

Development of specific right to food legislation

The content of this handbook is based on FAO's *Guide on Legislating for the Right to Food*, written by Dubravka Bojic Bultrini under the technical supervision of Margret Vidar, and with the valuable contribution of Lidija Knuth. Important contributions were likewise made by Isabella Rae.

José María Medina Rey and Maria Teresa de Febrer (PROSALUS, Spain) adapted it to the “handbook” format. The translation into English of this handbook was done by Stephen Carlin and Beth Gelb.

The purpose of the three handbooks on LEGISLATION is to provide practical information and guidelines for national legislators and individual parties or groups interested in establishing or strengthening the legal and institutional framework surrounding the right to food, in accordance with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other relevant instruments of international human rights law.

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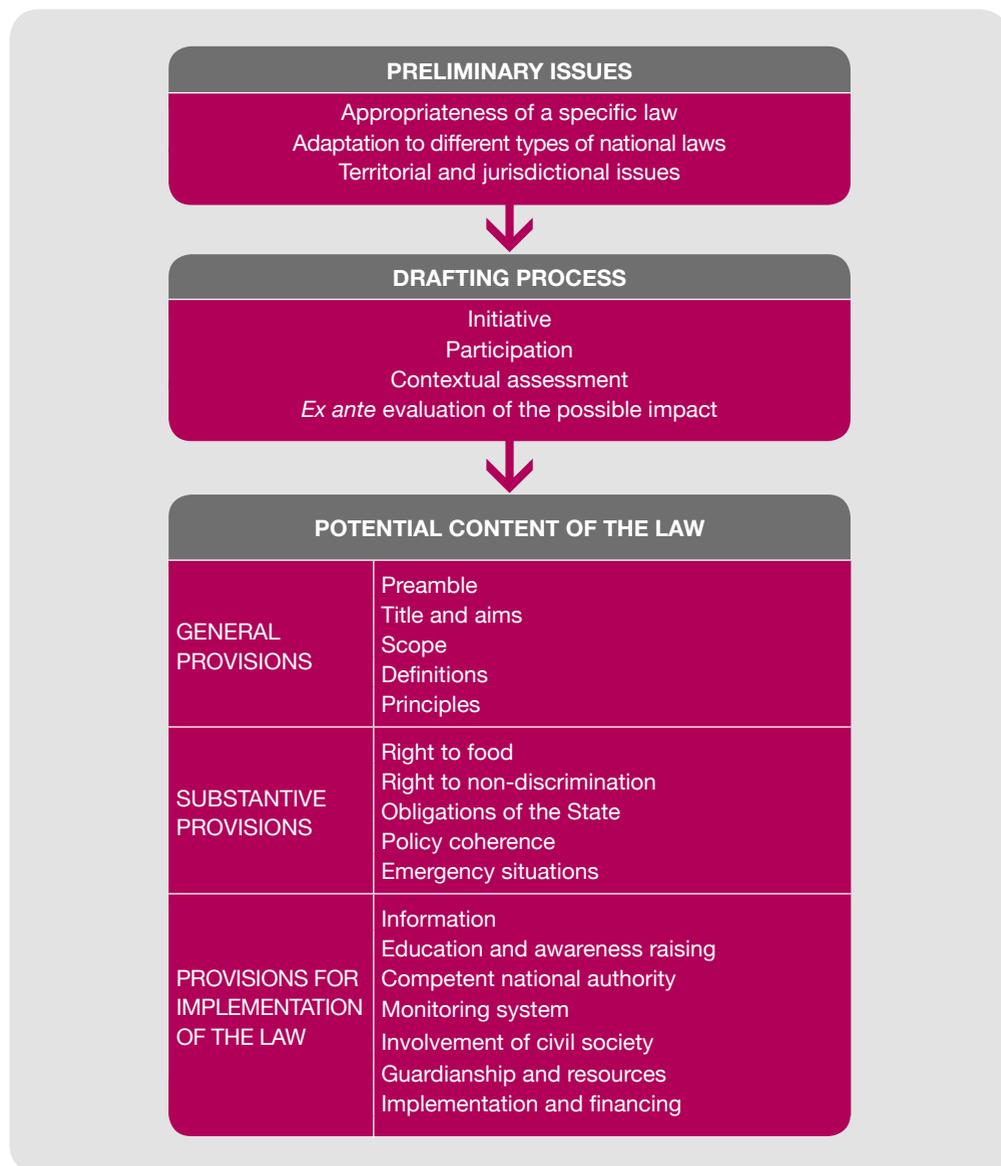
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1 PRELIMINARY ISSUES

