article 16)

The Constitution of Ecuador affords explicit protection as “[p]ersons and community groups have the right to safe and permanent access to healthy, sufficient and nutritional food, preferably produced locally and in keeping with their various identities and cultural traditions. The Ecuadorian State shall promote food sovereignty.” (Article 13)

3.2 Implicit recognition in a broader human right

Even if there are no explicit references to “food” or “nutrition”, certain constitutions guarantee key human rights in which the right to food is implicit. This is the case, for instance, with provisions protecting the right to an adequate standard of living – provisions which, in both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), subsequently specify the right to food. In other cases, the access to adequate food is a necessary component to our understanding of a “decent standard of living” or to “well-being.” Thus, the absence of an explicit reference to the right to food in a state constitution does not necessarily mean the country does not recognize that right.

Examples of countries with constitutions that could implicitly recognize the right to food include: the Argentine Republic (section 75.22), the People’s Democratic Republic of Algeria, the Republic of Armenia (article 34), the Kingdom of Belgium (art. 23), Bosnia & Herzegovina (art.2), , the Republic of Cuba (art. 9.a), the Republic of Cyprus (art. 9), Egypt (art. 38), the Federal Democratic Republic of Ethiopia (art. 43), , the Republic of Indonesia (art. 28c, 28h), Japan (art. 25), Malawi, the Republic of Nicaragua (art. 4; art.98) , the Republic of Peru (art. 2). The list of countries mentioned in this paragraph is not exhaustive.

3.3 Explicit recognition as a goal or directive principle within the constitutional order

A number of countries have established that the realization of the right to food and attaining adequate nutrition for all is an obligation of the state, without providing for a corresponding right in the human rights section of their constitutions. This is the case for the Republic of Armenia (art. 48), the Republic of Austria (Federal Constitutional Act, art. 5), the People's Republic of Bangladesh (art. 15, art. 18), the Federative Republic of Brazil (art. 208 227), the Republic of Burundi (art. 17), the Republic of Cuba (art. 9.b), the Democratic People's Republic of Korea (art. 25), Ecuador (art. 3), Ethiopia (art. 90), the Republic of the Gambia (art 216 (4)), the Republic of Guatemala (art. 99), the Republic of Honduras (art. 347), the Republic of India (art. 47), the Islamic Republic of Iran (art. 3(12); art 43), Ireland (art. 45), the Republic of Malawi (art. 13), the Republic of the Union of Myanmar (Part 2 (26/b)), the Republic of Namibia (art. 95), the Federal Republic of Nigeria (art. 16.2; art.17.3), the Islamic Republic of Pakistan (art. 38), the Independent State of Papua New Guinea (art. 1.4), the Republic of South Sudan (art. 35 (2)), the Democratic Socialist Republic of Sri Lanka (art. 27), the Swiss Confederation (art. 104), the Republic of Uganda (XIV), the Bolivarian Republic of Venezuela (art. 305) and Zimbabwe (Art. 289).

3.4 Recognition of direct applicability of international treaties

The constitutions of many countries, adhering to the monist system, recognize and incorporate the country's international obligations arising from the ratification of international treaties. The entrenchment of the right to food in domestic law makes the right to food operational at the national level, as there is an explicit duty to implement and monitor international human right obligations. Thus, an explicit recognition of international law within the domestic legal regime can contribute to the realization of the right to food, whether through obligations arising under the ICESCR or through the interdependency of human rights.

