



## RIGHT TO ADEQUATE FOOD IN CONSTITUTIONS

*'Today, striving to ensure that every person enjoys adequate food is seen not only as a moral imperative and an investment with enormous economic returns, but also as the realization of a basic human right.'*

Guide on legislating for the Right to Food, FAO (2010)

### BACKGROUND

Countries in Latin America and the Caribbean have made renewed commitments to end hunger and all forms of malnutrition through multiple international and regional declarations, such as the [Hunger-Free Latin America and the Caribbean Initiative 2025 \(IALCSH\)](#), the [CELAC's Plan for Food Security, Nutrition and Hunger Eradication 2025](#) and the [Sustainable Development Goals of 2015 \(SDGs\)](#). If these political commitments are supported by effective legislation, including constitutional protection, the future economic, social and cultural benefit to the continent in the fight against hunger and malnutrition is evident.

Furthermore, FAO, together with the Spanish Cooperation and the Mexican Agency for International Development Cooperation (AMEXCID), has promoted the [Parliamentary Front against Hunger in Latin America and the Caribbean \(PFH LAC\)](#). This permanent and plural parliamentary network is composed of 21 national parliaments<sup>1</sup> and

<sup>1</sup> The following 21 countries have parliamentary fronts: Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Granada, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, Saint Vincent and the Grenadines and Uruguay.

four regional and sub-regional parliaments. The PFH LAC pays special attention to the right to adequate food and nutrition, especially in the context of the COVID-19 pandemic (FAO, 2020c) and the new challenges countries will face in the post-pandemic period.

### THE INTERNATIONAL AND REGIONAL FRAMEWORK

The commitments reflect obligations undertaken by the countries of the region under international human rights law: the right to adequate food for all people was formally recognized in the **American Declaration of the Rights and Duties of Man** and the **Universal Declaration of Human Rights**, both from 1948. Article 11 of the American Declaration recognizes the right to food as an integral part of the right to health and well-being, while Article 25 of the Universal Declaration establishes food as a vital element for an adequate standard of living, health and well-being of people.



## Universal Declaration of Human Rights, 1948

### Article 25 (1):

*"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services..."*

Since then, the right to adequate food has also been recognized in declarations, treaties and agreements. Such is the case of the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** of 1966 that establishes the right to food in Article 11 and is legally binding on its 169 States Parties.<sup>2</sup>

### International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966. Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Likewise, the **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights** of 1978 ("Protocol of San Salvador") explicitly recognizes the right to food in Article 12.<sup>3</sup> **The right to adequate food** is the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding

<sup>2</sup> All countries of Latin America and the Caribbean are Parties to the ICESCR, with the exception of Cuba.

<sup>3</sup> The Protocol has 16 States Parties from the Latin American and Caribbean region.

to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear ( United Nations, 2008, para. 17 ).

### Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1978, Article 12:

1. Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.

2. In order to promote the exercise of this right and eradicate malnutrition, the States Parties undertake to improve methods of production, supply and distribution of food, and to this end, agree to promote greater international cooperation in support of the relevant national policies.

The right to adequate food implies the following components:

- **The availability of food:** refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in response to demand.
- **The stability of food:** it is necessary to have a stable food supply; food availability should be stable over time at all places.
- **The accessibility of food:** all people should have access, both economic and physical, to sufficient amounts of adequate food. This implies that the costs associated with the acquisition of food for an adequate diet should be at a level that the attainment and satisfaction of the other basic needs are not compromised.
- **The sustainability of food:** natural resources must be managed in such a way that they ensure the availability of sufficient amounts of food for both present and future generations.
- **The adequacy of food:** food must be available in sufficient quantity to meet the nutritional needs of individuals, be free from adverse substances, and be acceptable for the culture of the group to which each person belongs.

Furthermore, it is important to refer to the concept of **food security**. It exists when all people have, at all times, physical, social and economic access to sufficient, safe and nutritious food that meets their dietary energy requirements and food preferences for an active and healthy life.

## THE DUTIES OF STATES

States are duty-bearers while people are right-holders. The legal obligations of States come, among others, from binding international treaties that have been ratified by them. Once an international instrument is ratified, the State must ensure its **effective enforcement at the national level**.

According to Article 2.1 of the ICESCR, a State Party should take steps to the maximum of its available resources for the progressive realization of the rights contained within it, by all appropriate means, including the adoption of legislative measures and the full effectiveness of the rights recognized in the Covenant.

The State has the obligation to **respect, protect** and **fulfill** (facilitate and provide) the right to food and must always do so in a way that is **non-discriminatory** and ensures that all human rights are protected.

### States have the obligation to:

**Respect:** existing access to adequate food requires that States do not adopt measures of any kind which may result in preventing access.

