

Constitutional and Legal Protection of the Right to Food around the World



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Lidija Knuth and Margret Vidar



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RIGHT TO FOOD STUDIES

Right to Food Studies is a series of articles and reports on right to food related issues of contemporary interest in the areas of policy, legislation, agriculture, rural development, biodiversity, environment and natural resource management.

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Right to Food Studies are available at www.fao.org/righttofood/. For those without web access, mail or paper copies may be requested from the Right to Food Unit, FAO, Viale delle Terme di Caracalla 00153, Rome, Italy, righttofood@fao.org. Readers are encouraged to send any comments or reactions they may have regarding a Right to Food Study.

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List of Abbreviations

ADA	Austrian Development Agency
FAO	Food and Agriculture Organization of the United Nations
ICESCR	International Covenant on Economic, Social and Cultural Rights
CCPR	International Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CONASAN	Consejo Nacional de Seguridad Alimentaria y Nutricional
CRC	Convention on the Rights of the Child
FIAN	Food First Information and Action Network
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHR	International Human Rights
IIED	International Institute for Environment and Development
IPU	Inter-Parliamentary Union
MDG(s)	Millennium Development Goal(s)
OHCHR	Office of the United Nations High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNTS	United Nations Treaty Series
UNU	United Nations University



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1. Introduction

Human rights are the fundamental inherent rights of all human beings to which people are entitled simply by virtue of being born into the human family. While, on the one hand, they limit the power of the State to arbitrarily interfere with people's free exercise of their rights, on the other they require the State to take positive measures to create an enabling environment in which people may enjoy these rights. Governments and other duty bearers are under an obligation to respect, protect and fulfil human rights, and are responsible for ensuring legal entitlements and remedies in case of non-fulfilment.¹

From a legal standpoint, human rights are the individual and collective rights recognized by States and enshrined in their constitutions and in international law. A functional protection system requires not only the ratification of the relevant human rights treaties but, arguably, also their constitutional protection and further implementation, as necessary, through the enactment of appropriate legislation.

The human right to adequate food has been recognized in different international instruments, most notably the Universal Declaration of Human Rights (UDHR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and the Convention on the Rights of the Child (CRC). These are reviewed briefly in the next section of this study.

While legislative protection is needed to ensure the implementation of the right to food at the national level, it is only one of a number of necessary measures. This study reviews legal protection at the national level through constitutional provisions, national legislation and the direct applicability of international law. It builds on research undertaken for papers dealing with recognition of the right to food at the national level² and for the Guide on Legislating for the Right to Food,³ complemented by further research by the

¹ OHCHR. 2005. *Human Rights: Handbook for Parliamentarians*, Office of the United Nations High Commissioner for Human Rights (OHCHR) and Inter-Parliamentary Union (IPU), Geneva, p. 1.

² See Vidar, M. 2006. *State recognition of the right to food at the national level*. UNU Wider research paper 2006/61. Reprinted in B. Guha-Khasnobis, S. S. Acharya and B. Davis (eds). 2007. *Food Insecurity, Vulnerability and Human Rights Failure*. Helsinki. UNU. Wider. FAO. 2006. Recognition of the right to food at the national level in FAO. 2009. *The Right to Food Guidelines: Information papers and case studies*, at 111 ff.

³ FAO. Rome.

FAO Legal Office.⁴ It provides up-to-date and comprehensive information regarding legislative activities in different countries and the constitutional protection of the right to food. The methodology employed was that of reviewing the constitutions of the world with regard to the right to food and the direct applicability of international human rights law, and collecting examples of framework law from different sources available to FAO.

The study briefly reviews the right to food in international law and discusses whether there is a duty to take legislative action. Having examined constitutions protecting the right to food and the different ways in which they do so, it identifies those countries in which the right to food is directly applicable by virtue of international human rights treaties being incorporated into the domestic legal system. Finally, it summarizes country progress with regard to framework law and indicates the number of countries that have adopted, or are in the process of drafting, a framework law on the right to food or food security.

It does not cover national courts' interpretation of constitutional or treaty provisions in terms of the justiciability of the right to food, nor does it explore whether the human rights treaties in question would be considered self-executing in individual cases.



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2. The right to food in international law

This section provides a general overview of the key elements related to the normative content, state obligations and implications of the right to food, before discussing in some detail whether or not there can be said to be an international obligation for States to incorporate the right to food into their constitution or national legislation.

2.1. GENERAL OVERVIEW

The human right to adequate food is recognized and reaffirmed in a number of binding and non-binding international instruments. Among the most relevant of these are:

- Universal Declaration of Human Rights (UDHR): article 25 recognizes the right to an adequate standard of living, including food;
- International Covenant on Economic, Social and Cultural Rights (ICESCR):⁵ article 11 recognizes the right to an adequate standard of living, including adequate food, and the fundamental right to be free from hunger as a separate right (160 States Parties);
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁶ which recognizes in article 12 the right of pregnant and lactating women to special protection with regard to adequate nutrition and in article 14 the right of rural women to equal access to land, water, credit and other services, social security and adequate living conditions (186 States Parties); and
- Convention on the Rights of the Child (CRC):⁷ article 25 recognizes the right to the highest attainable standard of health, and article 27 the right to an adequate standard of living which, in both articles, includes food and nutrition (193 States Parties).

The normative content, state obligations and implications of the right to food have been explained in a number of reports and publications by the Food and Agriculture Organization of the United Nations (FAO),⁸ the Committee on Economic, Social and Cultural Rights (CESCR) and the Office of the High Commissioner for Human Rights (OHCHR), amongst others. The key points are summarized here below:

⁵ See International Covenant on Economic, Social and Cultural Rights, 16 Dec. 1966, UNTS 3 [hereinafter ICESCR].

⁶ Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Mar. 1, 1980, 1249 UNTS 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

⁷ Convention on the Rights of the Child, Nov. 20, 1989, 1577 UNTS. 3, 47-48 [hereinafter CRC].

⁸ See, for instance, FAO. 2009. *Guide on Legislating for the Right to Food*, Rome. See also www.fao.org/righttofood.

The right to food is defined by the UN Special Rapporteur on the Right to Food as 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 to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.⁹

The general obligation of the State Party is to take steps including, in particular, legislative measures to the maximum of available resources, towards the full realization of the right to food and to ensure non-discrimination (art. 2 ICESCR). The CESCR has adopted an analytical framework for the description of the obligations to respect, protect and fulfil (facilitate and provide) the right to food.¹⁰

As part of its follow-up to the adoption of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security¹¹ (hereinafter referred to as 'Right to Food Guidelines'), FAO has developed seven implementation steps for States, as follows: (1) identifying and targeting the hungry and the poor; (2) conducting a thorough assessment of existing policies, institutions and laws; (3) adopting a sound food security strategy; (4) elaborating a framework law; (5) allocating institutional roles and responsibilities; (6) monitoring progress towards established benchmarks; and (7) establishing recourse mechanisms. Steps four and seven are directly related to the issue of constitutional and legal protection of the right to food.¹²

2.2. ARGUMENTS FOR STATES PARTIES' OBLIGATION TO INCORPORATE THE RIGHT TO FOOD INTO THEIR CONSTITUTION AND NATIONAL LEGISLATION

The right to food is binding on States that have ratified the relevant treaty.¹³ However, in order for it to be effective for individuals within that State, national legislation must reflect the right in such a way as to make it applicable. This may take place through its incorporation into the constitution and through framework laws and sectoral laws.¹⁴ In some countries, international treaties are directly applicable; thus the right to food could be protected even without being recognized specifically in the constitution or law.

⁹ <http://www2.obchr.org/english/issues/food/index.htm>.

¹⁰ Committee on Economic, Social and Cultural Rights. 1999. *General Comment 12, The right to adequate food (article 11)*. UN doc. E/C.12/1999/5, 5 May.

¹¹ Adopted by the 127th Session of the FAO Council, November 2004.

¹² <http://www.fao.org/righttofood>.

¹³ This study does not discuss the possibility of the right to food having the status of customary international law, which would make it binding on States that have not ratified the relevant treaties. This has been advocated on the basis of the status of the UDHR. Simma, B. & Alston, P. 1988, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*, 12 *Austl. Y.B. Int'l L.* 82, 95 (1988-1989), at 84 (citing, inter alia, Humphrey, *The Universal Declaration of Human Rights: Its History, Impact and Juridical Character*, in Ramcharan ed. 1979. *Human Rights: Thirty Years after the Universal Declaration* 21, 37; Louis B. Sohn, *The Human Rights Law of the Charter*, 12 *Tex. Int. L.J.* 129, 133 (1977)).