Some of the constitutions that are considered to provide such applicability of international law include the Republic of Albania (art. 5), the People's Democratic Republic of Algeria (art. 132), the Principality of Andorra (art. 3), the Republic of Angola (art. 12; article 13), the Argentine Republic (art. 31, art 75), the Republic of Armenia (art. 6), the Republic of Austria (art. 9), the Republic of Azerbaijan (art. 148 (II); art. 151; art. 12), the Republic of Belarus (Art. 8), the Republic of Benin (art. 146), the Kingdom of Bhutan (art. 145, 146, 147, 40), the Plurinational State of Bolivia (art. 410, 13), Bosnia and Herzegovina (art. 2/1), the Republic of Bulgaria (art. 5), Burkina Faso (art. 151), the Republic of Burundi (chapter XIII), Republic of Cabo Verde (art. 11(4)), the Republic of Cameroon (art. 45), the Central African Republic (art. 72), the Republic of Chad (art. 221), the Republic of Chile (art. 5, para. 2), the Union of the Comoros (art. 10), Congo (art. 183, 184), the Republic of Costa Rica (art. 7), the Republic of Côte d'Ivoire (Art. 87), the Republic of Croatia (Art. 140), the Czech Republic (art. 49), the Democratic Republic of the Congo (art. 213), the Republic of Djibouti (art. 70), the Dominican Republic (art. 26, 74(3)), the Republic of Ecuador (art. 417), Egypt (art. 93), the Republic of El Salvador (art. 44), the Republic of Estonia (para 123), the French Republic (art. 55), Georgia (art. 6), the Federal Republic of Germany (art. 25), the Hellenic Republic (art. 28), the Republic of Guatemala (art. 46), the Republic of Guinea (art. 151), the Republic of Honduras (art. 16-18), Hungary (Foundation/article Q/3), the Republic of Italy (art. 10), the Republic of Kazakhstan (art. 4), the Republic of Kenya (art. 2), the Kyrgyz Republic (art. 6(3)), the Republic of Lithuania (art. 138), the Republic of Madagascar (art. 137), the Republic of Mali

(art. 116), Mongolia (art. 10), Montenegro (art. 9), the Kingdom of Morocco (Preamble), the Kingdom of the Netherlands (art. 91-94), the Republic of the Niger (art.171), the Republic of Paraguay (art.137), the Republic of Poland (art. 87, 89, 91), the Portuguese Republic (art. 8), the Republic of Moldova (art. 4(2)), Romania (art. 11, 20), the Russian Federation (art. 15(4)), the Republic of Rwanda (art. 190), the Republic of San Marino (art. 1(4)), the Republic of Senegal (art. 98), the Republic of Seychelles (art. 48), the Republic of Slovenia (art. 8, 153), the Republic of South Africa (art. 231), the Republic of South Sudan (art. 243), the Kingdom of Spain (Section 95), the Swiss Confederation (art. 193(4)), the Republic of Tajikistan (art. 10), the Former Yugoslav Republic of Macedonia (art. 8), the Democratic Republic of Timor Leste (Sect. 9), the Togolese Republic (art. 140), the Republic of Tunisia (art.20), the Republic of Turkey (art. 90), Turkmenistan (art. 6), and the Bolivarian Republic of Venezuela (art. 23).

4. FOOD SECURITY LAWS AND FRAMEWORK LAWS ON FOOD SECURITY

Framework laws elaborate on the general principles of the right to food and guide in the creation and implementation of legislation, thus making the right operational in practice (FAO, 2009: 57). As such, whether the right to food is recognized directly in a state constitution, or derived implicitly from other constitutionally recognized human rights or from international obligations, framework laws on the right to food articulate general principles and obligations for the achievement of food security and for the establishment of a comprehensive legal and policy framework.

As food security and nutrition and the right to adequate food are multidimensional and cross-sectoral in nature, a framework law is necessary to assign responsibility to different parties while ensuring coordination and direction. A framework law on the right to food can provide the scope and content of the right, set out obligations for state authorities and private actors, establish necessary institutional mechanisms, give legal basis for subsidiary legislation and other necessary measures, and provide grounds for redress (FAO, 2009: 53–65). Thus, framework laws are useful as they articulate the normative content of the right to food and provide various means of enforcement at the administrative, judicial and quasi-judicial levels.

Over the last decade a number of countries have adopted food security framework laws that establish institutional framework and guidance for the governance of their food security systems and also recognize the right to food and/or take a human rights based approach. These include the Argentine Republic (2003), the Federative Republic of Brazil (2010), the Republic of Ecuador (2009, amended 2010), the Republic of Guatemala (2005), the Republic of Honduras (2011), the Republic of Indonesia (2012), the United Mexican States (2004, 2013), the Republic of Nicaragua (2009), Turkmenistan (2000) and the Bolivarian Republic of Venezuela (2008 (one law amended 2009)). These countries score a full point under the FAO monitoring methodology mentioned above, as does the Republic of Armenia (2002), which has a food security legislation that addresses a number of aspects of food security and recognizes the right to food but does not establish an institutional framework. In the United Republic of Tanzania, Zanzibar (2011) also adopted a framework law on food security. Many of these laws explicitly address nutrition as well as food security.