1.1. APPROPRIATENESS OF SPECIFIC LEGISLATION ON THE RIGHT TO FOOD IN NATIONAL LEGAL SYSTEMS

Regardless of whether or not the right to food is recognized under the constitution, the existence of a specific law will contribute to a more precise definition of this right, guide public policy and provide the means with which to enforce it at the administrative, judicial and quasi-judicial levels.

A specific law can:

- clearly identify the scope and content of the right to food;
- define the duties of the state with respect to this right;
- establish the necessary institutional mechanisms;
- provide the legal basis for guiding and implementing policies and for the adoption of any regulation or measure by the competent authorities;
- strengthen the role that the judiciary should play in enforcing the right to food;
- empower rights-holders to require the government to meet its obligations;
- provide the legal basis needed for the adoption of measures to correct existing social inequalities in gaining access to food;
- establish the financial mechanisms needed for the implementation of the law.

1.2. TYPES OF LAWS, ADAPTATION TO DIFFERENT NATIONAL LEGAL SYSTEMS

National legal systems are diverse and are comprised of different types of laws, with different names and sometimes different content: organic laws, general laws, basic laws, framework laws, ordinary laws, sectoral laws, etc.

Therefore, the guidelines and work instructions provided in this handbook must be **adapted to the specificity of each national legal system** and the types of laws comprising them.

We will be using the concept of **framework law** throughout this handbook. It could happen that this exact concept is not used in some countries and in that case it will be necessary to identify the type of law most similar to the one described. In any case, in order to ensure adequate protection of the right to food, **the type of law enacted must necessarily have a regulatory status above that of an ordinary or sectoral law.**

CONCEPT OF FRAMEWORK LAW

This is a law used to legislate on multisectoral matters in a consistent, coordinated and comprehensive fashion, laying down general principles and obligations while leaving the details to lower-level laws and giving the competent authorities the power to define the necessary measures within the framework established by law.

1.3. TERRITORIAL AND JURISDICTIONAL ISSUES

The territorial structure of the state (federal, decentralized, etc.) is another aspect that must be taken into account when drafting a specific law on the right to food.

The legal regulation established must strike a balance between two principles:

- respect for the competencies of the authorities at each territorial level; and
- the establishment of a system or regulation that does not give rise to discriminatory situations in which there are different levels of protection of the right to food among the different jurisdictional areas of the same country.

In this regard, the framework law can be very useful as it can establish the general principles and minimum guarantees while giving territorial authorities a degree of manoeuvrability, within the scope of their competencies, to establish their own rules.

1.4. DRAFTING OF THE LAW

Before delving into the possible contents of the framework law on the right to food, we should first say a few words about the drafting process.

The **initiative to launch the drafting process** may come from different bodies, i.e. the government, parliament or even civil society. In any case, if the process is to be a success,

it must have the support of broad sectors of the society and of institutions that have the necessary capacity to ensure that the law will be complied with.

One way to achieve this wide-ranging social support may be to promote the participation of all stakeholders, including both government sectors and civil society:

- In the case of government agencies that will be affected in one way or another by the new law, prior consultation may help identify potential problems at the initial stage of drafting the bill, thus providing necessary guidance.
- In the case of civil society, it is important to make an effort to contact all potential stakeholders, identifying both entities and individuals who should be consulted. It is very important that the institutions consulted first receive all of the relevant information needed to fully and effectively take part in the process, and should be given sufficient time to analyse the information and prepare their comments, observations and proposals. To that end, it is important to be aware of the specificities of some of the groups involved and to adopt strategies to facilitate their full participation, for example, using their mother tongue in the case of indigenous communities.