¹⁴ FAO. 2009. *Guide on Legislating for the Right to Food*. Rome.

State obligations with regard to the ICESCR include, according to article 2.1, ‘particularly the adoption of legislative measures’. However, international human rights law does not formally oblige States Parties to incorporate ICESCR provisions literally into domestic law. Ultimately, it is for each State Party to the ICESCR to determine the legal status to be given to its provisions - in this case, the right to food - within that legal system.¹⁵

Flexibility with regard to implementation strategies refers to the ability of individual States to determine how best to implement treaty obligations within the framework of domestic law-making procedures and constitutional constraints. It also responds to the need to respect the sovereignty of the State over the law applicable in its territory as well as deference to diversity in domestic legal arrangements employed by States participating in IHR treaties. The language of article 2 (1) of the ICESCR supports this flexible position.

On the other hand, the CESCR considers that in many instances legislation is highly desirable and ‘may be even indispensable’ in order to give effect to the rights guaranteed in the ICESCR.¹⁶ Indeed, some scholars would go even further and proclaim the existence of an obligation to provide constitutional protection.¹⁷ The following general and specific arguments support the incorporation of human rights such as the right to food in domestic law, in particular in the constitution:

- *Principle of good faith:* The principle of good faith supports the proposition that failure to incorporate the right to food, as also other human rights stipulated by international human rights treaties, into domestic law, including constitutional law, could be viewed in theory as a violation of international law.
- *Effet utile:* Another relevant principle is that of effectiveness (‘effet utile’), which supports reading international treaties in a manner designed to give effect to their provisions. In democracies committed to the rule of law, domestic courts often function as the most accessible and effective human rights enforcers.¹⁸ This is because the familiarity of such courts with local conditions facilitates the issuance of politically acceptable decisions. Furthermore, their judgments are routinely enforced by the executive branch, and proceedings before these courts

¹⁵ FAO. 2009. *Guide on Legislating for the Right to Food*. Rome, p. 2.

¹⁶ CESCR. 1990. General Comment 3: The Nature of States Parties Obligations (art. 2, para. 1 of the Covenant), para. 3, in *Compilation of general comments and general recommendations adopted by human rights treaty bodies*, UN doc. HRI/GEN/1/Rev.1, at 45.

¹⁷ See Nowak, Manfred. 1993. UN Covenant on Civil and Political Rights: CCPR Commentary. 53-54; Schachter, O. 1981. The Obligation to Implement the Covenant in Domestic Law, in L. Henkin ed. *The International Bill of Rights: The Covenant on Civil and Political Rights*, 311, 313-14; Henkin, Louis. 1990. *Constitutionalism, democracy, and foreign affairs*. New York. Columbia University Press, at 395; Craven, Mathew C. R. 1995. The International Covenant on Economic, Social and Cultural Rights. 125; Cook, R.J. 1994. State Responsibility for Violations of Women’s Human Rights, 7 *Harv. Hum. Rts. J.* 125, 161 (1994); Neuman, Gerald L. 2006. International Law as a Resource in Constitutional Interpretation, *Harvard Journal of Law & Public Policy*, Vol. 30, 2006, at 84. However, this margin of discretion is reviewable by international monitoring bodies. See CESCR General Comment 3, para. 4 (‘[T]he ultimate determination as to whether all appropriate measures have been taken remains one for the Committee to make.’).

¹⁸ In the context of IHR treaties, there can be little doubt that enforcement of IHR norms through domestic courts could be far more effective than methods of enforcement available at the international level (e.g., through treaty bodies such as UN Committees, or inter-State communications), which are less accessible to individual victims and less likely to generate compliance by the State in question (note that the decisions of UN treaty bodies are not even legally binding). The weakness of the inter-State formal and informal enforcement mechanisms existing under UN treaties highlights the advantages of domestic fora. See Knop, K. 2000. Here and There: International Law in Domestic Courts, 32 *N.Y.U. J. INT’L L. & POL.* 501, 516 (2000) (‘Domestic courts seem the best hope for putting international law into action.’).

are widely perceived as legitimate.¹⁹ Domestic procedures concerning the right to food could be deemed effective from an international human rights law perspective only if individuals are able to invoke the right as recognized internationally before domestic courts. Hence, the incorporation of right to food standards into domestic law, especially constitutional law, goes a long way towards ensuring its effectiveness.

- ***Effective right to remedy:*** It is difficult to envisage how provisions on an effective right to remedy ('second order' right) can be met without first of all incorporating substantive primary rights ('first order' rights)²⁰ into domestic law. Such incorporation shall provide for adequate, effective, prompt and appropriate remedies. Hence, it must enable individuals to approach domestic courts in the event of a breach of IHR treaty norms, such as the right to food - a process that must lead to an enforceable remedy.
- ***UN bodies support this view:*** The need to incorporate IHR law, including the right to food, into domestic legislation, in particular constitutional law, finds support in case law and as good practice in periodic reports of the UN treaty bodies.²¹
- Whereas the ICESCR refers to 'legislative measures' in general with regard to the implementation of human rights recognized therein, the Right to Food Guidelines refer to 'State constitutions' specifically, in the context of the right to food.²²

As right to food violations are often the product of domestic legislation, an incorporation strategy that fails to offer adequate constitutional remedies might be viewed as inappropriate and ineffective. It is also questionable whether constitutional law that fails to incorporate the right to food in a meaningful way can 'ensure' future implementation, i.e., provide the human right to food with the necessary degree of security and protection from future legislative encroachment.²³

Most international treaty provisions on the right to food may be considered non self-executing – that is, they cannot be given effect without incorporating legislation. In addition, the crosscutting and complex nature of the right to food and its interrelationship with other human rights calls for legislative action, even where the ICESCR and other relevant human rights treaties are directly applicable within the national legal order.²⁴ Therefore, it is always advisable for countries to have clear and explicit constitutional provisions, a framework law on the right to food, and adequate sectoral legislation. Nevertheless, this study will also consider the case of direct applicability of international treaties as a means for legally protecting the right to food in a given country.

¹⁹ Henkin, L. 1981. Introduction, in Henkin (ed). *The International Bill of Rights: The International Covenant on Civil and Political Rights*, at 1, 14 (observing that when national institutions fail to provide human rights, international institutions 'can only press the State to do so'); Goldsmith, J. 2000. Should International Human Rights Law Trump US Domestic Law? *1 Chi. J. Int'l L.* 327, 334 (2000).

²⁰ For a division between 'first order' and 'second order' rights, endowed with an individuating operative function, see Raz, J. 1980. *The concept of a legal system*, 155 (2nd ed.).

²¹ CESCR General Comment 9, para. 8 ('[T]he Committee strongly encourages formal adoption or incorporation of the Covenant in national law.'). CESCR. 2002. Concluding Observations: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories, para. 11, CESCR, 28th Sess., UN doc. E/C.12/1/Add.79.

²² States are invited to 'include provisions in their domestic law, which may include their *constitutions, bills of rights or legislation*, to directly implement the progressive realization of the right to adequate food' (Guideline 7.2., emphasis added). Note that this is only an 'invitation'.

²³ Schachter, O. 1981. The Obligation to Implement the Covenant in Domestic Law, in Henkin ed., *The International Bill of Rights: The Covenant on Civil and Political Rights*, at 23.

²⁴ FAO. 2009. *Guide on Legislating for the Right to Food*. Rome, p. 2.



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3. Constitutional recognition of the right to food

This section briefly reviews the role of constitutions in general, before examining in detail the constitutional protection provided for the right to food across the world.

3.1. THE ROLE OF CONSTITUTIONS

A country's constitution plays a fundamental role in the realization of the right to food because it is the supreme law of the land²⁵ and the source of all political power within a nation. It is a body of rules that establishes and regulates a government by stipulating checks, balances and limitations of governmental authority.²⁶ The constitutionality of every law and act of Government is one of the most important political principles of democracies and universally accepted rule of law norms.

The logical consequence of the superiority of the constitution is that it supersedes all acts of the legislature contrary to it. Consequently, such acts will not bind either the courts or the citizens. Constitutional provisions are also binding for the executive so all administrative authorities are equally limited by its provisions. Any executive or administrative act that contravenes the provisions of the constitution must be considered void and the courts must invalidate it.

On the basis of a right to food provision in the constitution, the constitutional court or the highest court of a country has the power of judicial review. This means that it declares certain laws unconstitutional if they violate the right to food provision, and the person whose rights have been breached may have a right to remedy. This has an enormous impact on the realization of the right to food because a successful claim may lead to the reform of legislation or policies found to violate that right. There have not been many court cases involving the right to food so far. However, a notable example concerning two cases in India is described in Box 1.