The FAO methodology gives a lower score of half a point for food security laws and food security framework laws that do not include references to the right to food or take a human rights based

approach. These include the Republic of Azerbaijan (1999/2011), the Republic of Colombia (2009), the Republic of Djibouti (2009, 2010), the French Republic (2009, 2010), Japan (2005), the Kyrgyz Republic (2008), and the Republic of Tajikistan (2010).

Finally, countries that have adopted government or ministerial decrees establishing a coordination framework for food security that do contain provisions on the right to food or take a human rights based approach are also given half a point. These include the Republic of Angola (2008), Republic of Cabo Verde (2013), the Republic of El Salvador (2009), the Republic of Mozambique (2010 implemented in 2012 and 2013), the Republic of Peru (2013) and the Bolivarian Republic of Venezuela (2014).

At regional level, there have been recent efforts to mainstream a human rights based approach in food security legislation. The Latin American Parliament (PARLATINO) adopted a Regional Framework Law on the Right to Food, Food Security and Food Sovereignty in November 2012. The Framework Law is a consensus between Latin American countries on the type of legislation and substantive provisions that can be developed in order to incorporate a human rights-based approach in national legal frameworks on food security and nutrition.

Mozambique: Government Decree No. 24 (2010) created the Technical Secretariat for Food and Nutrition Security (SETSAN), and subsequent governmental actions including Ministerial Order No. 334 (2012) and Ministerial Order No. 136 (2013) further approved the personnel composition and the regulation of SETSAN.

Nicaragua: the Law on Food Sovereignty and Food Security and Nutrition No. 693 of 2009 established an institutional system with a number of mechanisms and a secretariat for coordination of actions for food sovereignty, food security and nutrition. The purpose of the law is stated in Article 1 as follows: "This law is of public order and social interest; its purpose is to guarantee the right of all Nicaraguans to rely on sufficient, innocuous and nutritious foods, in harmony with their vital need, that these be physically, economically, socially and culturally available in a timely and permanent manner.

Food should be available in a stable and sufficient manner by means of State development and governance with public policies for the implementation of food sovereignty and nutrition." It also sets out a number of human rights principles, and the law gets a full score under the FAO indicators for framework laws.

Indonesia: Food Law No. 18 (2012). Indonesia was an early adopter in 1997 of a food law that covered various aspects of food security and established an institutional coordination framework, as well as a food security council chaired by the President of the Republic. It also mentioned the right to food, but did not have substantive or actionable provisions on the right or on human rights-based approaches. In 2010 the food law was thoroughly revised, and stronger elements of the right to food and of food sovereignty were brought in, so that the law now qualifies for a full score under the FAO indicators for framework laws.

The multi-stakeholder approach covered by Guideline 6 of the RtFG is an important aspect of framework laws. The participation of stakeholders during the drafting stages will reveal the scope of interests and concerns pertaining to the realization of the right to food. As such, framework laws provide improved policy coherence and can ensure that the right to food is central to a country's development strategies. In addition, the institutional framework established by the framework law for coordination and consultation purposes should include provisions on participation of non-governmental stakeholders, as most of them do.

5. SECTORAL LAW

Sectoral laws are important to the progressive realization of the right to food, since the right depends upon many factors and actors. Legislation concerning access to and management of land and natural resources can partly determine whether rural people are able to feed themselves and produce a surplus to feed urban dwellers. Trade legislation influences affordability of food as well as the ability of farmers to compete. Agricultural laws frame conditions for food production. Labour laws have an impact on whether or not wage labourers can earn enough to buy the food they need, and social protection supports food purchasing. Indeed, the many issues covered in the RtFG give an idea of the types of sectoral legislation that can contribute to or hinder the realization of the right to food. The scope of this paper does not allow a full overview of all sectoral developments in all countries to assess whether they have taken the RtFG into account, or whether they indeed contribute to the realization of the right to food. Rather, we have chosen to demonstrate these developments with three different examples.