The process should begin with an assessment of the context of the right to food in the country and the extent to which it is exercised, focusing on at least the following four basic aspects:¹

- Identify and describe vulnerable groups or those subject to food insecurity.
- Analyse the key reasons why each of these groups is subject to food insecurity.
- Analyse the legal and institutional environment in which the right to food should be exercised while also identifying the country's international obligations.
- Analyse the programmes and policies that could be affecting the right to food and identify how these might be redesigned.

The aim is to have an overview of the legal, political and social context in which the new law will be incorporated.

Another type of analysis that would be worthwhile for the drafting process is an *ex ante* assessment of the possible consequences of the future law and its potential social, administrative, budgetary, economic and other effects, with a view to assessing the likelihood that it will be effectively enforced. The possible costs and benefits resulting from enforcement of the law must likewise be evaluated.

1. For this stage, please see Handbook 7 on right to food assessment.

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POTENTIAL CONTENT FOR THE FRAMEWORK LAW ON THE RIGHT TO FOOD

2.1. GENERAL PROVISIONS

The purpose of the general provisions is to establish the basis upon which to comprehend the will of the lawmakers and properly interpret the substantive content to be developed in the body of the law.

2.1.1. Preamble

The preamble to the framework law should provide a general overview of the reasons for which the competent authority has decided to draft the law. The law could be framed along the lines of international right to food instruments and a description given of the context in which it will be implemented.

2.1.2. Title and aims

Legislative practice in recent years in several countries has shown that in many cases the title of the law governing the right to food does not refer to this right *per se*, but rather to food and nutrition security or to food sovereignty. What matters is not the title of the law but rather the purpose or objective it pursues. In this regard, it is important that the law's general provisions explicitly state that the law's main objective is to promote the full exercise of the human right to food.

In addition to this general purpose, the law could formulate some specific aims to establish public policy goals on the right to food to be developed in the framework of the law.

2.1.3. Scope of the law

The general provisions should indicate the subjective and objective scope of the law, i.e. to whom and what it applies. Given that this law regulates a human right, the subjective scope should draw a distinction between rights-holders and duty-bearers:

- All natural persons are **rights-holders** of the human right to adequate food. Since human rights are universal, it can be assumed that the law should support the progressive realization of the right to food of any person who is in the country without discrimination on any grounds. This should include asylum seekers, refugees, migrants, etc. Owing to the controversies that may arise in this regard, it would be advisable for the general provisions of the law to explicitly define exactly who the holders of the right to food are for the purpose of enforcing the law.
- The **duty-bearer** of human rights is the state. The framework law may specify the responsibilities of different state authorities and territorial levels. Although the duty-bearers are not private persons, the state must take the necessary measures to ensure that the activities of companies and private persons do not hinder the exercise of the right to food. The framework law must at least establish the state's obligation to protect and properly regulate the activities of third parties.

2.1.4. Definitions

The framework law may use terms and concepts related to the right to food or food security whose meaning may not be generally and unequivocally understood, e.g. food, food security, nutrition security, hunger, undernutrition, subnutrition, malnutrition, food insecurity, food vulnerability, etc. A definitions section in the general provisions will allow for a proper and uniform understanding and interpretation of the law. Reference can be made to these terms where they are defined in other laws comprising the national legal system.

2.1.5. Principles

The framework law's general provisions should include a section dedicated to the fundamental principles that govern the actions of all levels of government on the right to food. FAO has highlighted the importance of a set of principles (the mnemonic PANTHER) that should be taken into account.

HUMAN RIGHTS “PANTHER” PRINCIPLES

(PANTHER is a mnemonic which stands for the following human rights principles)

Participation	Individuals and groups can actively, freely, effectively and significantly participate in decisions that affect their lives, in particular, the ability to feed themselves.
Accountability	Authorities must be accountable to their superiors and to the people they serve, the latter being able to challenge both the process and content of the decisions that affect their livelihoods.
Non-discrimination	There should be no limitations on the right to food on the basis of race, sex, creed, etc. In certain cases, this could entail treating certain people or groups differently from the rest.
Transparency	The government must ensure that information regarding activities and policies, laws and budgets prepared within the framework of the right to food is published in a language accessible to the public and disseminated through appropriate media.
Human dignity	Authorities must ensure that measures affecting the livelihoods of people and their ability to exercise the right to food are adopted in a manner that respects the absolute value of the person, based on the simple fact that they are human beings and not on the basis of their social status or special attributes.
Empowerment	The authorities must provide people with the ways and means of choosing and influencing decisions that affect their livelihoods.
Rule of law	The government must legitimately exercise its authority in strict accordance with laws in force and must respect established implementation procedures.

