



Framework laws on the right to adequate food

“Parliamentarians are critical partners in the fight to eradicate poverty and malnutrition, given their legislative, budgetary and policy oversight roles”.

José Graziano da Silva, FAO Director-General

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BACKGROUND

With the Sustainable Development Goals (SDG2) of 2015, countries pledged to end hunger everywhere by 2030 through decisive national action and international and regional cooperation. If this global goal is to be achieved, affirmative and creative actions are needed on the part of all countries. Building on the African Charter on Human and People’s Rights (Banjul Charter) and other regional human rights instruments, African countries committed to ensure food security for all people with the Malabo Declaration of 2014. These together with the Africa Regional Nutrition Strategy 2015-2025 and African countries’ ratifications of international

and regional human rights treaties that guarantee the right to adequate food are clear indicators of commitment on the part of governments in Africa to achieving the eradication of hunger. However, public declarations of commitment are not sufficient to reach the goal of zero hunger by 2030, to ensure the right to food and the establishment of a food secure environment. Countries must act separately and collaboratively to put into place an enabling environment that includes effective legislative measures.

The Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security or Right to Food Guidelines, were adopted by the FAO Council in November 2004 and establish useful recommendations to countries as to how to realize the right to food. Among the recommendations are ideas for framework laws and key aspects relevant to the right to adequate food, including an adequate enabling environment for people to feed themselves, assistance when they cannot, and accountability

**The Committee on Economic, Social and
Cultural Rights General Comment 12, 1999**

**Paragraph 29. Benchmarks and
framework legislation, inter alia:**

“...States should consider the adoption of a framework law as a major instrument in the implementation of the national strategy concerning the right to food...”.

for implementation. Policy areas include nutrition, education, food safety, access to employment and natural resources and safety nets for the protection of the most vulnerable. Guideline 7 of the Right to Food Guidelines encourages States to create and implement framework laws and strategies to secure the right to food over the long term. The Committee on Economic, Social and Cultural Rights in its General Comment 12 on Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also recommends the adoption of framework laws.

HOW CAN A FRAMEWORK LAW HELP?

Food and nutrition security and the right to adequate food are multidimensional and cross-sectoral in nature. Their realization cuts across economic, social, cultural, environmental and political life and is intrinsically linked to that of other human rights, such as the right to water, the right to property, access to land and other productive resources, the right to health, the right to decent work and fair pay among others. As such, multiple and diverse sectors and disciplines must necessarily be involved in food and nutrition security responses.

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

A “framework law” provides a legislative structure that brings together under one governing law, different sectoral disciplines, as well as the legal grounds for organizing the multiple state actors responsible for securing the right to food. A good framework law will provide clarity as to the definition, scope and content of the right to adequate food, and will aid the interpretation and implementation of this right at the national level. It will have within its remit the assignation of responsibilities to different actors across the ministerial and sectoral spectrum, and provide for their effective coordination and articulation. It can also serve to anchor and integrate plans, programmes and policies, provide direction for institutional mechanisms, subsidiary legislation, as well as budgetary matters and expenditure of state resources and provide grounds and mechanisms

for redress. At the same time, a framework law acts as a guide for the creation and implementation of complimentary regulations or legislation, enabling a degree of freedom and autonomy for the diverse sectors and disciplines, experts in food and nutrition security, as well as room for geographical or regional adjustments, to ensure the optimum and most applicable operation of the law in accordance with the particular context, discipline or environment of implementation.

Whether the right to food is recognized expressly or implicitly in a State’s Constitution, or derived from international or regional obligations, a framework law on the right to adequate food that results from extensive and inclusive consultation, and contains clear definition of the sectors regulated, the roles and responsibilities of relevant actors, budget provision and transparency and accountability mechanisms can be a useful and effective tool for guaranteeing, implementing and monitoring the right to adequate food for all and achieving food and nutrition security in the long term.

In Africa, the right to food is already recognized in the framework laws of some countries, for example in Mali the Agriculture Policy framework law recognizes the right to food. Zanzibar, the United Republic of Tanzania adopted a framework law on food security in 2011. In 2018, the Republic of Cabo Verde adopted a food and nutrition security law that aims to achieve the right to adequate food. There are draft laws on the right to food, food security, nutrition security or food sovereignty in Malawi, Mozambique, South Africa, and Uganda. Other countries have adopted government or ministerial decrees with provisions on the rights to food and established a coordination framework for food security such as the Republic of Angola (2008), the Republic of Mozambique (2010 implemented in 2012 and 2013).

Source: Faolex

A framework law is not intended to regulate in detail any of the many sectoral areas relevant to the realization of the right to food. Thus it should not enter into details of, for instance, land tenure, food safety, seeds or other areas that require their own specific legal and institutional framework.