5.1 Establishing entitlements to food subsidies and transfers in cash or in kind for food security

After years of an ongoing court case about the right to food (see below), as well as years of debate about the Republic of India's public distribution system for food and social transfers related to food, India's parliament adopted the National Food Security Act, 2013. It established a legal framework for programmes that previously had been run without clear entitlements and rights for beneficiaries, and incorporated elements of many of the interim orders of the Supreme Court in the Right to Food case (*PUCL vs Union of India & Ors*).

The legislation creates entitlements to food-related assistance and also establishes grievance mechanisms, which is one of the essential elements for the realization of the right to adequate food.

Salient features of India's National Food Security Act, 2013

- (i) **Coverage and entitlement under Targeted Public Distribution System (TPDS):** Up to 75 percent of the rural population and 50 percent of the urban population will be covered under TPDS, with uniform entitlement of 5 kg per person per month. However, since Antyodaya Anna Yojana (AAY) households constitute the poorest of the poor, and are presently entitled to 35 kg per household per month, entitlement of existing AAY households will be protected at 35 kg per household per month.
- (ii) **State-wise coverage:** Corresponding to the all India coverage of 75 percent and 50 percent in the rural and urban areas, State-wise coverage will be determined by the Central Government. Planning Commission has determined the State-wise coverage by using the NSS Household Consumption Survey data for 2011–12 and also provided the State-wise "inclusion ratios".
- (iii) **Subsidised prices under TPDS and their revision:** Foodgrains under TPDS will be made available at subsidised prices of Rs. 3/2/1 per kg for rice, wheat and coarse grains for a period of three years from the date of commencement of the Act. Thereafter prices will be suitably linked to Minimum Support Price (MSP).
- (iv) In case any State's allocation under the proposed legislation is lower than their current allocation, it will be protected up to the level of average offtake during the last three years, at prices to be determined by the Central Government. Existing prices for APL households i.e. Rs. 6.10 per kg for wheat and Rs 8.30 per kg for rice has been determined as issue prices for the additional allocation to protect the average offtake during last three years.
- (v) **Identification of Households:** Within the coverage under TPDS determined for each State, the work of identification of eligible households is to be done by States/UTs.
- (vi) **Nutritional Support to women and children:** Pregnant women and lactating mothers and children in the age group of 6 months to 14 years will be entitled to meals as per prescribed nutritional norms under Integrated Child Development Services (ICDS) and Mid-Day Meal (MDM) schemes. Higher nutritional norms have been prescribed for malnourished children up to 6 years of age.
- (vii) **Maternity Benefit:** Pregnant women and lactating mothers will also be entitled to receive maternity benefit of not less than Rs. 6 000.
- (viii) **Women Empowerment:** Eldest woman of the household of age 18 years or above to be the head of the household for the purpose of issuing of ration cards.
- (ix) **Grievance Redressal Mechanism:** Grievance redressal mechanism at the District and State levels. States will have the flexibility to use the existing machinery or set up a separate mechanism.

Salient features of India's National Food Security Act, 2013

- (x) **Cost of intra-State transportation & handling of foodgrains and FPS Dealers' margin:** Central Government will provide assistance to States in meeting the expenditure incurred by them on transportation of foodgrains within the State, its handling and FPS dealers' margin as per norms to be devised for this purpose.
- (xi) **Transparency and Accountability:** Provisions have been made for disclosure of records relating to PDS, social audits and setting up of Vigilance Committees in order to ensure transparency and accountability.
- (xii) **Food Security Allowance:** Provision for food security allowance to entitled beneficiaries in case of non-supply of entitled foodgrains or meals.
- (xiii) **Penalty:** Provision for penalty on public servant or authority, to be imposed by the State Food Commission, in case of failure to comply with the relief recommended by the District Grievance Redressal Officer.

Copied from India's Department of Food and Public Distribution
(available at <http://dfpd.nic.in/?q=node/955>).