²⁵ For explicit claims, see *inter alia*, the Constitution of Australia, Preamble; the Canadian Constitution Act, 1982, Art.552; the Constitution of Italy, Art.1; the Constitution of Ireland, Art.6; the Constitution of Japan, Art. 98; and the Constitution of the United States, Art. 6. For implicit claims, see *inter alia*, the Constitution of India, Arts. 251 and 254; the Basic Law of Federal Republic of Germany, Arts. 20 (3), 23,28 (1) and (3), 37, 56, 64(2), 70, 87 a(2), 98(2), and 142.

²⁶ The second kind of constitution, an unwritten constitution, exists for example in Canada, England, Israel and New Zealand. These countries have no written constitution in one single document, but rather a number of Basic Laws, that are primary laws guiding society. In the absence of a formal codified set of laws, tradition and existing legal and political systems may provide enduring constitutional principles.

**BOX 1.
Right to food case in India**

The decision of the Supreme Court of India in both *Kishen Pattnayak & another v. State of Orissa*,²⁷ and *People's Union for Civil Liberties (PUCL) v. Union of India and others*²⁸ has recognized the right to food under the right to life stipulated in article 21 of the Indian Constitution, with reference also to the Directive Principle of State Policy concerning nutrition, contained in article 47. Interim orders in the latter case have led to new and better-implemented government programmes and have asserted that benefits under these programmes are legal entitlements. Such programmes include mid-day meals for school children, food entitlements in childcare centres, subsidized food for a number of specific vulnerable groups, as well as changes to the subsidies directed at all persons below the official poverty line. The court case continued for several years and included the appointment of Court Commissioners²⁹ to monitor the implementation of interim orders.³⁰

Finally, the inclusion of a specific provision on everyone's right to food, particularly that of children and women, within the constitution has significant merit in providing legal protection of the right to food, as such, and in ensuring freedom from hunger.

3.2. TYPES OF CONSTITUTIONAL RECOGNITION OF THE RIGHT TO FOOD

Many national constitutions take into account the right to food or some of its aspects. Constitutional recognition of the right to food can be divided into four broad categories:

- (i) Explicit and direct recognition, as a human right in itself or as part of another, broader human right;
- (ii) Right to food implicit in a broader human right;
- (iii) Explicit recognition of the right to food as a goal or directive principle within the constitutional order; and
- (iv) Indirect recognition, through interpretation of other human rights by the judiciary.

The following subsections will look at each type of protection in turn.

3.2.1. EXPLICIT AND DIRECT RECOGNITION OF THE RIGHT TO FOOD

According to our survey, 23 countries recognize the right to food explicitly as an individual human right. It is necessary to distinguish between the different ways in which this recognition takes place. Nine of these countries recognize the right as

²⁷ See *Kishen Pattnayak & Another v. State of Orissa*, A.I.R. 1989 S.C. 677.

²⁸ See *People's Union for Civil Liberties v. Union of India & Ors.* (S.C. 2001), *Writ Petition (Civil) No. 196/2001*, reprinted in Colin Gonsalves ed., 2004. *Right to Food*. New Delhi, p. 48.

²⁹ See <http://www.sccommissioners.org>

³⁰ See the website of the Indian right to food campaign for additional information: <http://www.righttofoodindia.org>

an independent right applicable to everyone. An example of such a constitutional provision is provided in Box 2.

BOX 2.

Explicit and direct recognition of the right to food for all

SOUTH AFRICA

Article 27

1. Everyone has the right to have access to
[...] b. sufficient food and water; and
c. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
2. The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.

Of the 23 countries that recognize the right to food as a human right, ten stipulate the right to food for a specific category of the population only, such as children or prisoners. Box 3 provides an example of this.

BOX 3.

Explicit and direct recognition of the right to food for children

COLOMBIA

Article 44. Children have fundamental rights to: life, integrity, health and social security, and adequate food. .

Five countries have constitutional provisions that stipulate the right to food explicitly as being part of another human right. This is often worded in ways similar to article 11.1 ICESCR as part of a human right to an *adequate standard of living, to a quality of life or to development*.³¹ Box 4 provides an example.

³¹ See UN Declaration on the Right to Development, proclaimed in 1986 by UN General Assembly resolution 41/128.

BOX 4.

Explicit protection of the right to food as part of a broader right

BELARUS

Article 21. Every individual shall exercise the right to a dignified standard of living, including appropriate food, clothing, housing and likewise a continuous improvement of necessary living conditions.

Some constitutional rights protect aspects of the right food and refer explicitly to the right to food component of the main right in question. This sub-category could be described as constitutional rights that provide explicit recognition of one aspect of the right to food. The sub-category includes the right to food as part of the right to work and was found in two constitutions. Box 5 provides an example of this.

BOX 5.

Right to food as part of the right to a minimum wage

BRAZIL

Article 7. The following are rights of urban and rural workers, among others that aim to improve their social conditions: ...

IV – nationally unified minimum wage, established by law, capable of satisfying their basic living needs and those of their families with housing, food, education, health, leisure, clothing, hygiene, transportation and social security, with periodical adjustments to maintain its purchasing power.

3.2.2. THE RIGHT TO FOOD IS IMPLICIT IN A BROADER HUMAN RIGHT

There are many countries whose constitutions do not make explicit reference to ‘food’ or ‘nutrition’ but guarantee other human rights in which the right to food is implicit, according to their normal meaning in international law. The survey did not investigate whether national and international interpretation coincided. These rights include the right to an adequate or decent standard of living, to well-being, to a means necessary to live a dignified life, to development, and to a standard of living not below the subsistence level. This type of protection is granted by 24 countries. Box 6 provides an example:

BOX 6.

Implicit protection through a broader human right

ETHIOPIA

Article 43. The Right to Development

- (1) The Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular, have the right to improved standards of living and to sustainable development....
- (4) The basic aim of development activities shall be to enhance citizens' capacity for development and to meet their basic needs.

Rights such as the right to a minimum wage ensuring existence compatible with human dignity,³² to social security, assistance for the destitute, special assistance and protection of (orphaned) children,³³ aid for (working) mothers before and after child birth, and for the disabled and the elderly, all necessarily provide implicit protection of aspects of the right to food. Some constitutions even stipulate special protection in the case of loss of the family breadwinner.³⁴ Box 7 gives one such example, but the survey did not make a definite count of all such provisions; their mention here is simply for the sake of comprehensiveness.³⁵

BOX 7.

Implicit partial protection through related rights

ISLAMIC REPUBLIC OF IRAN

Article 29 [Welfare Rights]

- (1) To benefit from social security with respect to retirement, unemployment, old age, disability, absence of a guardian, and benefits relating to being stranded, accidents, health services, and medical care and treatment provided through insurance or other means, is accepted as a universal right.

³² Andorra (art. 29), Argentina (art. 14bis 1)), Belarus (art. 42), Bolivia (art. 7.e), Costa Rica (art. 57), Croatia (art. 55), Cuba (art. 9), Ecuador (art. 35), El Salvador (art. 70.2), Honduras (art. 128.5), Italy (art. 36), Lesotho (art. 30), Madagascar (art. 29), Mexico (art. 123), Nigeria (art. 16d), Paraguay (art. 92), Peru (art. 24), Portugal, (art. 59), Romania (art. 43), Slovakia (art. 35), Spain (art. 35), Venezuela (Bolivarian Republic of) (art. 91).

³³ E.g. Moldova (art. 50(2)), Spain (art. 39(2)).

³⁴ E.g. Kazakhstan (art. 28(1)), Russian Federation (art. 39(1)), Slovakia (art. 39(1)).

³⁵ In addition, certain countries with no written constitution (such as Australia, Israel, New Zealand and the United Kingdom) recognize some of these economic and social rights (such as the right to a minimum wage and to social security benefits) through specific national legislation and case law.

3.2.3. DIRECTIVE PRINCIPLES OF STATE POLICY

Many of the countries that do not recognize the right to food explicitly in their substantive provisions or bills of rights refer nonetheless to the right to food or food security, or to raising the level of nutrition and standard of living in the provisions that set out the objectives or directive principles of state policy (see Box 8). Directive principles are statements of principle. They often represent the values to which a society aspires although at the time of drafting they may not reflect a broad societal reality. Very often these constitutional provisions guide governmental action, particularly in the socio-economic field, but are not considered to provide for individual or justiciable rights. Our survey identified 13 countries as having such provisions.