**Protect:** the State must take measures to ensure that enterprises or individuals do not deprive people of their access to adequate food.

**Fulfill** (facilitate and provide): the State must strengthen people's access to and utilization of resources and the means to secure their livelihood including food security (facilitate); as well as fulfill the obligation to provide food wherever a group or individuals are unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal (provide). This obligation applies also to people who are victims of natural or other disasters (OHCHR and FAO. 2010. pp. 20-29).

In addition, there are other international and regional instruments, such as declarations, recommendations, resolutions etc., which, although non-legally binding, lay down guidelines and principles that should govern the actions of States. The **Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security**, adopted by the FAO Council in 2004, are an example of this kind of instruments. The Guidelines adopted for and by States provide extensive persuasive and clear guidance as to how States can implement the right to adequate food. These Guidelines recommend a variety of measures, including constitutional and legislative actions as well as coordinated institutional frameworks to address the cross-sectoral dimensions of the right to food.

The principal **non-legally binding** instruments relating to the right to adequate food are:

- American Declaration of the Rights and Duties of Man, 1948.
- Universal Declaration on Human Rights, 1948.
- Universal Declaration on the Eradication of Hunger and Malnutrition, 1974.
- Rome Declaration on World Food Security, 1996.
- Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, 2004.
- Sustainable Development Goals 2015 (SDG2).

## THE IMPORTANCE OF CONSTITUTIONAL PROTECTION

Seeking to include express provision of the right to adequate food in a country's constitution is one of the most fundamental and enduring legislative actions that can be taken at the national level to comply with international obligations.

The Constitution is a country's supreme law or the law with the highest hierarchy within the legal system of a country. Consequently, incorporating the right to food in a clear and explicit way in a country's Constitution can bestow the highest level of recognition of its guarantee. In the same way, its precise and direct inclusion aids the interpretation of related laws and eventual amendments of national laws; as well as acting to promote and raise awareness of that right nationally. Furthermore, as the Constitution generally prevails over changes of government and political trends, recognizing the right to food in it favours its long-term protection.

When the right to food is recognized in the bill of rights of a Constitution, it enables the judicial review of any law which is inconsistent with or represents an obstacle to the enjoyment of the right to food. Laws considered to be in contravention of the right to food can be declared unconstitutional. It would also entail the right to a remedy for those whose rights have been breached.

## CONTENT OF CONSTITUTIONAL PROVISIONS ON THE RIGHT TO FOOD

Many national constitutions do refer in one way or another to the right to adequate food. Constitutional recognition may be explicit and direct, as for example in Bolivia (Article 16) and Mexico (Article 4.3). It can be implicit within a broader interpretation of other human

rights, as for example in Argentina (Article 14.bis 1) or Peru (Articles 2, 10 and 24). Or the right to food can be recognized as a goal or directive principle within state policy, as it is the case in the Dominican Republic (Articles 54 and 57).

Currently, 15 countries in Latin America and the Caribbean explicitly enshrine the human right to adequate food in their constitutions, either for all people or for specific groups of the population such as children, pregnant women, elderly persons, displaced persons or persons deprived of their liberty.<sup>4</sup>

## EXAMPLES OF EXPLICIT CONSTITUTIONAL PROVISIONS RECOGNIZING THE RIGHT TO FOOD IN LATIN AMERICA AND THE CARIBBEAN

### EXPLICIT CONSTITUTIONAL PROVISIONS RECOGNIZING THE RIGHT TO FOOD FOR ALL PEOPLE<sup>5</sup>

Countries	Provisions
<b>Bolivia</b>	<b>Article 16:</b> "I. Every person has the right to water and food. II. The State has the obligation to guarantee food security for all the population through healthy, adequate and sufficient food."
<b>Brazil</b>	<b>Article 6:</b> "Education, health, food, employment, housing, rest, safety, social security, protection of maternity and childhood, and assistance to the indigent are social rights, according to what is established in this Constitution."
<b>Cuba</b>	<b>Article 77:</b> "All people have the right to healthy and adequate food. The State creates the conditions to strengthen food security for the entire population."
<b>Mexico</b>	<b>Article 4.3:</b> "[...] Every person has the right to nutritious, sufficient and adequate quality food <sup>6</sup> . The State shall guarantee it [...]"

### EXPLICIT CONSTITUTIONAL PROVISIONS RECOGNIZING THE RIGHT TO FOOD FOR SPECIFIC GROUPS OF THE POPULATION

#### CHILDREN

Countries	Provisions
<b>Colombia</b>	<b>Article 44:</b> "Children have fundamental rights to: life, physical integrity, health and social security, adequate food [...] They shall also enjoy other rights enshrined in the Constitution, the laws and international treaties ratified by Colombia."
<b>Panama</b>	<b>Article 56:</b> " [...] The State will provide protection to minors' physical, mental and moral health and shall guarantee their right to food, health, education and social protection. The elderly and persons with disabilities shall have the same rights guaranteed."