5.2 Food safety and consumer protection

Human rights-based approaches are also increasingly seen in laws that primarily concern food and feed safety and consumer protection, which of course are vital for the realization of the right to adequate food. For instance, the Montenegro Law on Food Security (2007) regulates the basic principles aimed at ensuring a high level of protection of human life and health, and provides an effective protection of consumer interests and demands in the production and trade of safe food and feed. The Law recognizes the right of every person to have a guaranteed access to safe and healthy food. It also sets up a participatory institutional framework and takes into account other human rights principles.

5.3 School feeding legislation

School feeding is increasingly recognized as a key component in the progressive realization of fundamental human rights, such as the right to food, the right to health and the right to education. Children as a group are particularly vulnerable to food insecurity, as they are dependent on adults for access to education, health services and adequate food to meet their dietary requirements in order to live in a dignified manner.

Some countries have adopted school feeding legislation founded on a human rights-based approach. Such an approach recognizes children's right to adequate food as an entitlement instead of as public assistance. For example, Law 11.947 of 2009 establishes the School Feeding Programme in all primary schools in the Federative Republic of Brazil (PNAE). Art. 3 of the law states that school feeding is a students' right, and thus it is a duty of the state to promote and safeguard this right established by the law.

the Republic of Peru has also recently approved a law on healthy food for children and adolescents (2013). This law aims to protect the right to health of children and youth by regulating: i) food product-related advertisements targeting children; and ii) food available within schools, so that the quality is in accordance with the standards set by the Ministry of Health. The law promotes nutrition education and physical activity as part of the obligations of educational institutions, and establishes the National Observatory for Nutrition and Control of Overweight and Obesity as the monitoring institution that provides and analyses periodic data on the nutritional status of children and youth.

Legal developments on school feeding go beyond the national level. In 2013, the PARLATINO adopted a regional framework law on school feeding, which provides a set of guidelines for regulating various aspects related to food access for children within schools.

6. JURISPRUDENTIAL DEVELOPMENT ON THE RIGHT TO FOOD

In relation to the right to food, the notion of justiciability can be understood as:

“the possibility of a human right, recognized in general and abstract terms, to be invoked before a judicial or quasi-judicial body that can: first, determine, in a particular concrete case presented before it, if the human right has, or has not, been violated; and second, decide on the appropriate measures to be taken in the case of violation” (FAO, 2004).

The grounds for justiciability of the right to food at national, regional and international levels already exist under international law. Article 8 of the Universal Declaration of Human Rights states that “everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law.” The United Nations Committee on Economic, Social, and Cultural Rights (CESCR) advises in its General Comment 9 that “appropriate means of redress, or remedies must be available to any aggrieved individual or group and appropriate means of ensuring governmental accountability must be put in place” (CESCR, 1998). And in its General Comment 12 (CESCR, 1999), the CESCR advises that 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,” including those provided by quasi-judicial mechanisms.

The International Development Law Organization (IDLO) study *Realizing the Right to Food: Legal Strategies and Approaches* provides an overview of case law concerning the right to food from different countries. The study highlights specific issues relevant to successful litigation of the right to food, and identifies entry points for such litigation. The cases discussed in this section are drawn from the study’s 60+ cases related to the right to food.

The case law illustrates how the courts have interpreted the scope and normative content of the right to food. For individuals, these cases provide a range of remedies and protections that the right to food can potentially provide. Ultimately, the examination of relevant jurisprudence reveals how the right to food could be further promoted and whether states have the capacity to enforce the right.

The cases identified in the IDLO report are divided into three categories: 1) cases involving failure to ensure the right to be free from hunger; 2) cases involving the means to produce or procure food; 3) cases involving the protection of vulnerable, marginalized and disadvantaged groups (IDLO, 2014: 39).

6.1 Addressing the failure to ensure the right to be free from hunger

Cases adjudicating the right to be free from hunger encompass a range of issues, including cases concerning the protection from extreme poverty and severe malnutrition (Brazil, FAO, 2011b) and those entailing access to food by internally displaced populations during times of armed conflict (Colombia). In Argentina, the Supreme Court attributed the “food and health crisis” within the *Toba* indigenous communities to “the government’s inaction and failure to discharge its obligations under national and international law.”