BOX 8.

Recognition of the right to food as a directive principle of state policy

SRI LANKA

Art. 27. The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include

...(c) the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions, and full enjoyment of leisure and social and cultural opportunities.

The use of directive principles varies from country to country. In India, although the directive principles began as unenforceable guidelines, an active Supreme Court has transformed them into strong constitutional rights. In a number of cases, the Supreme Court of India interpreted the constitutional right to life to include the right to food, based on the constitutional provisions in the Directive Principles of State Policy (see Box 1, p.7).

Of course, such directive principles include implicit reference to the right to food in many, if not most, constitutions by referring to general wellbeing or social justice objectives. These were not counted in the present survey of constitutions but an example is provided in Box 9.

BOX 9.

Implicit reference to right to food in directive principles

GHANA

36 (1) The State shall take all necessary action to ensure that the national economy is managed in such a way as to maximize the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Ghana and to provide adequate means of livelihood and suitable employment and public assistance to the needy.

3.2.4. INDIRECT RECOGNITION THROUGH INTERPRETATION OF OTHER HUMAN RIGHTS

There are many countries whose constitutions guarantee other human rights in which the right to food is not necessarily implicit. This is the case in particular with regard to the right to life³⁶ and the right to be free from torture and degrading treatment. Thus, the absence of direct recognition of the right to food in a state constitution does not mean that the right to food is totally unprotected in the country. Depending on a country's legal tradition, other human rights can be interpreted as including the right to food. A combination of other constitutional provisions together with general state policy commitments or directive principles may be used to advance the implementation of this right. For instance, there may be state policies on the promotion of well-being, the right to work and the right to social security (in cases of unemployment or inability to work) which can be relied upon in combination with constitutional rights. As mentioned earlier, in India the fundamental right to life has been expanded by the courts with reference to directive principles. This creates a dynamic relationship between the Fundamental Rights and the Directive Principles of the Constitution, and an avenue to enforce the latter as individual rights.

BOX 10.

Protection through recognition of the right to life

IRELAND

In the case of *G v. An Bord Uchtála* before the Irish courts, judges referred to the right to life as necessarily implying “the right to be born, the right to preserve and defend, and to have preserved and defended that life and the right to maintain that life at a proper human standard in matters of food, clothing and habitation.”³⁷

In other cases, courts can give a broad interpretation of civil (and not just economic and social) rights, some of which are widely guaranteed under domestic law, such as the right to life, the right not to be subjected to cruel or degrading treatment and the right to human dignity, even without referring to directive principles of state policy. Some examples are provided in boxes 10 and 11.

³⁶ The right to life is generally not seen to include the right to survive, but the UN Human Rights Committee in its General Comment 6 (art. 6 ICCPR), para. 5, “noted that the right to life has been too often narrowly interpreted. The expression ‘inherent right to life’ cannot be properly understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States Parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.” 30 April 1982.

³⁷ *G v. An Bord Uchtála*. 1980, IR 32, quoted in Irish Human Rights Commission. 2005. *Discussion document on making economic, social and cultural rights effective*. Prepared in view of an International Conference on Economic, Social, and Cultural Rights, Dublin, 9-10 December 2006, p. 107. *G v. An Bord Uchtála*. 1980, IR 32, quoted in Irish Human Rights Commission. 2005. *Discussion document on making economic, social and cultural rights effective*. Prepared in view of an International Conference on Economic, Social, and Cultural Rights, Dublin, 9-10 December 2006, p. 107.

BOX 11.

Protection through the prohibition of degrading or inhuman treatment

FIJI

In a case involving a person whose prison rations were reduced as a form of punishment for having escaped from custody, the High Court of Fiji referred to Article 11.1 of the ICESCR and considered that such action amounted to degrading and inhuman treatment prohibited by the Constitution. The Court wrote that “[a]ny reduction in rations... was not conforming to the Republic of Fiji undertaking to provide its people with adequate food... . To reduce prison rations as a form of punishment... contravenes section 25(1) of the Constitution as amounting to degrading and inhumane treatment”.³⁸

The experience of a number of countries has shown that governments can indeed be held to account for ensuring the effective exercise of the right to food under constitutional provisions on other human rights. However, the extent to which indirect invocation of other human rights (civil and political rights or other economic and social rights) can lead to effective protection of the right to food at the national level will ultimately depend on judicial interpretation of the State constitution and whether a given human right (e.g. the right to life) will be broadly interpreted so as to also include the right to food. For this reason, the study does not attempt to provide a headcount of countries where such rulings are possible. However, note is taken of the existence of court cases in Botswana,³⁹ Fiji,⁴⁰ Ireland,⁴¹ Lesotho,⁴² Nepal, India,⁴³ the United Kingdom⁴⁴ and the United States of America,⁴⁵ all of which have protected the right to food through constitutional rights to life, or to be free from torture or cruel and degrading treatment.

³⁸ See *Rarasea v. The State*, Criminal appeal No. HAA0027.2000 of 12 May 2000.

³⁹ See *Sesana, Sethoboga and Others v. Attorney General*, 12 December 2006. See *Sesana, Sethoboga and Others v. Attorney General*, 12 December 2006.

⁴⁰ See *Rarasea v. The State*, Criminal appeal No. HAA0027.2000 of 12 May 2000.

⁴¹ *G v. An Bord Uchtála*. 1980, IR 32, quoted in Irish Human Rights Commission. 2005. *Discussion document on making economic, social and cultural rights effective*. Prepared in view of an International Conference on Economic, Social, and Cultural Rights, Dublin, 9–10 December 2006, p. 107.

⁴² See *Khatang Tema Baitsokoli and Mosala Nkekela vs. Maseru City Council and Others* (CONST/C/1/2004), decision of the High Court of Lesotho, 26 January 2005.

⁴³ *People's Union for Civil Liberties v Union of India and Others*, Writ Petition [Civil] No. 196 of 2001 – Supreme Court of India.

⁴⁴ See *Regina v. Secretary of State for the Home Department ex parte Adam, Regina v. Secretary of State for the Home Department ex parte Limbuela, and Regina v. Secretary of State for the Home Department ex parte Tesema* (conjoined appeals), House of Lords, [2005] UKHL 66.

⁴⁵ See *Antonelli v. Sheahan*, 81 F.3d 1422, 1432 (7th Cir. 1996) concerning the alleged provision of “rancid food” and “nutritionally deficient diet”; *Strope v. Sebelius*, US Court of Appeals, 06-3144 (D.C. No. 05-CV-3284-SAC) (10th Cir. 2006) concerning alleged retaliation of prison officials against inmate complaining about the quality and adequacy of the food. See also *Cooper v. Sheriff, Lubbock County*, 929 F.2d 1078, 1083 (5th Cir. 1991) concerning alleged refusal of officials to feed inmates for 12 consecutive days.

3.3. OVERVIEW OF COUNTRIES' CONSTITUTIONAL RECOGNITION OF THE RIGHT TO FOOD

This section builds on the analytical framework presented earlier. It lists the countries and the constitutional provisions that protect the right to food in different ways, and gives numerical details regarding the different categories.

3.3.1. EXPLICIT AND DIRECT RECOGNITION OF THE RIGHT TO FOOD

A total of 23⁴⁶ constitutions recognize the right to food explicitly as a human right. Of these, *nine* countries recognize the right as a separate and stand-alone right: Bolivia (art. 16), Brazil (art. 6), Ecuador (art. 13), Guyana (art. 40), Haiti (art. 22), Kenya (art. 43) and South Africa (art. 27.1). The Interim Constitution of Nepal recognizes an individual right to food sovereignty⁴⁷ (art. 18.3) and Nicaragua (art. 63) provides for the right of every person to be free from hunger.

*Ten*⁴⁸ constitutions recognize the right to food of a specific segment of the population: Brazil (art. 227), Colombia (art. 44), Cuba (art. 9), Guatemala (art. 51), Honduras (art. 123), Mexico (art. 4), Panama (art. 52), Paraguay (art. 54), and South Africa (art. 28.1.c) have provisions regarding the right to food of children; Costa Rica (art. 82) protects the right to food of indigenous children; while South Africa (art. 35.2.e) also specifies the right to food of prisoners and detainees.

An additional *five* countries recognize the right to food explicitly as part of a human right to an adequate standard of living, quality of life, or development: Belarus (art. 21.), the Congo (art. 34.1), Malawi (art. 30.2), Moldova (art. 47.1) and Ukraine (art. 48); while the right to food is explicitly recognized in Brazil (art. 7.4) and in Suriname⁴⁹ (art. 24) as part of the right to work.

