Implementation of the right to food in national legislation

FAO Legal Office

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tates Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are required to adopt, inter alia, the legislative measures necessary to realize the right to an adequate standard of living, including the right to adequate food. Several countries already have provisions on the right to food in their national constitutions, but there is still a worldwide lack of experience in designing and using national legislation to implement those provisions.

Of course, problems and causes of hunger or lack of access to adequate food vary greatly from country to country, so different solutions will be needed in each. However, it seems that legal tools could be used to further implementation of the right to adequate food in all countries.

National responsibility

ICESCR Article 11 recognizes the right of everyone to an adequate standard of living for themselves and their families. The right to an adequate standard of living includes the rights to adequate food, freedom from hunger and the continuous improvement of living conditions. The States Parties to the Covenant commit themselves to take appropriate steps to ensure the realization of this right. Under ICESCR Article 2, these steps are to be taken by each State Party, “to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures” (emphasis added).

This commitment was renewed by the world’s leaders in 1996 in the context of Commitment 7.4 of the World Food Summit (WFS) Plan of Action, in which governments announced that they would make every effort to implement the provisions of ICESCR Article 11. In the Plan of Action, governments pledged their political will and common and national commitment to achieving food security for all11 and to an ongoing effort to eradicate hunger in all countries,

11 Food security is defined in the introduction to the WFS Plan of Action as existing 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.
12 See Rome Declaration on World Food Security, paragraph 2.
with an immediate view to reducing the number of undernourished people to half its present (1996) level no later than 2015.12

The primary responsibility for ensuring the full enjoyment of the right to adequate food lies with the national authorities of each state. This applies both to the obligations contained in the International Human Rights Covenants and to the commitments under the WFS Plan of Action.

In recognition of this primary responsibility, a number of countries have enshrined the right to adequate food, or at least the responsibility of the state in this area, in their national constitutions.13 As yet, however, no country has adopted national legislation expressly to implement this right. Neither has any substantial work been done to establish how such commitments can be implemented in national legislation, although some elements of such a methodology have been defined and are presented below.

Levels of state obligations

Human rights experts have identified three levels at which the state’s human rights obligations operate; states must respect, protect and fulfil their subjects’ rights. Obligations can be divided further into obligations of result and obligations of conduct, the latter being the focus of legislative action. This basic analysis already provides some guidance as to the types of action that a state may take through national legislation.

Obligations to respect stipulate limits on the exercise of state power, rather than positive action. The state should not, in general, interfere with the livelihood of its subjects or their abilities to provide for themselves. Where any review indicates the existence of national legislation that has such an effect, either directly or indirectly, then immediate action will be called for to rectify the situation.

Obligations to protect require regulating the conduct of non-state actors. This entails the establishment of an enabling regulatory environment, that is legislation and sanctions, for example, in the fields of food safety and nutrition, protection of the environment and land tenure.

Obligations to fulfil require positive action by the state to identify vulnerable groups and to design, implement and monitor policies that will facilitate their access to food-producing resources or an income. As a last resort, direct assistance may have to be provided, to ensure, at a minimum, freedom from hunger.

11 The constitutions of the Congo (Art. 34), Ecuador (Art. 19), Haiti (Art. 22), Nicaragua (Art. 63), South Africa (Art. 27), Uganda (Art. 14) and Ukraine (Art. 48) recognize explicitly the right to adequate food as set out in ICESCR. The constitutions of Bangladesh (Art. 15), Ethiopia (Art. 90), Guatemala (Art. 99), India (Art. 47), the Islamic Republic of Iran (Arts. 3 & 43), Malawi (Art. 13), Nigeria (Art. 16), Pakistan (Art. 38), Seychelles (Preamble) and Sri Lanka (Art. 27), set the achievement of these goals as responsibilities of the state, while the constitutions of Brazil (Art. 227), Guatemala (Art. 51), Paraguay (Art. 53), Peru (Art. 6), and South Africa (Art. 28), recognize the right of children to adequate food and nutrition. See The right to food in national constitutions.
The right to food in national constitutions

HAITI  Article 22
“The State recognizes the right of every citizen to decent housing, education, food and social security.”

CUBA  Article 8 (The Socialist State)
“...as the power of the people and for the people, guarantees... That no child be left without schooling, food and clothing.”

GUATEMALA  Article 51 (Protection of Minors and the Elderly)
“The State will protect the physical, mental and moral health of Minors and the Elderly. It will guarantee them their right to food, public health, education, security and social insurance.”

BRASIL  Article 227 (Right to food for children and teenagers)
“It is the duty of the family, of society, and of the State to ensure children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, in addition to safeguarding them against all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.”

COLOMBIA  Article 44
“The following are basic rights for children... a balanced diet...”

ECUADOR  Article 19
“...The right to a standard of living that ensures the necessary health, food, clothing, housing, medical care and social services.”