The highly cited Indian Supreme Court case, *People’s Union for Civil Liberties vs Union of India & Ors*, confirms that the right to life under Article 21 of the Indian Constitution includes the right to food and other elements needed for a dignified life. The case was originally based on starvation deaths occurring in drought-affected areas, but soon moved beyond those to other right to food issues. Also, the Supreme Court of Nepal has adjudicated on the issue of hunger and starvation, including a 2008 case concerning the claim that scarcity of food, inefficiencies of food distribution, and the distribution of rotten food led to starvation and disease in parts of Nepal.

6.2 Safeguarding the means to produce or procure food

Cases pertaining to this issue concern the normative content of the right to food, particularly availability and accessibility. They address the issue of whether a given resource (such as land and water) should be available and accessible, for instance in Malaysia. Judicial protection of access to the given resource in the context of safeguarding the right to food reinforces the multidimensional aspect of the right and further integrates the right to food in the national human rights framework.

6.3 Protection of vulnerable, marginalized and disadvantaged groups

The IDLO study examines cases concerning individuals, groups and communities that are particularly vulnerable to food insecurity and “whose [economic, social, and cultural] ESC rights are at greatest risk” (IDLO, 2014: 50). The study discusses various cases concerning prisoners or detained persons, indigenous peoples and children, also recognizing other vulnerable groups such as refugees, asylum-seekers, stateless persons and undocumented migrants.

The study highlights cases that challenged overall prison conditions, including the lack of access to food and water (IDLO, 2014). In Fiji, the High Court held that food deprivation as punishment, through the reduction in inmates’ food rations, was unconstitutional. At the regional level, in *Civil Liberties Organization vs Nigeria*, the African Commission on Human and Peoples’ Rights held that deprivation of light, insufficient food, and lack of access to medical care violated Article 5 of the African Charter of Human and Peoples’ Rights (prohibiting torture and cruel, inhuman or degrading punishment). At the international level, the Human Rights Committee, which oversees compliance with the International Covenant on Civil and Political Rights, held in *Womah Mukong vs Cameroon* that deprivation of food constituted a form of cruel, inhuman and degrading treatment.

Cases concerning the right to food of indigenous people have been considered at both domestic and regional levels. The IDLO study particularly highlights cases within the Inter-American legal system that

affirmed the state's obligation "to recognize, demarcate, and protect the right to collective ownership of land, in particular to guarantee indigenous populations access to their own means of subsistence" (IDLO, 2014: 46). Cases such as *Maya Indigenous Community of the Toledo District vs Belize* address how the use of natural resources on indigenous lands by certain private third parties undermines the indigenous population's right to food. The study also cites *SERAC and Center for Economic and Social Rights vs Nigeria*, in which the African Commission held that Nigeria had violated the right of the indigenous Ogoni people by not involving them in the decision-making process that affected the development of their community's lands and livelihood.

Thus, as the IDLO study notes, "the role of judges in ensuring certain procedural conditions are met before state authorities or third state parties decide to carry out activities entailing the exploitation of natural resources on indigenous lands may be an important tool against interference with the right to food" (IDLO, 2014: 51).

Specific recognition of the right to food for children is significant, as malnutrition and other aspects of food insecurity have tremendous implications for adulthood. Yet children have limited capacity to procure or access food without adults. The IDLO study illustrates how strategic litigation has sought to address chronic malnutrition and harsh living conditions facing children in Guatemala. In *Juzgado de la niñez y la adolescencia e de Adolescentes en Conflicto con la Ley Penal del Departamento de Zacapa*, the Child and Adolescent Court of the Zacapa Department held that the state failed to take decisive actions in combating child malnutrition in the Camotán municipality, and thus violated the right to food, the right to life, the right to housing and the right to an adequate standard of living. In its reasoning, the Court cited Article 51 of the Constitution that protects the right to food for children, Article 11 of the ICESCR, and Article 25 of the Universal Declaration of Human Rights. The Court also referred to the CESCR's General Comment 12 (IDLO, 2014: 53).

In the cases IDLO collected, the courts often addressed the inaction and inefficiency of government bodies as failures to uphold the right to food. As IDLO notes, "litigation that tackles long-standing systematic failure combined with state inaction may be more effective, especially if there is a clear evidence of political incompetence" (IDLO, 2014: 42). The courts assessed the extent to which the state had an obligation and also determined the nature of the obligation, i.e. whether it was results-oriented or based on conduct.