#### PREGNANT AND LACTATING WOMEN

Countries	Provisions
<b>Colombia</b>	<b>Article 43:</b> "Women and men have equal rights and opportunities. Women may not be subject to any kind of discrimination. During pregnancy and after childbirth, women shall enjoy special assistance and protection from the State and shall receive a food subsidy if she is unemployed or abandoned at that moment. The State shall especially support women who are heads of households."

#### ELDERLY PERSONS

Countries	Provisions
<b>Guatemala</b>	<b>Article 51:</b> "Protection of children and the elderly. The State shall protect the physical, mental and moral health of children and the elderly. It shall guarantee their right to food, public health, education, safety and social protection."

<sup>4</sup> Bolivia, Brazil, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay and Suriname.

<sup>5</sup> Although four countries stand out as an example, there are nine constitutions in Latin America and the Caribbean that explicitly recognize the right to food for all people, through similar provisions as the examples chosen for the table: Bolivia, Brazil, Cuba, Ecuador, Guyana, Haiti, Mexico, Nicaragua and Suriname.

<sup>6</sup> Not an official translation. Original in Spanish: Art. 4.3: "[...] Toda persona tiene derecho a la alimentación nutritiva, suficiente y de calidad. El Estado lo garantizará [...]", available at: <http://www.fao.org/faolex/results/details/es/c/LEX-FAOC126640>

Constitutional provisions alone are not enough to guarantee food and nutrition security nor the eradication of hunger. However, explicit constitutional recognition of the right to food can make an important contribution to these objectives, particularly if provision is also made through implementing legislation, such as framework laws on food security and nutrition and complimentary sectoral legislation, courts with jurisdiction to enforce the right, and allocation of adequate budget. The clear, explicit and detailed constitutional recognition of the right to food will aid governments in laying down appropriate legal framework, in prioritizing action, in providing safeguards against retrogressive measures and in raising awareness to achieve its effective compliance.

## STRATEGIES FOR INCLUDING THE RIGHT TO ADEQUATE FOOD IN THE CONSTITUTION

When considering constitutional protection for the right to food at the national level, the choice of strategy is very much country specific, depending to a large extent on the mix of policy, institutional and legal frameworks within the country. However, in general, it is possible to promote the adoption of a constitutional amendment that can either make an existing constitutional provision more precise or insert an entirely new clause to expressly protect the right to food.

The adoption of constitutional rules requires political will and parliamentary action, consolidated through cooperation and multisector collaboration and strengthened awareness of legislators. To this end, one should add efforts to raise public awareness, as well as that of the executive and judicial branches, to lay the foundations for legitimate and lasting legislative progress, with broad public support.

The **Parliamentary Front against Hunger in Latin America and the Caribbean (PFH LAC)** promotes this kind of initiatives in the region and provides a space to foster participation, connect interested parties, enhance transparency, and promote technical assistance and awareness-raising. Its alliance with FAO, the Spanish Cooperation, and the Mexican Agency for International Development Cooperation (AMEXCID) opens the possibility for parliamentarians and their advisors to participate in trainings, exchanges of experiences and public information, and media campaigns to generate greater impact.

## PARLIAMENTARY ACTION CHECKLIST

An elected politician has a legal obligation and moral duty to act in representation of all the people, and especially in protection of those most vulnerable among its constituents. Parliamentarians have a clear role to drive legislative advances collaboratively with the executive authority, the academy, the private sector and civil society; provide oversight of existing legislation; request accountability to the executive authority on key laws and policies; approve and influence budgets; and inform discussions and public opinion at local, national or regional level.

Action on the part of parliamentarians is fundamental to securing the right to adequate food for all. They can take the following action:

- Consider joining one of the national chapters of the Parliamentary Front against Hunger and Malnutrition in your country, or forming one of these fronts if your country does not have one;
- Review the current state of the Constitution in terms of recognition of the right to adequate food and whether it provides for the right explicitly for all people without distinction or not. Identify gaps and opportunities for amendment and check the constitutional procedures that amendment must follow, trying to generate public information and consultation processes, as well as consensus;
- Promote the ratification of international and regional treaties, such as the ICESCR and the Protocol of San Salvador, that protect the right to adequate food. If the State is already a Party to a treaty, consider the recommendations of treaty bodies or mechanisms such as the Universal Periodic Review<sup>7</sup> or the Special Rapporteur on the right to adequate food, or the Working Group of the Protocol of San Salvador as part of their parliamentary oversight mandate;
- Review draft legislation and budgets to ensure inclusion of right to food related principles, adequate financing for FSN and accountability of relevant actors;
- Engage with constituents to determine implementation of the right to adequate food locally and to provide relevant evidence to government on the effectiveness of current legal provisions;
- In reviewing reports of relevant government ministries and agencies, investigate the implementation of laws and policies relating to the right to adequate food and ask questions on the utilization of funds, and in the process identify legal and budget-related gaps;

<sup>7</sup> Every four to five years the government must prepare and submit a report on progress in human rights, and then defend this before its peers at the Human Rights Council. Other entities can also submit independent review reports.