GUATEMALA  Article 99 (Feeding and nutrition)
“The State will see to it that the food and the nutrition of the population meet the minimum health requirements. The specialized actions among themselves or with international organizations dedicated to public health to achieve an effective national food delivery system.”

NICARAGUA  Article 63
“It is the right of Nicaraguans to be protected against hunger. The State shall promote programmes which assure adequate availability and equitable distribution of food.”

PARAGUAY  Article 53 (Children)
“Every parent has the right and obligation to care for, to feed, to educate, and to support his children while they are minors. The laws will punish those parents who fail to comply with their duty to provide their children with food...”

THE FOLLOWING COUNTRIES HAD NO MENTION OF THE RIGHT TO FOOD IN THEIR CONSTITUTIONS
Afghanistan, Albania, Algeria, Andorra, Angola, Antigua, Argentina, Armenia, Australia, Austria, Azerbaijan, the Bahamas, Bahrain, Barbados, Belarus, Belgium, Belize, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Comores, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Finland, Fiji, France, Gabon, the Gambia, Germany, Ghana, Grenada, Greece, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, Iceland, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, Democratic People's Republic of Korea, Republic of Korea, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, The Former Yugoslav Republic of Macedonia, Madagascar, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Republic of Moldova, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, the Netherlands, New Zealand, the Niger, Norway, Oman, Panama, Papua New Guinea, the Philippines, Poland, Portugal, Qatar, Romania, the Russian Federation, Rwanda, Saint Lucia, Saint Vincent, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, Spain, the Sudan, Suriname, Swaziland, Sweden, Switzerland, the Syrian Arab Republic, Taiwan Province of China, Tajikistan, United Arab Emirates, United Kingdom, United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Western Samoa, Yemen, Yugoslavia, Zambia and Zimbabwe.

NO CONSTITUTION TEXT WAS FOUND FOR THE FOLLOWING COUNTRIES
Bhutan, Bolivia, Botswana, Brunei Darussalam, Georgia, Lesotho, Saint Christopher and Nevis and San Marino.
BANGLADESH Article 15 (Provision of basic necessities)

“It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement of the material and cultural standard of living of the people, with a view to securing to its citizens the provision of the basic necessities of life, including food, clothing, shelter…"
A useful first step in deciding on legislative measures for the implementation of the right to food would be for states to review how effectively they are already implementing their obligations to respect, protect and fulfil, not only in the substantive areas of food production, processing, distribution and consumption, but also in the infrastructure that underlies those areas, for example in land tenure systems.

While doing this, states should also define the extent to which national government itself should intervene, in the light of the principles of individual responsibility, subsidiarity and complementarity, bearing in mind that the state’s obligation is to ensure the right to adequate food, and not necessarily to carry out itself every substantive action or measure that needs to be taken.

A government’s primary responsibility is not to interfere with individuals’ efforts to provide for themselves, but to seek to ensure an enabling environment for such efforts. However, within every state, there will always be some persons who need direct assistance and, in this context, the efficacy of existing social safety nets and social legislation should also be reviewed, taking into account the role of local authorities.

Scope of legislative reviews

The constitutional provisions recognizing the right to an adequate standard of living, including the right to food, are normally concise and focused, while the measures that may be required to give effect to that right will inevitably be far-ranging and extend into many different areas. The measures will therefore need to be practically oriented and, for this, the WFS Plan of Action provides a blueprint as well as establishing targets for national governments, civil society and the international community. Legislative and institutional measures are an essential component in constructing the enabling environment in which rights can be realized.

Any review of national legislation and institutions needs to be wide-ranging enough to cover all the relevant areas, but narrow enough to be tangible and practicable. A well-focused review requires some initial understanding of the nature and extent of the problem, the locations and numbers of those who are deprived of the right to food or have inadequate access to food, and the reasons for that lack of access.14

The specific areas in which corrective legislative action is needed should then be identified. These areas may include land tenure, access to water, credit, rural markets, food production and food quality, as well as the institutional and legislative framework in which the right to adequate food is to be realized.

The extent to which existing legislation and institutions are already realizing

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14 In this context, use could be made of FAO’s Food Insecurity and Vulnerability Information and Mapping System (FIVIMS), see p. 29.
THE RIGHT TO FOOD IN THEORY AND PRACTICE

the right to food is, of course, only one of the issues that a review of national legislation and institutions needs to take into account – each country will have its own constraints on the realization of the right to adequate food. However, all relevant legislation and institutions will need to be reviewed from the point of view of the degree in which, in addition to achieving their own sectoral objectives, they contribute to an adequate regulatory and enabling framework for the realization of the right to food, bearing in mind the state’s obligations in this regard.

In addition, national legislation can also establish the framework within which the review and practical measures take place by: establishing general principles for the implementation of the right to adequate food; setting targets and deadlines; and establishing the institutional framework for policy-making and the monitoring of progress.