2.2. SUBSTANTIVE PROVISIONS

There are many substantive issues related to the right to food that can be regulated by a framework law. In this handbook we address some of the most important content which should be considered.

2.2.1. Provisions establishing the right to food

The right to food is a complex right. In practice, the extent and content of the rights exercised will vary depending on the specific circumstances of the individual and the country's degree of economic development. However, in no case should these fall short of the right to a minimum amount of food that is consistent with human dignity and the fundamental right to be free from hunger.

In establishing the right to adequate food, the framework law should be structured around two distinct realization approaches:

- First, the **fundamental right to be free from hunger**, which implies immediate obligations on the part of the state as this right should not be limited by the principle of progressive realization. The framework law should clearly set out the content of the right to be free from hunger; in this regard it should lay down the appropriate criteria to determine the standards and procedures used in defining the minimum amount of food that is required in each case so that every individual, depending on his or her circumstances, is free from hunger.
- Second, the **right of every person to adequate food**, the components of which must be described in detail in the framework law. This right is subject not only to the principle of progressive realization but also to that of non-retrogression.² The law could also regulate distinctions made in the exercise of this right with regard to certain groups (children, pregnant and nursing women, the elderly, people with disabilities, certain chronically ill persons, etc.).

2.2.2. Provisions regarding the right of non-discrimination

Even though the principle of non-discrimination has been incorporated, along with the other fundamental legal principles, into the general provisions that guide the implementation of

2. An explanation of these two principles can be found in paragraph 1.4.1. of Handbook 1.

the law, we would suggest including the prohibition of both direct and indirect discrimination into the substantive provisions in the main text of the framework law:

- **Direct discrimination** is when a person has been or would be treated in a less favourable manner than another in a comparable situation for any reason (sex, race, religion, age, etc.).
- **Indirect discrimination** is when an apparently neutral provision, criterion or practice puts a person at a disadvantage compared to others for any reason (for professing a particular religion, having a disability, age, or any other condition).

The framework law should also stipulate the obligation of state authorities to implement the measures needed to ensure that private parties do not adopt discriminatory practices in their activities in certain areas.

One of the most prevalent forms of discrimination is that based on gender. In many societies, **gender-based discrimination** puts women at a disadvantage *vis-à-vis* the rest of the population in terms of their socio-economic status and level of education, and leaves them little authority in taking family decisions. One consequence of this discrimination is unequal food distribution among family members which typically translates into malnutrition for women and girls. The framework law should explicitly describe the obligation of public authorities to prevent and eliminate all forms of discrimination against women in relation to ensuring the right to food.

2.2.3. Provisions on the obligations of government authorities

The States Parties to the International Covenant on Economic, Social and Cultural Rights are obliged to take all necessary measures, to the extent permitted by available resources, to progressively achieve a situation where everyone can feed themselves with dignity. The state has the obligation to respect, protect and fulfil this right. The framework law should recognize and define these obligations, either in a general way confirming that the state is bound by these three duties, or by defining in detail the implications of each of the obligations for the public authorities responsible for implementing the right to food.

The **obligation to respect** requires states to refrain from adopting measures that could prevent, restrict or deprive people of the ability to feed themselves. This implies that when adopting any measure, decision, rule, etc., the competent authorities should consider not only the requirements necessary to meet the objective pursued by the measure, but must also assess whether the measure affects the right to food of any person or group. In these

situations the authorities should take into account the public interest, the likelihood of causing damage and the seriousness of possible damage, subject in all cases to respect for the principle of proportionality.

PRINCIPLE OF PROPORTIONALITY

The authority must be certain that any measure which could limit the right of a person or group is necessary for the common good of the community or society as a whole, and that the impact is proportional to that interest.