6.4 Remedies

While the scope of the remedies seem limited to the short term, and the human rights crisis at hand cannot wait for the slow wheels of justice to find solutions for all, a judicial decision sets a precedent and provides opportunities for future development of access to rights and entitlements afforded by the legal framework. In the case of *PUCL vs Union of India & Ors in India*, the Supreme Court issued several interim orders requiring the government to effectively implement various measures under the framework law, especially in regards to vulnerable groups (e.g. Interim Order of 3 May 2003). In the case of Nepal, the Supreme Court issued an interim order for the immediate supply of food in the affected parts of the country. In its final decision in 2010, the Court held that the right to food along with the rights to health, housing, education and social security constituted basic human rights, and that the state had the obligation to ensure its realization (Adhikari, 2011). In the Guatemalan case of *Juzgado de*

la niñez y la adolescencia e de Adolescentes en Conflicto con la Ley Penal del Departamento de Zacapa, the Child and Adolescent Court ordered various measures of relief to the claimants, and requested that the Ministry of Agriculture guarantee availability of specific foodstuffs in sufficient quantity and quality to the children and their families, until they were no longer in a state of malnutrition (IDLO, 2014: 53).

7. CONCLUSION

A number of countries have amended their constitutions in the last decade since the adoption of the RtFG. New constitutions that protect the right to food include those of Bolivia, Ecuador and Kenya, while countries such as Brazil have recently adopted specific constitutional amendments to provide greater protection for the right to food. In addition, many countries have constitutional provisions that effectively place human rights treaties that they have ratified on par with constitutional protection. However, not all new constitutions since 2004 have included the right to food, and there are many countries where protection of the right to food is much more indirect and that could still take steps to amend their constitutions to include direct protection of this fundamental human right. Thus there is still much work to be done to promote constitutional amendments.

There has also been a great increase in the use of right to food framework laws over the last decade.

Yet, as a proportion of all FAO Members, the percentage remains low. More efforts are thus needed at the national level for this tool to be adopted and used effectively to further the realization of the right to food. Furthermore, there are still weaknesses to some framework laws, particularly in terms of their effect on justiciability, where it is doubtful that individuals or groups could rely directly on the framework laws in cases of violation of the right to food. There needs to be more detailed definitions of state obligations to respect, protect and fulfil the right as well as clearer provisions on administrative, quasi-judicial and judicial remedies in many of the laws that already exist.

It can reasonably be expected that, as countries learn from one another's experiences with constitutional protection and framework law adoption and implementation, there will also be increased political pressure from civil society and political will by parliaments and governments take legislative action.

With regard to sectoral legislation, there are a number of interesting developments that can be linked to increased efforts by governments and parliaments to respect, protect and fulfil the right to food, and more generally to take a human rights-based approach in various sectors. The development can be said to be still in the early stages, but it can reasonably be expected that good examples will keep increasing in the future.

With regard to case law and developments of jurisprudence at national, regional and international levels, there seems also to be acceleration over the last decade. As judges and lawyers become more aware of the possibilities of using litigation for individual and group remedies, as they begin strategically to redress broader lacunae and challenges, and as lawyers increasingly argue for the right to food as a basis for decisions, it is likely that the justiciability of the right to food will continue to expand over time.

Yet, today there are still scholars who argue that economic, social and cultural rights, as stated in the ICESCR and national constitutions, are not justiciable because they are imprecise, resource-demanding, and subject to available resources and progressive realization.

Of course, in addition to creative lawyers and broad-minded judges, the success of the cases on the issue of the right to food depends on the strength of the legal framework. The continuing efforts of states to strengthen the legislative and legal frameworks are vital for the progressive realization of the right to food. As this paper illustrates, there has been great process in terms of the increase in the number of states adopting the recommendations of the RtFG.

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Food and Agriculture Organization
of the United Nations

The Food and Agriculture Organization of the United Nations (FAO) would like to thank the Governments of Norway and Spain for the financial support which made possible the development of this report.



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