

The right to food within the international framework of human rights and country constitutions

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

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

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

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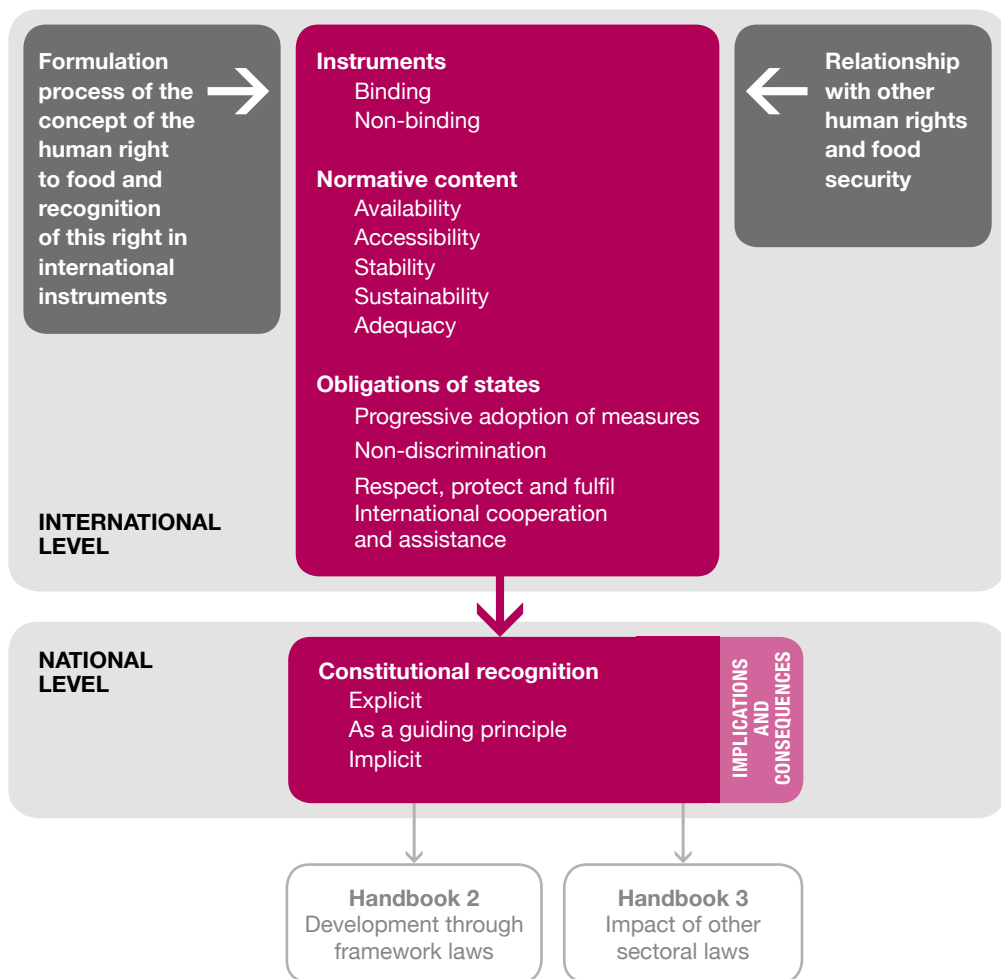
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The FAO glossary on the right to food is available at:
<http://www.fao.org/righttofood/knowledge-centre/glossary/en>

1.1. BACKGROUND, BUILDING PROCESS

Within the realm of international legal instruments, human rights treaties constitute a special category characterized, among other things, by the fact that people are the rights-holders while states are the duty-bearers.

The first major international example of legal thinking on human rights was the **Universal Declaration of Human Rights** passed in 1948 in the aftermath of the horrors of World War II. The Declaration recognizes the human right to food in the context of the right to an adequate standard of living.

UNIVERSAL DECLARATION OF HUMAN RIGHTS, Art. 25(1):

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

Given that it did not have the legal status of a treaty, the Universal Declaration was subsequently implemented through two covenants that are binding on ratifying states: one for civil and political rights and the other for economic, social and cultural rights (ICESCR). The right to food is in the second category of rights.

1.2. BINDING AND NON-BINDING INSTRUMENTS

Binding international instruments impose legal obligations on ratifying states insofar as such states must guarantee the effective enforcement of the agreement at the national level. These international instruments take the form of treaties, covenants or conventions.

MAIN BINDING INSTRUMENTS RELATED TO THE RIGHT TO FOOD¹

- International Covenant on Economic, Social and Cultural Rights (1966).
- Convention on the Elimination of All Forms of Discrimination against Women (1979).
- Convention on the Rights of the Child (1989).
- Convention Relating to the Status of Refugees (1951).
- Convention on the Rights of Persons with Disabilities (2006).
- A number of regional human rights instruments.

Non-binding international instruments lay down guidelines and principles and impose moral obligations on signatory states, but the latter are not legally bound by their provisions. Nevertheless, such instruments have contributed significantly to the development of international human rights law. They take the form of declarations, recommendations or resolutions.