The **obligation to protect** requires states to adopt specific measures, legislative or of a different sort, to regulate the activities of third parties in order to ensure that they do not interfere with the exercise of the right to food of any sector of the population. Therefore, it is incumbent upon the state to protect each person's right to food from the action of other individuals or private entities. This protection entails three levels of action:

- Regulate those sectors that could have a negative impact on the right to food (e.g. mining, logging or the use of other biological resources, construction, waste management, food marketing, etc.), establishing the necessary administrative or legislative provisions.
- Set up a permanent monitoring and control scheme to ensure that private parties respect and abide by the rules laid down.
- In cases of non-compliance, initiate procedures to apply the corresponding penalties in accordance with the regulation and restore the status of the rights-holders whose rights have been breached.

The **obligation to fulfil** means that states must take positive action for the realization of this right. Different aspects can be identified within this broad obligation to fulfil:

- Obligation to promote knowledge of human rights, in particular the right to food, among state agents and officials as well as the private sector. The framework law could stipulate that public authorities must develop appropriate training and information programmes.
- Obligation to facilitate the exercise of the right to food, applying policies and programmes that improve people's ability to feed themselves, and enhance people's access to resources and their use. The framework law could define some types

of actions to be undertaken by public authorities for this purpose (e.g. increasing food production in a sustainable manner, increasing the production of healthy food, organizing capacity building and training programmes in the area of nutrition, establishing local procurement systems for food assistance programmes, etc.).

- Obligation to ensure the right to food by providing sufficient amounts of quality food directly to individuals or groups who, for reasons beyond their control, cannot feed themselves, thus at least guaranteeing freedom from hunger in the country. In defining this obligation, the framework law should at least establish the obligation to provide a minimum amount of food and include provisions giving priority to the most vulnerable people and groups (physiologically vulnerable populations and disadvantaged groups due to geographic or economic reasons).

2.2.4. Provisions on policy coherence

To avoid interference in the exercise of the right to food, we would advise first considering the potential impact that the different government actions may have (laws, policies, programmes or projects) on the availability, accessibility and adequacy of food.

To that end, the framework law could provide for prior impact assessments, especially of those activities or sectors which could have possible implications for the availability or accessibility of adequate food, so as to ensure consistency and compatibility with the obligation to respect, protect and fulfil the right to food.³

2.2.5. Provisions regarding emergency situations

The framework law should include provisions relating to early warning systems (emergency preparedness and alert and preparation procedures and warning mechanisms) and emergency response (organization and management of emergency food aid).

The state must be prepared to respond appropriately to these emergencies, and to that end it must build capacity to ensure adequate monitoring, risk assessment, early warning and preparedness for possible crisis situations. An official must be assigned to coordinate this response.

3. In this regard, please see Handbook 3 which addresses evaluation of the compatibility of sectoral rules.

OBLIGATION TO PROVIDE A MINIMUM AMOUNT OF FOOD

The framework law must establish criteria and procedures to define the minimum amount of food that the state is obliged to provide for the full realization of everyone's right to be free from hunger.

Responsibility	The framework law should designate the competent public authority and establish his or her legal responsibility, but does not have to provide full details which could be left to lower-level provisions. In this sense, the law should also establish that authority's obligation to submit a draft regulation to the legislature within a given time frame on the minimum amount of food that must be made available, taking into account, <i>inter alia</i> , the territorial structure of the state and the possibility of decentralization.
Scope	<p>The "minimum amount of food" must cover minimum food requirements that allow the individual to live with dignity and free from hunger. Food requirements are what a person needs to maintain normal organic and cognitive functions and to be able to develop properly throughout childhood. The framework law should at least establish:</p> <ul style="list-style-type: none"> - the criteria or procedures to define the makeup (calories, protein, micronutrients) of this minimum amount of food in each case; - the criteria and procedures to identify and inform potential beneficiaries; - the option to furnish food supplies in kind, through vouchers that can be exchanged for food or through cash transfers; - the period during which this minimum amount of food must be provided.
Procedure	The decision of whether or not to award the subsidy for the minimum amount of food should not be left to the authority. The framework law should establish objective, transparent, fair and non-discriminatory eligibility criteria and an application process that is fair, simple, easily accessible and free of charge. The regulations implementing this procedure and these criteria should define who can apply for this aid and who should receive it, paying particular attention to domestic (within the family unit) food distribution problems.
Guarantees	To ensure compliance with this obligation on the minimum amount of food required to be free from hunger, the framework law should, <i>inter alia</i> : <ul style="list-style-type: none"> - Establish appropriate monitoring and evaluation mechanisms and oblige the competent authority to submit periodic reports. - Provide for an adequately funded budget item in the government budget. - Establish a complaint procedure for possible cases of infringement of the right to be free from hunger.