- Consider securing regional parliamentary support for legislative processes relating to the right to adequate food, such as implementation of relevant model laws;
- Learn more on the subject, for example, seek specific trainings and raise awareness based on the knowledge and skills developed;
- Build alliances with other actors that may influence the fulfillment of the right to food, such as other parliamentarians, other authorities of the State, international cooperation partners, civil society, media, academia, lawyers' associations and human rights institutions;
- Consider opportunities for South-South Cooperation: could your country's experience benefit other countries or could your country benefit from the support by other countries?

## REFERENCES/RESOURCES FOR FURTHER INFORMATION

- **FAO.** 2005. *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*. Rome. 48 pp. (also available at <http://www.fao.org/3/a-y7937e.pdf>).
- **FAO.** 2009a. *Glossary on Right to Food*. Rome. 138 pp. (also available at <http://www.fao.org/3/a-as994t.pdf>).
- **FAO.** 2009b. *Guide on legislating for the Right to Food. Book 1*. Rome. 328 pp. (also available at <http://www.fao.org/3/a-i0815e.pdf>).
- **FAO.** 2014a. *Right to Food Handbooks No. 1 "The right to food within the international framework of human rights and country constitutions"*. Rome. 20 pp. (also available at <http://www.fao.org/3/a-i3448e.pdf>).
- **FAO.** 2014b. *Legal developments in the progressive realization of the right to adequate food. Thematic Study 3* [online]. 26 pp. [Cited 15 July 2020]. <http://www.fao.org/3/a-i3892e.pdf>.
- **FAO.** 2017. *Parliamentary fronts against hunger, and legislative initiatives for the right to adequate food and nutrition. The experience of Latin America and the Caribbean 2009-2016*. Rome. 72 pp. (also available at <http://www.fao.org/3/a-i7872e.pdf>).
- **FAO.** 2018a. *10 Contributions parliamentarians can make towards achieving "Zero Hunger"* [online]. 12 pp. [Cited 15 July 2020]. <http://www.fao.org/3/CA2183EN/ca2183en.pdf>.
- **FAO.** 2018b. *Parliamentary alliances against hunger and malnutrition* [online]. 32 pp. [Cited 15 July 2020]. <http://www.fao.org/3/ca1681en/CA1681EN.pdf>.
- **FAO.** 2020a. Constitutional recognitions of the Right to Adequate Food Database. In: *The Right to Food around the Globe* [online]. Rome. [Cited 15 July 2020]. <http://www.fao.org/right-to-food-around-the-globe/en/>.
- **FAO.** 2020b. FAOLEX Database. In: *FAO Legal Office* [online]. Rome. [Cited 15 July 2020]. <http://www.fao.org/faolex/en/>.
- **FAO.** 2020c. Open Letter from the Parliamentary Front against Hunger on COVID-19, 1 April 2020 [online]. [Cited 15 July 2020]. <http://www.fao.org/americas/noticias/ver/en/c/1269115/>.
- **Latin American and Caribbean Parliament.** 2020. *Comunidad Parlamentaria del Conocimiento* [online]. Panama. [Cited 15 July 2020]. <http://comunidadparlamentaria.org/>.
- **OHCHR and FAO.** 2010. *The Right to Adequate Food. Fact Sheet No. 34 on Human Rights*. Geneva. 57 pp. (also available at: <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>).
- **OHCHR.** 2020. Special Rapporteur on the Right to Food. In: *OHCHR* [online]. Geneva (Switzerland). [Cited 15 July 2020]. <https://www.ohchr.org/en/issues/food/pages/foodindex.aspx>.
- **Parliamentary Front against Hunger in Latin America and the Caribbean (PFH LAC).** 2020. *PFH LAC* [online]. Santiago de Chile. [Cited 15 July 2020]. <http://parlamentarioscontraelhambre.org/en/>.
- **United Nations: Human Rights Council.** 2008. *Report of the Special Rapporteur on the right to food, Jean Ziegler. A/HRC/7/5* [online]. 27 pp. [Cited 15 July 2020]. <https://undocs.org/en/A/HRC/7/5>.