DRAFTING A FRAMEWORK LAW ON THE RIGHT TO FOOD

Given the multi-dimensional nature of the right to adequate food and food and nutrition security, in the preparation of a framework law to secure

the right to food, there should be adequate and informed multi-stakeholder consultation. The initiative for legislation may be proposed by parliament, government, or civil society, but if it is to be successful in effect it must seek broad support across society and institutions. Diverse ministries such as those of agriculture, health, education, women, justice, finance, planning, trade, environment and employment, as well as civil society organizations, small and medium sized producers, women’s organizations, youth groups, rural and urban organizations from all geographical, ethnic and linguistic regions, academia, law societies, the medical profession, the private sector as well as international development partners, and other stakeholders should be part of the discussions in the making of the law. Such broad-based consultations will be useful in terms of providing empirical evidence on the issues to be addressed, enriching the substantive contents of the law, promoting policy coherence in the pertinent sectors and creating awareness on rights and duties relating to food and nutrition security among relevant stakeholders.

In considering the elaboration of a framework law on the right to food and food and nutrition security, it would be important to:

- Identify the international and regional right to food commitments of the country, and the laws, policies and programmes that may be affecting the right to food;
- Review the context of the right to food in the country, the state of food security, the groups that are most vulnerable to food insecurity and the causes for food insecurity;
- Consider the legal and institutional environment, the potential for redesigning policies that may be affecting the right to food and the opportunities that exist for a successful framework law;
- Consider what form and legal status in hierarchy of national legal sources the law should take, for example, below the Constitution but with higher status than ordinary law;

- Carry out an impact analysis including a costs-benefit analysis, of the potential social, administrative, budgetary, economic and other consequences, this will help determine capacity for implementation, adequate budget provision and effective enforcement;
- Design a participatory drafting process – build alliances with multisector partners, civil society inclusion, human rights experts, academia, facilitating the buy in by counterpart agencies and ministries.
- Look to South-South cooperation – can your country provide support to another country at an earlier stage of development in terms of framework laws, or can you seek support from examples of other countries from the region/beyond?

One South-South cooperation example of a strong regional framework law based on human rights is the **Framework Law on the Right to Food and Food Sovereignty** adopted by the Latin American and Caribbean (LAC) Parliament (PARLATINO) in November 2012. This Framework Law is a result of a consensus among parliamentarians in LAC countries on the type of legislation and substantive provisions that incorporate a human rights-based approach to food security and nutrition. It serves as a good example for other regions to consider. The Pan-African Parliament has also adopted a resolution calling for the elaboration of a model law on food security and nutrition in Africa in November 2018. The development of the model law is expected to draw inspiration from the experience of the LAC and other regions.

GENERAL PROVISIONS OF A FRAMEWORK LAW¹

The following table sets out a checklist of key elements to structure a framework law on the right to adequate food and food and nutrition security. It can be of use in assessing and strengthening current laws and policy provisions within a country or region. It can be used to guide the design of national or regional framework laws. It provides a list of possible contents that drafters can customize to suit the needs and obligations of the country.

¹ Adapted from the FAO publications: *Guide to Legislating on the Right to Food*; and *Development of Specific Right to Food Legislation*.

1. General Provisions	Recommendation
Preamble	Set out the overall objectives and reasons for the law, including express reference to the country's goals to end hunger, and create sustainable food and nutrition security; the human rights principles using international human rights instruments as a guide and the context for implementation.
Title and Objectives	Here the 'right to adequate food' can be expressly included within the title. Make the realization of the human right to food a main objective. Consider formulating public policy goals on food and nutrition security and specify that the purpose and objectives of the law should be achieved in a way that is consistent with human rights principles.
Scope	Clearly express who is governed by the law and what activities and subject matters it covers, e.g. refer to who the rights holders are, and the duty bearers, including the obligation to protect and regulate third party activities and the specific responsibilities of different state authorities, as well as the hierarchical status of the law within the domestic legal sphere.
Definitions	This section provides important clarity of interpretation by clearly defining terms and concepts, such as: 'food security', 'nutrition security', 'adequacy', 'availability', 'vulnerability' etc. Include definitions of all key terms and ensure the definitions are consistent with international/regional human rights law.
2. Substantive Provisions	Recommendation
Provision establishing the right to adequate food	Fully establish and identify the right to adequate food and the approaches to its realization by specifying the fundamental right of every person to be free from hunger that confers immediate obligations on the state to act; and the right of all to adequate food, including reference to special needs such as the elderly, people with disabilities, certain chronically sick people, children and pregnant/lactating women etc. conferring the obligation upon the state to take measures to ensure the conditions for food and nutrition security.
Non-discrimination with remedies	There is an overriding obligation on State authorities not to discriminate. Set out the right of persons not to be discriminated against either directly or indirectly and consider including 'special measures' to remedy the effects of discrimination and to achieve formal and substantive equality in implementation; reinforce the duty to prevent and eliminate discrimination against women and girls. Identify specific groups that may be subject to situations of vulnerability e.g. indigenous peoples, albinos or other groups.
Obligations on Government authorities	Set out the state's obligation to respect, protect and fulfill the right of all to feed themselves with dignity. Ensure these terms are defined and covered by specific clauses in the framework law. (See Briefing 1 for further explanation)
Impact assessment for policy coherence	Consider including provisions requiring right to food impact assessments to ensure compatibility with the obligation to respect, protect and fulfill the right to food and to avoid interference in the exercise of the right.
Shocks and Emergencies	Include provisions on ensuring the right to food in emergency situations, covering disaster risk management and preparedness, early warning systems, monitoring and risk assessment, as well as the designation of a coordinating authority.