2.3. PROVISIONS FOR IMPLEMENTATION OF THE LAW

2.3.1. Provisions on information

Information is key insofar as it enables people to:

- exercise their rights;
- take informed decisions about the food they buy and eat;
- avoid health risks linked to an unbalanced or inadequate diet or from consuming contaminated food;
- prepare nutritionally balanced meals for every age group, especially for children;
- become familiar with protection and compensation mechanisms in the event of the breach or violation of their right to food.

The framework law should furnish details on the role played by public authorities in enforcing the right to information in the specific context of the right to food, using the most appropriate forms and methods for dissemination, especially in remote areas and among people with higher rates of illiteracy.

2.3.2. Provisions on education and awareness raising

Education is a prerequisite if people are expected to comprehend information and better exercise their rights. Education and awareness raising play a crucial role in the full realization of the right to food. Nutrition education is especially important insofar as it can affect and improve people's behaviours and eating habits and have a positive impact on the exercise of the right to food.

The framework law could require public authorities to develop education and awareness-raising programmes.

2.3.3. Provisions on the national authority for the right to food

As we have seen throughout this handbook, the multisectoral nature of the right to food calls for interdisciplinary collaboration between public and private sectors, institutions and stakeholders. Proper coordination of these multiple stakeholders requires an authority with adequate technical and budgetary capacity and the powers needed to set up and organize necessary policies.

The framework law should establish the legal status, powers, duties, structure and makeup of the responsible national authority. There are **various options and models** that may be followed in establishing this authority:

- ranging from its integration within the structure of a particular ministry to its constitution as an independent and autonomous body linked to the highest level of government;
- constituted as a single, integrated institution or as a coordination and decision-making body alongside a technical and executive one;
- as a body in which only public institutions participate or one which includes representatives of the civil society, either as full members with voting rights or as observers.

Each model has its advantages and disadvantages.⁴

Similarly, the powers and functions entrusted to it can vary considerably, ranging from consulting and coordination duties to mediation and information functions and formulation of recommendations and proposals for laws and policies.

2.3.4. Provisions on the monitoring system

Monitoring is key to verifying the state's performance in terms of its willingness and effort to enforce the framework law, the degree of realization of the right to food actually achieved in the field and the impact that the measures adopted have had on that achievement.

MONITORING THE RIGHT TO FOOD

This process includes the regular collection, analysis, interpretation and dissemination of relevant information in order to assess the progress of the realization of the right to adequate food among all members of society while making certain that it adheres to relevant human rights principles and approaches.

Source: FAO. 2009. *Methods to Monitor the Human Right to Adequate Food*. Volume I, p. 6. Rome.

4. For a more detailed analysis see FAO. 2009. *Guide on Legislating for the Right to Food*, paragraph 3.11. Rome. This forms part of the Right to Food Methodological Toolbox prepared by FAO's Right to Food Team.

The framework law can contribute to the creation of an integrated monitoring system by establishing the responsibility of the appropriate authority to collect reliable data related to food and nutrition security, and by identifying early warning mechanisms.

The framework law should designate the agency responsible for monitoring the right to food, taking into account existing institutions and their powers and capacities. In this regard it is important to consider separating the monitoring body from that which is being monitored, and providing the monitoring body with the necessary human and financial resources and sufficient capacity and credibility.

In this regard, it is also important to highlight the role that can be played by national human rights institutions (National Human Rights Commission, Human Rights Prosecutor, Ombudsman, etc.) whose mandates may include monitoring the right to food.