3.3.2. THE RIGHT TO FOOD IS IMPLICIT IN A BROADER HUMAN RIGHT

There are 33 countries that recognize broader rights which are generally considered to include the right to food, such as the right to an adequate standard of living or similar rights.

The right to a decent standard of living is spelled out in ten countries: Armenia (art. 34), Bolivia (art. 158), Cambodia (art. 63), Costa Rica (art. 50), Czech Republic (art. 30), Ethiopia (art. 43), Guatemala (art. 119), Pakistan (art. 38a), Romania (art. 47.1), and Turkey (art. 61).⁵⁰

⁴⁶ Each country in this category is counted only once here, with the result that instead of counting 9+10+5+2=26, the count is 9+7+5+1=23.

⁴⁷ Food sovereignty normally has a meaning that includes the content of the right to food as understood by human rights law. The right to food has been recognized as part of the right to food sovereignty by the Supreme Court of Nepal in an interim order issued on 25 September 2008, according to which the Government of Nepal has to supply food immediately to 32 food-short districts.

⁴⁸ Of these ten countries, eight are additional, as Brazil and South Africa are already counted in the previous group.

⁴⁹ Brazil is also part of the previous groups, so only Suriname is counted here as an addition to the five countries indicated, thus contributing to the total number of 22.

⁵⁰ The right is limited to widows, orphans of those killed in war, disabled and war veterans.

In addition, the right to well-being is recognized in six countries: Azerbaijan (art. 16), El Salvador (art. 1), Equatorial Guinea (item 25), Eritrea (art. 21), Guinea (art. 15) and Peru (art. 2).

The right to be provided with a standard of living that is not below the subsistence level is protected in four countries: Georgia (art. 32), Germany (arts. 1, 20, and 28), Kyrgyzstan (art. 27) and the Netherlands (art. 20.1).

The right to the means necessary to live a dignified life is also recognized in eight countries: Belgium (art. 23), Cyprus (art. 9), El Salvador (art. 101), Finland (art. 19), Ghana (art. 36), Switzerland (art. 12), Thailand (art. 79) and Venezuela (art. 299).

The right to development is recognized in five countries: Burundi (art. 33), Congo (art. 58), Ecuador (art. 59), Eritrea (art. 10), and Malawi (art. 30).

3.3.3. DIRECTIVE PRINCIPLE OF STATE POLICY

The following 13 countries recognize the right to food or provide for state obligations related to food and nutrition security as a directive principle of state policy: Bangladesh (arts. 15 and 18), Brazil (art. 208.7),⁵¹ Ethiopia (art. 90), India (art. 47), Iran (arts. 3.12 and 43), Malawi (art. 13.10), Nigeria (art. 16.2d), Pakistan (art. 38), Panama (art. 110.1), Papua New Guinea (art. 1), Sierra Leone (art. 8.3a), Sri Lanka (arts. 22 and 27.c) and Uganda (preamble XIV.ii).

Added to the above are the 23 countries that recognize the right to food explicitly as a human right, making a total of 33 countries that make explicit reference to the right to food in their constitution.⁵² There are now 56 countries whose constitutions recognize the right to food.⁵³

⁵¹ The policy is limited to children in elementary schools: Article 208. The duty of the State towards education shall be fulfilled by ensuring the following: ... assistance to elementary school students by means of supplementary programmes providing school material, transportation, food and health assistance.

⁵² Brazil, Malawi and Panama are counted only once.

⁵³ Either explicitly or implicitly. All countries are counted only once. Hence, the total number counts the following countries only once: Bolivia, Brazil, Congo, Costa Rica, Ecuador, Eritrea, Ethiopia, Guatemala, Malawi, Pakistan, Panama, and South Africa.



Constitutional and Legal Protection of the Right to Food around the World

LIST OF BOXES AND ABBREVIATIONS

1. INTRODUCTION
 2. THE RIGHT TO FOOD IN INTERNATIONAL LAW
 3. CONSTITUTIONAL RECOGNITION OF THE RIGHT TO FOOD
 4. DIRECT APPLICABILITY OF HUMAN RIGHTS TREATIES RECOGNIZING THE RIGHT TO FOOD AT THE NATIONAL LEVEL
 5. FRAMEWORK LAW ON THE RIGHT TO FOOD OR FOOD SECURITY
 6. CONCLUSION
- ANNEXES

4. Direct applicability of human rights treaties recognizing the right to food at the national level

When a state ratifies an international treaty, it is agreeing to abide by the international norms and regulations the treaty puts forth. With regard to human rights covenants, States Parties agree to respect the human rights, including the right to food, of all its citizens including women and children, according to the parameters established by the treaty (ICESCR, CEDAW or CRC). This section of the paper analyzes the applicability of the right to food provisions stipulated by international human rights law at the national level.

Depending on a state's legal system, an individual may invoke the international provisions on the right to food before a national court even in the absence of explicit constitutional provisions on the right to food, or of implementing legislation. This means that the right to food is nationally applicable even if the constitution does not include a direct reference to it.

The first step in gauging the commitment of individual states to the right to food is to measure the status of ratification of relevant human rights treaty norms and to study the effect of the ratification of these treaties on the national law of the different countries. The direct applicability of a treaty provision depends primarily on the national legal system and secondly on the nature of the treaty provision. Thus, courts may hold that a treaty is not directly applicable because it lacks sufficient precision.⁵⁴

The question regarding the position of relevant treaty norms in the hierarchy of legal norms is separate from that concerning the applicability of international law in the national legal system. In most cases, international human rights treaty law is subordinate to the constitution but prevails over ordinary legislation. This means in essence that in countries where the relevant international human rights treaties are directly applicable and have a status either higher than or equal to that of the constitution, the treaty norm stipulating the right to food has been 'constitutionalized', or given a form of 'constitutional status' which is almost equivalent to the nation's own constitution. In other countries, these treaties do not have the same value as the constitution although they have the same legal value as other legislation or have an intermediate status meaning that they are lower in rank than the constitution and higher than ordinary legislation. This can lead to ambiguity in the case of inconsistency between statutory norms and the international treaty.

⁵⁴ Hospes, O.; Meulen, B.M.J. van der. 2009. *Fed up with the right to food? : The Netherlands' policies and practices regarding the human right to adequate food*, Wageningen Academic Publishers, pp. 38-40.

4.1. MONIST AND DUALIST APPROACHES

In order to understand whether the international treaty provisions on the right to food apply directly at the national level, it is necessary to know if international human rights and national law constitute parts of one single order (monism) or if they are parts of two distinct legal orders (dualism). Monism and dualism are two approaches used to describe two different theories on the relationship between international law and national law.

Monists view international and national law as part of a single legal order. Under this approach, international law is directly applicable in the national legal order. Once ratified, international treaties automatically become part of domestic law and do not require a supplementary legislative act of incorporation, as international law is immediately applicable within national legal systems (see Box 12).

BOX 12.

Monist system: The Former Yugoslav Republic of Macedonia

In the legal system of The Former Yugoslav Republic of Macedonia, the issue of the relationship between domestic and international law is a constitutional-legislative matter and is determined according to the monistic theory. According to Article 118 of the Constitution, international agreements ratified in accordance with the Constitution are part of the domestic legal order and cannot be changed by law. Thus, in the hierarchical position of the legal norms, international agreements take precedence over domestic laws.

This gives rise to the obligation to harmonize the legal order and the current practice of courts, public administration and other State agencies, with the standards arising from the conventions and practice of their agencies and bodies. The procedure of ratification of an international document follows the examination of the compatibility of the legislation and regulations, after which the legal implications are determined. The international agreements are sources of law in the Macedonian legal system, which means that individuals may automatically invoke the provisions of international agreements, and the courts and administrative agencies are under the obligation to apply them directly. The human rights agreements have a stronger legal effect than other international agreements. This is unambiguously inferred in Article 8 paragraph 1, item 1 of the Constitution, which stipulates the respect of the basic human and civil freedoms and rights, recognized in the international law and laid down in the Constitution, as one of the highest values of the constitutional order of the Republic of Macedonia.



BOX 12. (cont.)