MAIN NON-BINDING INSTRUMENTS RELATED TO THE RIGHT TO FOOD

- Universal Declaration on the Eradication of Hunger and Malnutrition (1974).
- Rome Declaration on World Food Security (1996).
- Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (2004).

1.3. NORMATIVE CONTENT

The human right to food is addressed twice in the ICESCR: under the fundamental right to be free from hunger and under the right to adequate food.

1. Dates refer to the year of adoption and not of entry into force.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, Art. 11:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

The **right to be free from hunger**, closely linked to the right to life, is considered an absolute standard, i.e. the minimum level to be guaranteed to all people, regardless of the degree of development of the state in question.

The right to **adequate food** is a much broader concept as it entails the need to establish the economic, political and social conditions necessary to enable people to achieve food security on their own.

CONCEPT OF THE RIGHT TO FOOD (GENERAL COMMENT 12)

“The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”

The Committee considers that the core content of the right to adequate food implies:

- the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;
- the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

COMPONENTS OF THE RIGHT TO FOOD (CESCR General Comment 12)

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

1.4. STATE OBLIGATIONS

It is primarily the duty of states to comply with human rights obligations. Regarding the right to food, we can identify several types of duties that refer to the adoption of the necessary measures for the progressive realization of this right, without discrimination, while respecting, protecting and fulfilling it, even through international cooperation and assistance.

1.4.1. Obligation to adopt measures

States must take deliberate, concrete measures aimed at achieving the full and progressive realization of the human right to food and must secure at least minimum essential levels so that people are protected from hunger. These measures can be of various types: legislative, administrative, economic, financial, educational and social. They must be allocated the maximum amount of available resources, and it must be ensured that resources that can be invested to meet this aim are not diverted to other areas.

PRINCIPLE OF NON-RETROGRESSION

States can proceed progressively in extending protection of the human right to food, to the extent that their resources permit. While the ICESCR does not impose an obligation to advance at a certain pace and with specific deadlines, States cannot go back, i.e. they cannot reduce the level of protection already achieved, as this would normally be considered a violation of the right to food.

1.4.2. Obligation not to discriminate

The principle of non-discrimination is one of the fundamental elements of international human rights law. The universality of human rights means that they apply to all people without any condition or limitation on the basis of race, colour, sex, language, religion, birth or any other social condition.

It is particularly important to recognize the need to guarantee equality between men and women in the exercise of their right to food.

This obligation not to discriminate is immediately applicable and is not subject to progressive implementation.

1.4.3. Obligation to respect, protect and fulfil

The **obligation to respect** requires states to refrain from adopting measures that could prevent, restrict or deprive people of the ability to feed themselves.

The **obligation to protect** requires states to adopt specific measures, either legislative or of a different sort, to regulate the activities of third parties in order to ensure that they do not interfere with the exercise of the right to food of any sector of the population.

The **obligation to fulfil** means that states must take positive action to:

- Facilitate the exercise of the right to food by applying policies and programmes that improve the ability of people to feed themselves.
- Ensure the right to food by providing food directly to individuals or groups who, for reasons beyond their control cannot feed themselves, thus at least guaranteeing freedom from hunger in the country.

- Promote knowledge of human rights, in particular the right to food, among state agents and officials as well as the private sector.

1.4.4. Obligation to cooperate and provide international assistance

Both cooperation and international assistance are essential for the realization of everyone's right to adequate food. States should refrain from imposing measures that could interfere with the ability of another state to enable its inhabitants to exercise their right to food. Under no circumstances shall food be used to exert political pressure nor shall food aid be contingent upon economic or political issues. Trade embargoes that prevent food from reaching another country shall not be established nor shall sanctions be imposed that affect the supply of food to the people.

The obligation to cooperate also implies that states with extremely limited resources must seek international assistance where necessary to avoid a situation of famine.

1.5. RELATIONSHIP WITH OTHER HUMAN RIGHTS

Human rights are universal, indivisible and interdependent; they are also interrelated without any right taking precedence over another.

Since food is multidimensional in nature, there are close links between the right to food and other human rights such as:

- the right to water, as this is part of food intake and is necessary to produce and cook food;
- the right to property, in particular access to land and other productive resources needed to produce food;
- the right to health, because the proper biological use of food is contingent on the state of health of the person and the possibility of access to basic health care;
- the right to work and fair remuneration, which allows people to provide for their basic needs, including food.

HUMAN RIGHTS “PANTHER” PRINCIPLES
(PANTHER is a mnemonic which stands for the following human rights principles)

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

1.6. RELATIONSHIP BETWEEN THE RIGHT TO FOOD AND FOOD SECURITY

The concept of food security has evolved significantly over the past 50 years. Early drafts placed the emphasis on the availability of food. For example, the Universal Declaration on the Eradication of Hunger and Malnutrition (1974) refers to the “establishment of a world food security system which would ensure adequate availability of, and reasonable prices for, food at all times, irrespective of periodic fluctuations and vagaries of weather and free of political and economic pressures”.