3. Provisions for Implementation	Recommendation
Information	<p>Stipulate the right of persons to seek and receive information of relevance to the right to food.</p> <p>Require competent authorities to disseminate and provide requested information promptly, clearly and in the most appropriate form, considering linguistic barriers and illiteracy rates.</p> <p>Provide for improved systems of data collection and statistical analysis.</p>
Education and awareness raising	<p>Include measures for education and awareness-raising on nutrition, human rights, sustainable development etc. with specific provisions for children and adults.</p>
National authority on the right to food/Coordination	<p>Provide for a national coordinating authority for the multisector and interdisciplinary collaboration of public/private institutions and stakeholders with adequate budget and powers, consider also coordination bodies at regional or municipal levels.</p>
Sectoral review	<p>Provide for the review of sectoral legislation for its compatibility with the right to food, with priority areas and suggested time frames for completion.</p>
Monitoring system	<p>Make provision for independent human rights based monitoring of the realization of the right to food and of the framework law itself. Include the designation of a responsible authority to collect sound data, ensure separation of powers and transparency throughout (consider establishing National Human Rights Institutions in accordance with the Paris Principles²).</p>
Civil society representation and participation	<p>Include provisions for civil society participation in the coordinating body, in monitoring and in regular consultation spaces.</p>
Remedies	<p>Provide for adequate remedies in cases of breaches/violations. This should include adequate budget and allowance for administrative complaints, judicial remedies, and a role for national human rights institutions, including training for judges and other public officials.</p>
Implementation	<p>Compliance provisions should be included with deadlines for the adoption of specific implementing legislation.</p>
Financial provisions/adequate budget	<p>Provisions should be made on financing for the implementation of the law, including the establishment of any special funding areas. Transparent financial reporting obligations should be established.</p>
International cooperation	<p>Consider whether to include any aspect related to international cooperation for implementation or whether any extraterritorial obligations should arise, for example in the elaboration of trade deals.</p>

CHECKLIST FOR PARLIAMENTARY ACTION

The State has the responsibility to respect, protect and fulfil the right to adequate food for all. Parliamentarians are among the duty bearers within the State and among their functions is the drafting and approving of legislation, the revision and approval of budgets and oversight of executive power. As elected representatives, parliamentarians

have a clear responsibility and mandate to act and should look to:

- Form a parliamentary committee for food security and nutrition, a parliamentary alliance to promote the right to food (such as a parliamentary front against hunger (PFH), or join an existing parliamentary group that works on the right to adequate food;

² Principles relating to the Status of National Institutions 48/134 1993 at <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>

- Review legislation and policies for inclusion of the right to adequate food; look for windows of opportunity to formulate and enact relevant legislation;
- Seek the ratification of international instruments that include the right to adequate food and to incorporate the provisions on the right to adequate into national legislation instruments;
- Consider expert reports on the state of the right to adequate food e.g. from human rights institutions, UN bodies and other sources and follow up on their recommendations;
- Revise and approve budget proposals that ensure public funding will be used as effectively and efficiently as possible in the implementation and protection of the right to adequate food and monitor approved budgetary expenditures, identifying allocation and spending gaps;
- Seek improvement of relevant knowledge and skills, participate in special trainings and capacity building activities;
- Spread the word, inform and generate consensus and public support, approve budgets for public education and programmes leading to awareness raising on right to food;
- Secure partnership, and find allies to support the drafting of a framework law, seeking expert support from lawyers, technicians and academics for the drafting of a framework law;
- Organize parliamentary hearings and consultative meetings to discuss the right to food framework law and promote free and inclusive public participation and input from civil society organizations, including women's organizations, rural and community groups, academia, government, public/private sector representatives etc.;
- Share good practices and experiences with other parliamentary groups around the region and the world.

REFERENCES/RESOURCES FOR FURTHER INFORMATION

Further information can be found at:

FAO Right to Food Guidelines

<http://www.fao.org/3/a-y7937e.pdf>

FAO Guide on legislating for the Right to Food

<http://www.fao.org/3/a-i0815e.pdf>

Right to Food Handbook 2 (Right to Food Legislation)

<http://www.fao.org/3/a-i3449e.pdf>

OHCHR Right to Food

<https://www.ohchr.org/en/issues/food/pages/foodindex.aspx>

FAOLEX national legislation database

Latin America and the Caribbean Parliament (PARLATINO)

Framework Law on the Right to Food and Food Sovereignty

<http://parlatino.org/wp-content/uploads/2017/09/derecho-alimentacion-soberania-ing.pdf>