Monist system: The Former Yugoslav Republic of Macedonia

In the context of the right to food, this means that individuals in The Former Yugoslav Republic of Macedonia have the possibility to claim violations of the right to food in court, even though the Constitution does not protect the right to food explicitly, because the country has ratified all three conventions pertinent to the protection of the right to food.⁵⁵

Dualists, on the other hand, view international and national law as distinct legal orders. For international law to be applicable in the national legal order, it must be received through domestic legislative measures, the effect of which is to transform the international rule into a national one. It is only after such transformation that individuals within the State may benefit from or rely on the international - now national - law. To the dualist, international law cannot claim supremacy within the domestic legal system although it is supreme in the international legal system. Common law countries often adopt a dualist approach to the relationship between international and national law (see Box 13).

It is generally believed that for the treaty rule to operate in the domestic legal system of a dualist State, there must be an 'act of transformation' meaning a government action by that State incorporating the treaty norm into its domestic law. This may be a statute duly enacted by parliament, using all or part of the treaty language and incorporating it as a statutory matter into domestic law.⁵⁶ Sometimes such a statute may paraphrase, 'clarify' or elaborate on the treaty language. In all these cases, the domestic law is the act of transformation and what is actually applicable. However, the treaty language usually has 'relevance' in interpreting the statutory language, according to various theories of domestic jurisprudence.

BOX 13.

Dualist system: United Kingdom of Great Britain and Northern Ireland

The United Kingdom is generally considered the prime example of a dualist system. Treaties never have direct 'statute-like' application in the United Kingdom. Many national systems derived from that of the United Kingdom, such as the Canadian and Australian systems, follow similar approaches.

⁵⁵ See UNDP and ADA. 2006. *The International and National Human Rights Legal Framework for Macedonia: A Human Rights-Based Approach to MDG-based Development Planning and Poverty Reduction*, April 2006, p.37, available at http://www.hurilink.org/tools/International_and_National_Human_Rights_Legal_Framework_for_Macedonai.pdf

⁵⁶ Frowein, J.A. Federal Republic of Germany, in F.G. Jacobs and S. Roberts, 1987, *The Effect of Treaties in Domestic Law*, London, Sweet & Maxwell, at 63, 66.

BOX 13. (cont.)

Dualist system: United Kingdom of Great Britain and Northern Ireland

In the UK, the legislature may enact laws that incorporate (“transform”) treaties or treaty norms into domestic law. The Human Rights Act 1998 that makes the European Convention for the Protection of Human Rights and Fundamental Rights enforceable in the United Kingdom is a leading example of a law that incorporates a human rights treaty into national law.

In the context of the right to food this means that although the UK has ratified the ICESCR, CRC and CEDAW, an additional legislative act is necessary to give effect to the treaty norms on the right to food within domestic law.

Like other concepts discussed here, an ‘act of transformation’ is not uniformly defined and there are several other terms that compete with or may, in the view of some, be subsumed within this phrase, such as ‘incorporation’, ‘adoption’, ‘reception’, and similar terms. Likewise, the term ‘implementation’ of treaties has a broader meaning which differs from, but in some cases includes, an ‘act of transformation’.⁵⁷

4.2. OVERVIEW OF DIRECT APPLICABILITY ACROSS THE WORLD

While common law countries are generally dualist in their approach, civil law countries follow different routes: some are monists, others are dualists. Many have direct constitutional provisions stipulating the applicability and status of international treaties. Others merely specify the applicability of international law, while status in the hierarchy is not specified. The overview below of countries where international law including the right to food is directly applicable, distinguishes between the different status accorded and also specifies where the research was unable to confirm with certainty that the relevant national legal system grants international law a privileged hierarchy. So as not to overstate figures, the final count does not include countries where there is doubt as to the status in the hierarchy.

The information concerning the applicability of international law is then cross-referenced with the status of ratification of individual treaties so as to determine which of the three main treaties, ICESCR, CEDAW and CRC, is applicable in which country.

⁵⁷ See, e.g., Human Rights Committee, General Comment 3: Article 2: Implementation at the National Level, para. 1, in UN. 1994. *Compilation of general comments and general recommendations adopted by human rights treaty bodies*, UN doc. HRI/GÉN/1/Rev.1, at 4 [hereinafter HRC General Comment 3] (“The Committee notes that article 2 of the Covenant [on Civil and Political Rights] generally leaves it to the States Parties concerned to choose their method of implementation in their territories within the framework set out in that article.”); CESCR, General Comment 3: The Nature of States Parties Obligations (art. 2, para. 1 of the Covenant), para. 4, in *ibid.*, at 45 [hereinafter CESCR General Comment 3] (“[E]ach State party must decide for itself which means are the most appropriate under the circumstances with respect to each of the rights ...”); CESCR. 1998. *General Comment 9: The Domestic Application of the Covenant*, para. 5, UN doc. E/C.12/1998/24 [hereinafter CESCR General Comment 9] (“[T]he precise method by which Covenant rights are given effect in national law is a matter for each State Party to decide ...”).

It should be borne in mind that in some countries where international law is directly applicable, right to food provisions may still be considered as non self-executing. The research did not generally go into such depths.

4.2.1 STATUS HIGHER THAN OR EQUAL TO CONSTITUTION

Although it is quite rare that treaties have an equal or higher status than the national constitution, this is stipulated in the constitutions of Argentina (art. 75.22),⁵⁸ Bosnia & Herzegovina (art. III.b.3 and Annex 1),⁵⁹ the Netherlands (art. 94), and Venezuela (art. 23), all of which have ratified the ICESCR, CEDAW and CRC.

4.2.2 PRIMACY OVER NATIONAL LEGISLATION

Most commonly, constitutional provisions that stipulate the direct applicability of international (human rights) treaties also provide that these have primacy over national legislation. This is the case in 61 countries, all but one of which have ratified the ICESCR, CEDAW and CRC. Box 14 provides an example of a general provision on the primacy of international law.

BOX 14.

International law is directly applicable and has primacy over national law

CAPE VERDE

11.4. The rules and principles of general or common international law and of conventional international law, validly approved or ratified, shall prevail, after their entry into force in the international and domestic legal orders, over all legislative and domestic normative acts of an infra-constitutional value.

Eighteen of the countries that recognize the primacy of international law, including the right to food, are in Africa: Algeria (art.132), Benin (art. 147), Burkina Faso (art. 151), Cameroon (art. 45), Cape Verde (art. 11.4), Central African Republic (art. 69), Chad (art. 222), Cote d'Ivoire (art. 87), Democratic Republic of Congo (arts. 176 and 215), Djibouti (art. 37), Guinea (art. 79), Mali (art. 116), Madagascar (art. 132.3), Mauritania (art. 80), Niger (art. 132), Senegal (art. 98), Togo (art. 140) and Tunisia (art. 32).

A further five of these countries are in Asia: Cambodia (art. 31.1), Kazakhstan (art. 4.3), Oman (art. 72), Tajikistan (art. 10) and Timor-Leste (art. 9). Box 15 contains an example from this region.

⁵⁸ In Argentina, it is a list of human rights treaties which does not encompass all human rights treaties.

⁵⁹ See International Human Rights Instruments, Core Document Forming Part of the Report of States Parties, Bosnia and Herzegovina, 9 April 1998, HRI/CORE/1/Add.89.

BOX 15.

Constitutional provision on primacy of international human rights law

CAMBODIA

31. The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, and the covenants and conventions related to human rights and women's and children's rights.

Twenty-four of these countries are in Europe:⁶⁰ Albania (art. 122), Andorra (art. 3.4) Armenia (art. 6), Azerbaijan (art. 151), Belarus (art. 116), Bulgaria (art. 5.4), Croatia (art. 134), Cyprus (art.169.3), Czech Republic (art.10), Estonia (art. 123), France (art. 55), Georgia (art. 6.2), Greece (art. 28.1), Italy (117), Lithuania (art. 138.3), Montenegro (art. 9), Poland (art. 91.2), Republic of Moldova (art. 4.2), Romania (art. 20.2),⁶¹ Russian Federation (art. 15.4), Slovakia (art. 11),⁶² Slovenia (art. 8), Spain (art. 96.1), The Former Yugoslav Republic of Macedonia (art. 118) and Turkey (art. 90).

Fourteen countries in Latin America and the Caribbean recognize the primacy of international law: Bolivia (arts. 410.II and 13.IV), Chile (art. 5.2),⁶³ Colombia (art.93),⁶⁴ Costa Rica (art.7),⁶⁵ Cuba (art. 12.b and art. 20 of Civil Code), Ecuador (arts. 417, 424, 426 and 428),⁶⁶ El Salvador (art. 144.2), Guatemala (art. 46), Guyana (art. 15A), Haiti (art. 276.2), Honduras (art. 18), Nicaragua (art. 10.2), Paraguay (art. 137.1) and Peru (arts. 32 and 55).