The concept of food security evolved over the following two decades incorporating very relevant aspects such as access, nutrition, sustainability systems, coping strategies, the cultural value of food, etc.

This concept was reformulated at the 1996 World Food Summit where it was determined that food security exists “when all people at all times have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences to lead a healthy and active life”.

The four basic pillars of food security were thus identified: availability, access, stability and utilization.

Food security is a concept based on needs, which sets a goal to be achieved through policies and programmes. The right to food is a legal concept involving rights-holders (people) and duty-bearers (states).

The protection of human rights under the constitution is the most effective form of legal protection as this is considered the fundamental or supreme law of a nation. This means that all domestic laws must abide by its provisions and that, in the event of a conflict, constitutional provisions prevail.

Constitutions generally include a declaration of fundamental human rights that both guide and constrain government action. Some recognize the right to food but do so in different ways.

2.1. EXPLICIT RECOGNITION

Explicit recognition of the right to food in the substantive part of the constitution guarantees that the right to food will be taken into account in all spheres of state activity affecting the exercise of this right, provided that public authorities and domestic courts have a thorough understanding of constitutional provisions and routinely apply them. The constitution may provide for the possibility of claiming the right to food through legal proceedings including individual appeals to the Constitutional Court.

Constitutions may explicitly recognize the right to food as an individual human right of all people (e.g. the Plurinational State of Bolivia, the Republic of Ecuador and the Republic of South Africa) or of a specific sector of the population (the Republic of Colombia recognizes this right in the case of children).

EXAMPLE OF EXPLICIT RECOGNITION

Constitution of the Republic of Nicaragua

Article 63. Nicaraguans have the right to be free of hunger. The State shall promote programmes to ensure adequate food availability and equitable distribution thereof.

In other cases, the right to food is explicitly included in the recognition of broader rights:

- the human right to an adequate standard of living, which includes food among its components (the Republic of Belarus and the Republic of Moldova);
- the right to development, which includes access to food (the Republic of Malawi).

2.2. RECOGNITION AS A GUIDING PRINCIPLE OF STATE POLICY

The constitutions of many countries do not explicitly refer to the right to food in their substantive provisions but do mention it in their guiding principles, which are declarations of principles that define the goals or main aims of state policy and which often reflect societal values. These principles provide guidance for government action, especially in the socio-economic sphere.

The effect of incorporating the right to food among the guiding principles of state policy, instead of including it in the section on fundamental rights, depends largely on the view adopted by judges and government officials. If the right to food is considered as an objective to be attained, its legal force pales in comparison with other cases where it is considered as an individual right that must be respected, and where the courts may take a more active role in its defence.

The constitutions of the Federal Republic of Nigeria and the Democratic Socialist Republic of Sri Lanka are examples of this type of recognition of the right to food as a guiding principle of state policy.

EXAMPLE OF RECOGNITION AS A GUIDING PRINCIPLE OF STATE POLICY

Constitution of the Federal Republic of Nigeria

Article 16(2)d. The State shall direct its policies to provide all citizens appropriate and adequate shelter, suitable and adequate food, a reasonable minimum wage established at national level, health care, an old-age pension and disease and welfare benefits for disabled persons.

2.3. IMPLIED RECOGNITION THROUGH A WIDER INTERPRETATION OF OTHER HUMAN RIGHTS

Although a given country may not recognize the right to food explicitly in the substantive part of the constitution or in the guiding principles of state policy, this right may be implicitly recognized through a broad interpretation of other recognized human rights such as the

right to life, the right to an adequate standard of living, the right to a minimum wage allowing one to live with dignity, the right to the necessary means to live with dignity, etc.

Experience in several countries has shown that governments can be required to ensure the effective exercise of the right to food in accordance with the constitutional provisions that recognize other human rights. However, this depends on the legal interpretation of the constitution and the human rights set out therein.

2.4. IMPLICATIONS AND CONSEQUENCES OF CONSTITUTIONAL RECOGNITION

The impact that constitutional guarantees can have on the right to food in a given country will depend on several factors:

- the way this right is recognized;
- the way it is described in the constitution;
- the knowledge that state authorities and courts have about this right;
- the will of said authorities to enforce the right;
- the country's legal procedures and appeal mechanisms;
- citizens' knowledge of their own rights.

The likelihood of receiving protection and remedy in the event of a violation of the right to food depends on the willingness of judges to enforce this human right. In this sense, one of the factors that can contribute to a more open and engaged attitude on the part of judges is the degree of detail with which the right to food is described in the constitution. In some constitutions, rights considered particularly important are drafted in greater detail.

Clear and explicit constitutional recognition of the right to food would serve as a benchmark against which to compare government action, would prevent uncertainty in judicial decisions, would provide safeguards against the repeal of this right and would offer a clear and solid legal basis for the drafting of a right to food framework law and ensure that it is respected by other sectoral laws.

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

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

RIGHT TO FOOD HANDBOOKS

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