RIGHT TO FOOD GUIDELINES

GUIDELINE 18. NATIONAL HUMAN RIGHTS INSTITUTIONS

18.1 States that have as a matter of national law or policy adopted a rights-based approach, and which have national human rights institutions or ombudspersons, may wish to include the progressive realization of the right to adequate food in the context of national food security in their mandates. States which do not have national human rights institutions or ombudspersons are encouraged to establish them. Human rights institutions should be independent and autonomous from the government, in accordance with the Paris Principles. States should encourage civil society organizations and individuals to contribute to monitoring activities undertaken by national human rights institutions with respect to the progressive realization of the right to adequate food.

2.3.5. Provisions on representation and participation of civil society

The major groups of civil society and, in particular, representatives of the groups most affected by food insecurity, should be given the opportunity to present their concerns to the government and offer their comments regarding the policies and programmes that affect them. The participation of civil society can help:

- increase transparency, efficiency and effectiveness;
- lend credibility and legitimacy to government decisions;
- ensure that policies are based on real needs;
- ensure that the demands of the population are included on the political agenda;
- encourage civil society actors to assume a sense of responsibility.

This will entail integrating diverse interests into policy-making in such a way that neither the process nor the results are disproportionately influenced by a single sector or small group of sectors.

Where other laws do not cover these processes, the framework law should clearly define:

- consultation mechanisms and processes;
- areas in which such consultations should be made;
- the obligation of the public authorities to undertake the consultation;
- the process and criteria employed in selecting civil society representatives.

There are different ways of establishing institutional consultation mechanisms, ranging from participation of civil society representatives in the national authority to the creation of an advisory group to support that authority or a combination of the two.

2.3.6. Provisions relating to resources and protection in cases of infringement

The framework law should establish clear provisions regarding the appeal mechanisms in the event of a breach of the right to food. Appeals may be administrative, judicial and quasi-judicial.

The decisions, actions or omissions of a government body may be appealed to a higher administrative authority. In most domestic legal systems, this type of **administrative appeal** is usually a preliminary step before a lawsuit or judicial appeal can be filed. The framework law should establish appropriate administrative procedures for these appeals and the corresponding compensation.

Holders of the right to food should be able to turn to the courts if they feel their rights have been violated. The framework law should establish a **judicial appeal** within the realm of the right to food for both the case of infringement of the provisions of the law, and to challenge limitations placed on that right by other laws. In its judgment, the competent court may include the redress deemed appropriate (restitution of rights, an end to the infringement, guarantees of non-repetition, rehabilitation, compensation) and may also order temporary protective measures until a final decision is delivered.

The right to food may likewise be protected by means of **quasi-judicial appeals** which in some legal systems are dealt with by human rights institutions. These appeal procedures are usually simpler and less expensive than judicial appeals, making them more accessible to the poor. Moreover, human rights institutions may file a lawsuit on their

own and recommend innovative and powerful remedies to address not only the particular circumstances of each of the victims, but also the deeper and more general systematic causes and consequences. It would be very helpful if the framework law stipulated that the national human rights institution is responsible for mediation, legal assistance and registration and investigation of cases of violation of the right to food.

2.3.7. Provisions on the implementation of the law itself and its funding

Implementation of the framework law will require a series of developments and additional legal mechanisms. The framework law should oblige the government to develop these complementary mechanisms within a reasonable period of time and to review current and future legislation to ensure it is compatible with the right to food.

In addition, the gradual fulfilment of state obligations will require adequate financial resources. The framework law could define the necessary financial mechanisms for the implementation of this law, for example, by establishing a suitable allocation in the general state budget.

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This collection of RIGHT TO FOOD HANDBOOKS has been compiled from publications forming part of the Right to Food Methodological Toolbox prepared by FAO's Right to Food Team.

The RIGHT TO FOOD HANDBOOKS have been developed under the project entitled "Coherent Food Security Responses: Incorporating Right to Food into Global and Regional Food Security Initiatives", co-funded by the Spanish Agency for International Cooperation for Development (AECID).



For more information on the Right to Food Methodological Toolbox, visit the website: www.fao.org/righttofood or contact us at: righttofood@fao.org

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The Food and Agriculture Organization of the United Nations (FAO) would like to thank the Government of Spain for its financial support which made the publication of this handbook possible.