All of these countries have ratified the ICESCR, CEDAW and CRC, with the exception of Andorra and Haiti, which have ratified CEDAW and CRC only.

⁶⁰ Membership of the Council of Europe or of the European regional group in FAO was used as a benchmark for the division between Asia and Europe.

⁶¹ According to art 20.2. supremacy of international treaties is established "unless the Constitution or national laws comprise more favorable provisions".

⁶² "provided that they secure a greater extent of constitutional rights and liberties".

⁶³ Issue of direct applicability of international treaties has been debated in the courts. International Human Rights Instruments, Core Document Forming Part of the Report of State Parties, Chile, 17 March 1999, HRI/CORE/1/Add.103. Article 5(5) only refers to human rights treaties. The constitution does not solve the question of the hierarchy of general international law. However, article 5(2) can be read as granting constitutional hierarchy to international human rights treaties.

⁶⁴ Constitutional court has interpreted human rights treaties as being part of the "constitutional block".

⁶⁵ The Constitutional Chamber of the Supreme Court has interpreted that international human rights law is above the constitution itself.

⁶⁶ Human rights treaties are granted similar status to the constitution.

4.2.3 PRIMACY OVER NATIONAL LEGISLATION ACCORDING TO SOURCES OTHER THAN THE CONSTITUTION

The 60 countries mentioned above have clear constitutional provisions regarding the status of international treaties vis-à-vis national law, to the effect that inconsistent national law is void. Moreover, several sources, including case law, laws on treaties and reports to the human rights bodies, indicate that an additional 13 countries affirm the primacy of international law over national legislation, namely Belgium, Brazil, China, Democratic People's Republic of Korea, Japan, Jordan, Libyan Arab Jamahiriya, Luxembourg, Morocco, Nepal, Switzerland, Syrian Arab Republic and Ukraine, all of which have ratified the ICESCR, CEDAW and CRC.

4.2.4 LIKELY PRIMACY OVER, OR STATUS EQUAL TO, NATIONAL LEGISLATION

The research carried out under this study could not clearly identify the status of international law in the national legal hierarchy of 16 countries under review. However, given that the majority of countries for which the status is known recognize the primacy of international law, it is considered that the status of international law is likely to be superior or equal to the constitution in these 16 countries as well. The countries are:

Burundi (art 292), Dominican Republic (art 37), Eritrea (art 32.4), Ethiopia (art 9.4), Gabon, Kyrgyzstan (art. 12.3), Latvia, Liechtenstein⁶⁷ (arts. 67 and 92.2), Panama, Philippines (art. 8 sect.5.2.a), Portugal (art. 8.2), San Marino, Suriname (arts. 72 and 105), Vietnam and Yemen, which have ratified the ICESCR, CEDAW and CRC.

In addition, Belize, Mozambique and Saudi Arabia (art. 70), which have ratified both CEDAW and CRC, also come under this category, as do Iran and Sudan, which have ratified the ICESCR and CRC.

Five countries recognize direct applicability. These countries are Egypt (art. 151), Iraq, Mongolia (art. 10.3), Republic of Korea (art. 6(1)), and Rwanda (art. 44(6)), which have ratified the ICESCR, CEDAW and CRC. However, international treaties have the same status as national law according to constitutional provisions.

Sources other than the constitution, including court cases, reports to human rights treaty bodies and national laws on treaties, indicate four additional countries that recognize international law as being applicable, but equal to national law. These are: Denmark, Fiji,⁶⁸ India and Indonesia.

⁶⁷ Only self-executing treaties are directly applicable.

⁶⁸ 43.(20): "In interpreting the provisions of this Chapter, the courts must promote the values that underlie a democratic society based on freedom and equality and must, if relevant, have regard to public international law applicable to the protection of the rights set out in this Chapter".



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5. Framework law on the right to food or food security

While constitutional provisions are described in rather broad terms, a framework law on the right to food can elaborate further on this right and thus make it operational in practice. The term ‘framework law’ refers to a legislative technique used to address cross-sectoral issues. Framework legislation lays down general principles and obligations, and leaves it to implementing legislation and the competent authorities to determine specific measures to be taken so as to realize such obligations, possibly within a given time limit.⁶⁹

There are many advantages in adopting a framework law on the right to food: The content of the right as well as the obligations of state authorities can be spelled out in some detail; institutional arrangements can be made on a stable basis for a better distribution of responsibilities; better coordination and more meaningful monitoring can give a precise definition of the scope and content of this human right, set out obligations for State authorities and private actors, establish necessary institutional mechanisms and provide the legal basis for subsidiary legislation and other necessary measures to be taken by the competent State authorities. It can also establish a right to a remedy, clarify the role of human rights institutions and provide the basis for a subsidiary legislation.⁷⁰

Framework law strengthens government accountability by providing for better monitoring, access to courts and administrative recourse mechanisms, and also by helping government officials to have a better understanding of their role.

The Committee on Economic, Social and Cultural Rights recommends the adoption of a framework law as a major instrument in the implementation of a national strategy for the right to food.⁷¹ The FAO Guide on Legislating for the Right to Food⁷² provides a full analysis of the optimal content of a right to food framework law.

Recent years have witnessed increased interest in the adoption of framework laws on the right to food. Such laws are often known as food security laws rather than right to food laws but the effect is similar, as long as the right to food is clearly spelled out.

⁶⁹ FAO. 2009. *Guide on Legislating for the Right to Food*. Rome, p. 4.

⁷⁰ FAO. 2009. *Guide on Legislating for the Right to Food*. Rome, pp. 53-54.

⁷¹ CESCR. 1999. General Comment 12: The right to adequate food (article 11 of the Covenant). UN doc. E/C.12/1999/5, 5 May, para. 29.

⁷² FAO. 2009. Rome.

A recent trend also includes the question of food sovereignty in such laws; this is sometimes controversial. Ten countries have already adopted these laws or decrees: Argentina,⁷³ Bolivia,⁷⁴ Brazil,⁷⁵ Ecuador,⁷⁶ El Salvador,⁷⁷ Guatemala,⁷⁸ Indonesia,⁷⁹ Nicaragua,⁸⁰ Peru⁸¹ and Venezuela.⁸²

Existing framework laws tend to define the right to food and establish institutional arrangements for food security, frequently with the participation of civil society. However, their treatment of obligations and remedies is not always very thorough, nor is it clear that they add to the justiciability of the right to food.

The right to food is also recognized in framework laws on other issues, both in Mali (agriculture policy law) and in Mexico (social development law). Another new development is sectoral legislation that gives effect to the right to food in different ways. For instance, the Brazilian law on school feeding⁸³ recognizes a right to school feeding and also mandates that at least 30% of the programme funding be spent on procurement from family farms.

Draft right to food, food security, nutrition security or food sovereignty laws have been developed in nine additional countries: Honduras, India, Malawi, Mexico, Mozambique, Paraguay, South Africa, Tanzania and Uganda. Finally, there are new drafts to strengthen, update or replace existing legislation in El Salvador, Nicaragua and Peru.

⁷³ Law 25.724 on the National Programme for Food and Nutrition Security, 2003.

⁷⁴ Supreme Decree No 28667 of 5 April 2006; Food Law for Workers, 2004.

⁷⁵ Law No. 11,346, 2006 Establishing the National Food and Nutrition Security System (SISAN). Decree No. 6273, establishing the Interministerial Chamber for Food and Nutritional Security, 2007.

⁷⁶ Law on Food and Nutritional Security, No. 41, 2006; Law on Food Sovereignty, Official Registry No. 583, 5 May 2009.

⁷⁷ Decree 63 of 16 October 2009 which establishes the National Food and Nutrition Security Council (CONASAN).

⁷⁸ Law on National Food and Nutrition Security System, Decree No. 32-2005, 2005. Agreement No 75/06, Regulation to the Law on National System on Food and Nutritional Security, 2006.

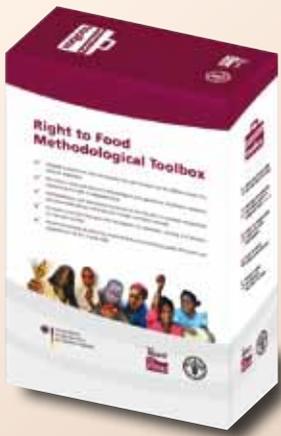
⁷⁹ Food Act No. 7/1996 ; Regulation on Food Security No. 68/2002.

⁸⁰ Law on Food and Nutritional Sovereignty and Security, No. 163- 2009, Decree No. 03-2007, Reforms and Amendments to Decree No. 71-98; Regulation to the Law No. 290, Law on Organization and Competences, 2007.

