

5.

LEGAL AND INSTITUTIONAL SETTINGS FOR MONITORING THE RIGHT TO FOOD

IN THIS CHAPTER WE COVER:

- Legal and institutional issues that may be relevant for implementing rights based monitoring.
- Ways to promote institutional participation and coordination in the monitoring process.

Legal and institutional settings in a country help determine what to monitor. Institutional mandates and capacities will also determine how the right to adequate food can be monitored, and which institutions participate in this process.

MONITORING THE LEGAL FRAMEWORK TO REALISE RIGHTS

The national legal framework should be conducive to the protection and promotion of all human rights. This framework essentially consists of the country's constitution, laws and regulations, customary law, and institutions with the responsibility to respect, protect and fulfil human rights. This legal framework is the basis for rights holders to claim their right to adequate food relying on legal provisions, recourse mechanisms, jurisprudence and institutional remedies. Assessing and then monitoring changes in the legal framework is an important contribution to turn rights holders into rights claimants. It can also bring about discussion and dialogue about changes needed to make the legal environment more accessible. Courts can play a monitoring role in assessing whether a particular administrative decision, policy or piece of legislation violates the right to adequate food. Capacity strengthening of courts to play a role in monitoring the right to adequate food should be considered in each country. In turn, court proceedings can be monitored for cases filed and cases resolved, and their outcomes. In practice, however, not many cases concerning the right to adequate food are submitted to courts. One outstanding example is from India (Box). Assessment of the relevant legal and regulatory arrangements is an important first step²⁵. The analysis should indicate what parts of these arrangements require adjustments. For example, in some countries this process starts with the introduction of a constitutional amendment. Implementation of the changes to be introduced in the legal framework need to be monitored.

²⁵ Volume II, chapter 4

INSTITUTIONAL FRAMEWORKS TO MONITOR THE RIGHT TO ADEQUATE FOOD

One of the first priorities in designing a national level rights-focused monitoring framework is the analysis of existing legal and administrative frameworks to determine their level of adequacy. Behind every effective and functioning monitoring system is a solid legal and administrative framework. Firstly, a set of criteria is needed against which to examine existing institutional conditions and to help to identify gaps that will need to be addressed. The analysis should include an examination of the various institutions that are likely to be involved, their institutional mandates and their degree of authority (as provided for by law), their capacity to gather information and undertake analysis and assessment, as well as their official reporting responsibilities.

BOX 5.1 - An example from India

The landmark case concerning the right to food is the People's Union for Civil Liberties (PUCL) petition to the Supreme Court filed in 2000, in response to starvation deaths in rural areas, especially in the drought-affected areas of Rajasthan and Orissa. The petitioners claimed that the State failed to properly implement the famine code and had thus violated the constitutional right to life and the right to food. In 2003, in its Interim Order, the Supreme Court acknowledged the violation of the constitutional right to life by interpreting it in the light of Article 47 of the Directive Principles and the State's duty to raise the level of nutrition and the standard of living of its people. The Court also issued several orders to Central and State governments to take measures to improve the situation; these included orders for the opening times of ration shops, the provision of grain at the set price to families below the poverty line, the publication of information about nutrition-related schemes and the progressive introduction of midday meal schemes in schools. The Court recognised that all benefits provided for by the relevant nutrition-related schemes are legal entitlements, and thus redress can be sought in case of violations.

Access to information and information sharing among different public institutions should ideally be mandated by law, and be considered in designing the rights-focused monitoring framework with the various institutional stakeholders to be involved.

A checklist of institutional attributes

- A CLEAR MANDATE
- ADEQUATE AND IDENTIFIABLE HUMAN AND FINANCIAL RESOURCES
- A WORK PLAN THAT SPECIFIES TIME-BOUND OUTPUTS
- A STRONG DISSEMINATION PLAN TARGETING DIFFERENT STAKEHOLDERS
- A HIGH LEVEL OF CREDIBILITY
- GOOD ACCESS TO ALL RELEVANT SOURCES OF INFORMATION
- ADVISORY COMMITTEES WITH HUMAN RIGHTS AND TECHNICAL EXPERTISE
- GOOD ADVOCACY AND COMMUNICATIONS CAPACITY

A checklist against which to assess attributes and responsibilities of an institution with primary responsibility to monitor the realisation of human rights may cover the following²⁶:

- a. The institution/organisation should have a clear mandate for monitoring the right to adequate food. This mandate should be endorsed at the highest level (for instance, by Parliament), explicitly stated in the Constitution (as is the case in South Africa), or enshrined in specific legislation. The institutional mandate should be widely known and understood by key stakeholders.
- b. The institution/organisation should have adequate and identifiable human and financial resources to undertake the monitoring tasks.
- c. There should be a well-defined work plan on the basis of which the institution/organisation can be held accountable for the production and dissemination of rights-focused monitoring information outputs.
- d. The institution/organisation should be organised in such a way that the monitoring information outputs easily reach key stakeholders at all levels in both the government and in non-governmental sectors. It is important that such monitoring information effectively influences decision-making, planning and programming.
- e. The institution/organisation should have a high level of credibility in the eyes of both those with responsibilities to act upon the monitoring information, as well as right holders. It should be seen as objective and independent, free from political influence. The realisation of human rights should be a major part of its institutional agenda.
- f. The institution/organisation should have effective access to all relevant information, and be able to rely on existing information networks in both the government and non-governmental sectors. It should have both the mandate and the capacity to verify the validity of the information received from all sources.
- g. The institution/organisation should, as part of its mandate, establish advisory committees that represent specific expertise in both technical and human rights aspects needed to monitor the right to adequate food.
- h. The institution/organisation should have a good communications and advocacy strategy in place when its mandate provides for pro-active promotion of the realisation of the right to adequate food. Monitoring information should likewise be designed to input into the communications and advocacy strategy.

It is unlikely that any one single institution (or unit within an institution) will meet all of the above criteria. Nor may it be wise to concentrate all monitoring functions in one institution. Nevertheless, efforts should be made to approach the high institutional standards outlined above. The term “institution”, as used here, refers not only to government institutions, but can include other agencies such as non governmental organisations and faith-based organisations.

²⁶ These approximately follow the so-called Paris Principles of 1991 which provide reference points for establishing and operating human rights institutions.

There may exist different institutional situations with respect to responsibilities to generate monitoring information, to monitor progress, and to implement pro-right-to-adequate food measures. This is compounded by a diverse food security mandate among various institutions, as pointed out in chapter 4. One way to overcome some of these *inter-institutional aspects* is to strengthen an inter-institutional network to monitor the right to adequate food, with some institutional members identified as primary or leading monitoring institutions or organisations, and others as associated institutions that may undertake specialised and highly technical tasks, the results of which feed into the overall monitoring function. Several scenarios are possible.

One scenario would be where a human rights institution assumes a central monitoring role, relying largely on information generated by associated institutions, such as line and planning ministries, statistical offices, poverty monitoring units, and Non Governmental Organisations. Technical monitoring expertise may have to be seconded to the human rights institution. A *second* scenario may be where monitoring is part of the mandate of an inter-ministry body, like a national food security and nutrition council, that relies on information from various sources. The human rights institution should be a member of this body. Such a council would need a technical secretariat, with capacity to analyse information including from a human rights perspective. For example, staff from a human rights institution can be seconded to this technical secretariat. A *third* scenario is where most of the monitoring of the realisation of human rights is undertaken by a network of non-governmental agencies, in first instance, monitoring government efforts to realise human rights. Civil society organisations often rely on government statistics to monitor the realisation of human rights, though they may have means to generate additional information and/or to verify government statistics. Rather than being an antagonistic relationship, efforts should be made that this eventually leads to a government-civil society partnership in monitoring and ultimately in the implementation of pro-right-to-adequate food measures. This is what happened in Brazil: civil society networks first undertook monitoring of government actions. At present a great deal of the monitoring role has been assumed by the National Food Security Council (and similar councils at state level), two-thirds of its members are from civil society and one third from the government sector. Academic institutions often conduct food security and nutrition related research. Primary monitoring institutions may also rely on research results from universities and research centres. Research institutions are usually seen as being independent and neutral, and generate normative information that may serve as standards to be used in rights-based monitoring.

Below is a look at a few concrete country examples that illustrate how various agencies may take on specific tasks and responsibilities in the rights-based monitoring process (Box). The case from South Africa is a special one, and even the process in Brazil has many unique features.

STRENGTHENING THE SUSTAINABILITY OF MONITORING THE RIGHT TO ADEQUATE FOOD

The lack of sustainability has repeatedly been identified as hindering monitoring information systems at country level. National information systems are often at least partially dependent on donor funding. This may be true for sector information systems, national surveys, population or agricultural censuses. Sustainability has political, social, institutional, technical and financial dimensions that are closely interrelated. Capacity strengthening can contribute to institutional and technical sustainability. An information system that is politically and socially supported, that has a strong institutional base or network, and that produces relevant, timely and technically sound information outputs, will most likely have adequate financial resources on a long-term basis.

BOX 5.2 - Examples of agency tasks and responsibilities in Right based monitoring

Example 1: Brazil

In Brazil, the Ministerio Publico has a clear mandate to monitor the realisation of economic, social and cultural rights. However, it seems to lack adequate human and financial resources to undertake necessary monitoring tasks itself, while the Office of the National Rapporteur for the Right to Food, Water and Rural Land monitors rights violations and reports these to the Ministerio Publico for follow-up action.

Example 2: South Africa

The South African Human Rights Commission is constitutionally mandated to monitor the realisation of all human rights (not only the right to adequate food), is autonomous and has unlimited access to information from all government departments. The Commission reports to, and can make legislative proposals to the Parliament. As an independent organisation, South Africa Human Rights Commission obtains information from line ministries and other duty bearers, analyses the information and issues a public report to Parliament.

Example 3: Brazil

A network of Non Governmental Organisations, social associations and institutions in Brazil called Fórum Brasileiro de Segurança Alimentar e Nutricional, undertakes research and fieldwork to generate and analyse information related to food and nutrition. The outputs produced by the network and individual members are used for policy and programme proposals and for monitoring. This type of networking – through the establishment of collaborative links among different agencies is a model that should be encouraged in all countries.

Experience to date suggests that the likelihood of successful monitoring will be enhanced through:

- An inclusive and participatory process, involving key stakeholders (monitoring information providers and users).
- A good communication process which clearly articulates the value added of the information system in integrating human rights principles and approaches in existing monitoring activities.
- An early demonstration of what the information system is capable of producing in response to information needs on the part of various users.
- A realistic and transparent assessment of the information system, and a clear identification of what is needed to improve the system's efficiency and effectiveness.

Applying these ideas may help to improve the chances of successful, more meaningful and long-term realisation of the right to adequate food and other economic, social and cultural rights.