⁸¹ Decree No. 118-2002 PCM, establishing the Multisectoral Commission on Food Security, 2002; Decree No. 139/02/PCM, Conforming the Technical Committee of the Multisectoral Commission on Food Security, 2002.

⁸² Organic Law on Agricultural and Food Security and Sovereignty, Decree No 6.071, 2008; Law establishing a Programme on Food for Workers, 1998; Law on Food for Workers, 2004; Decree No. 4.448, Regulation of the Law on Food for Workers, 2006.

⁸³ Articles 2.VI and 14 of Law 11.947 of 16 June 2009. Diário Oficial da Uniao n.113 17-6-2009.



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6. Conclusion

This study has found that the right to food is better protected legally at the national level than one would assume from simply counting the number of direct and explicit mentions of the right to food in constitutions. Currently, 56 constitutions protect the right to food either implicitly or explicitly as a justiciable right, or explicitly in the form of a directive principle of state. In addition, through the direct applicability of international treaties, the right to food is directly applicable, with a higher status than national legislation, in at least 51 countries,⁸⁴ thus reaching a total of 106 countries in which the right to food is applicable.

Finally, ten countries have already adopted a framework law on the right to food or food security recognizing the right to food, and a further nine countries are in the process of drafting such legislation. This development is likely to gather momentum in the coming years.

Legal protection is a necessary step for the realization of the right to food as a right. While food security - a situation where all people at all times have access to sufficient, safe and nutritious food for an active and healthy life - can be achieved in theory without the adoption of legal measures, the addition of legally enforceable rights makes the future of food security more secure.

The rule of law continues to be evasive in many countries throughout the world, and legislation frequently gathers dust on shelves while life goes on as before. Therefore, it is not enough to recognize the right to food constitutionally and to enact law on same; such law needs to be 'owned' by those who are most in need of its enforcement. Successful legislation should be employed after a thorough process involving all stakeholders, government and civil society alike. Legislation also needs constant follow up from all sides, in order to be effective. Furthermore, judges and lawyers need to be fully cognisant of the right to food if cases are to be brought to court and dealt with successfully.

⁸⁴ This number does not include the countries that recognize the right to food already, explicitly or implicitly, in their constitutions.



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ANNEX 1. Explicit constitutional provisions recognizing the right to food around the world (Status as of 31 December 2010)		
No.	COUNTRIES	EXPLICIT CONSTITUTIONAL PROVISIONS
1	Belarus (art. 21, para 2)	Every individual shall exercise the right to a dignified standard of living, including appropriate food, clothing, housing and likewise a continuous improvement of necessary living conditions.
2	Bolivia (art.16)	Every person has the right to water and food. The State has the obligation to guarantee food security for all through a healthy, adequate and sufficient food
3	Brazil (art.6) (art. 7) (art. 227)	Education, health and food are social rights. The following are rights of urban and rural workers, among others that aim to improve their social conditions: ... nationally unified minimum wage, established by law, capable of satisfying their basic living needs and those of their families with housing, food, education, health, leisure, clothing, hygiene, transportation and social security. 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, and nourishment.
4	Colombia (art.44)	Children have fundamental rights to: life, integrity, health and social security, adequate food.
5	Congo (art.34)	Every citizen shall have the right to a level of life sufficient to assure his health, his well-being and that of his family, notably food, clothing, shelter, medical care as well as necessary social services.
6	Costa Rica (art.82)	The State shall provide food and clothing for indigent pupils, in accordance with the law.
7	Cuba (art.8)	...as the power of the people and for the people, guarantees: ... That no child be left without schooling, food and clothing.
8	Ecuador (art.13)	Persons 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.
9	Guatemala (art. 51)	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.
10	Guyana	Every person in Guyana is entitled to the basic right to a happy, creative and productive life, free from hunger, disease, ignorance and want.
11	Haiti (art.22)	The State recognizes the right of every citizen to decent housing, education, food and social security.



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No.	COUNTRIES	EXPLICIT CONSTITUTIONAL PROVISIONS
12	Honduras (art.123)	Every child shall enjoy the benefits of the social security and education. They have the right to grow and develop in good health, for which must be provided, both to him and his mother, special care from the prenatal period, taking right to enjoy food.
13	Kenya (art.43(c))	Every person has the right ...to be free from hunger, and to have adequate food of acceptable quality.
14	Malawi (art.13 (b)) (art.30.2)	The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals: (b) Nutrition: To achieve adequate nutrition for all in order to promote good health and self-sufficiency. The State shall take all necessary measures for the realization of the right to development. Such measures shall include, amongst other things, equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure.
15	Mexico (art.4)	Children's needs to nourishment...shall be fulfilled.
16	Moldova (art. 47 (l))	The State is obliged to take action aimed at ensuring that every person has a decent standard of living, whereby good health and welfare, based on available food, clothing, shelter, medical care, and services are secured for that person and his/her family.
17	Nepal (art.18(3))	Every citizen shall have the right to food sovereignty as provided for in the law.
18	Nicaragua (art.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.
19	Panama (art.56)	The state will provide protection to minors' physical, mental and moral health and will guarantee their right to food, health, education and social protection. Elderly and persons with disabilities will have the same rights guaranteed.
20	Paraguay (art. 54) (art. 57)	Families, society, and the State have the obligation of guaranteeing a child the right to a harmonious, comprehensive development, as well as the right to fully exercise his rights by protecting him against abandonment, under nourishment, violence, abuse. Every senior citizen has the right to receive full protection by his family, society, and the State. State organizations will promote the well-being of senior citizens by providing them with social services to meet their needs for food, health, housing, culture, and leisure.
21	South Africa (art.27) (art.28 (c)) (art.35.2(e))	Everyone has the right to have access to: sufficient food and water. Every child has the right to (c) basic nutrition, shelter, basic health care services and social services. Everyone who is detained, including every sentenced prisoner, has the right... to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.
22	Suriname (art.24)	The state shall take care of the creation of conditions in which an optimal satisfaction of the basic needs for work, food, health care, education, energy, clothing and communication is obtained.
23	Ukraine (art. 48)	Everyone has the right to a standard of living sufficient for himself or herself and his or her family that includes adequate nutrition, clothing and housing.

ANNEX 2. Types of constitutional provisions on the right to food (Status as of 31 December 2010)					
COUNTRY	EXPLICIT			IMPLICIT	EXPLICIT
	DIRECT AND GENERAL	SPECIFIC GROUPS	STANDARD OF LIVING	BROADER RIGHTS	DIRECTIVE PRINCIPLE
Armenia				✓	
Azerbaijan				✓	
Belarus			✓		
Belgium				✓	
Bangladesh					✓
Bolivia	✓			✓	
Brazil	✓	✓	✓		✓
Burundi				✓	
Cambodia				✓	
Colombia		✓			
Czech Rep.				✓	
Congo			✓	✓	
Costa Rica		✓		✓	
Cuba		✓			
Cyprus				✓	
Ecuador	✓			✓	
El Salvador				✓	
Eq.uatorial Guinea				✓	
Eritrea				✓	
Ethiopia				✓	✓
Finland				✓	
Georgia				✓	
Germany				✓	
Ghana				✓	
Guatemala		✓		✓	
Guinea				✓	
Guyana	✓				
Haiti	✓				
Honduras		✓			
India					✓
Iran					✓
Kenya	✓				
Kyrgystan				✓	
Malawi			✓	✓	✓
Mexico		✓			
Moldova			✓		
Nepal	✓				
Netherlands				✓	
Nicaragua	✓				
Nigeria					✓
Panama		✓			✓
Papua New Guinea					✓
Pakistan				✓	✓



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COUNTRY	EXPLICIT			IMPLICIT	EXPLICIT
	EXPLICIT STATEMENT	SPECIFIC GROUPS	STANDARD OF LIVING	BROADER RIGHTS	DIRECTIVE PRINCIPLE
Paraguay		✓			
Peru				✓	
Romania				✓	
Sierra Leone					✓
Sri Lanka					✓
South Africa	✓	✓			
Suriname			✓		
Switzerland				✓	
Thailand				✓	
Turkey				✓	
Uganda					✓
Ukraine			✓		
Venezuela				✓	
CATEGORY TOTAL	9	10	7	31	13
	TOTAL EXPLICIT AS RIGHT 23*				
	TOTAL EXPLICIT, IMPLICIT AND AS DIRECTIVE PRINCIPLE 56*				

* Countries falling into more than one category have been counted only once.

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