

RIGHT TO FOOD - AN INTERNATIONAL PERSPECTIVE

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Abstract

There is wide consensus that every woman, man and child has the right to adequate food - this human right is enshrined in a number of international instruments and is repeatedly reaffirmed in the outcome documents of major international conferences and summits. There is also agreement that an approach grounded on the right to food and good governance is necessary for tackling the root causes of hunger and reducing the persistently high number of people suffering from hunger and malnutrition. Consequently, critical questions are: How can international commitments be translated into realities for people? And how can an approach based on the right to food make a difference?

Many States have accepted the right to food as a legally binding obligation, including the 160 States Parties (as of September 2012) to ICESCR. An increasing number of countries have also enshrined the right to food in their national constitutions and legislation, thus taking a fundamental step towards the realization of this right. The right to food is being increasingly integrated into ordinary laws and policies relating to FNS.

Despite this international agreement, however, there is still a significant gap between formal recognition of the right to food in legislative and FNS frameworks and its practical implementation. 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 level and international level.

This paper briefly reviews the right to food in international law and discusses whether there is a duty to take legislative action. The present paper seeks to make a brief study of the legal provisions relating right to food.

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INTRODUCTION

It is generally agreed that every man, woman and child has the right to adequate food¹. 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-fulfilment². According to the Food and Agriculture Organization of the United Nations (Herein after referred as FAO), more than one billion people are undernourished³.

Over two billion suffer from a lack of essential vitamins and minerals in their food. Nearly six million children die every year from malnutrition or related diseases, that is about half of all preventable deaths. The majority of those suffering from hunger and malnutrition are smallholders or landless people, mostly women and girls living in rural areas without access to productive resources. Although many people might imagine that deaths from hunger generally occur in times of famine and conflict, the fact is that only about 10 per cent of these deaths are the result of armed conflicts, natural catastrophes or exceptional climatic conditions. The other 90 per cent are victims of long-term, chronic lack of access to adequate food.

Adequate food is a human right, a right of every individual in every country. This has been formally recognized by the great majority of states. But there is a large difference between a state's formal recognition of food as a human right and its putting this recognition fully into practice.

Many States have accepted the right to food as a legally binding obligation, including the 160 States Parties (as of September 2012) to the International Covenant on Economic, Social and

¹ 'Right to food' to mean the human right to adequate food as enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (OHCHR, 1966) and elaborated in General Comment No. 12 of the Committee on Economic, Social and Cultural Rights (CESCR, 1999). FAO's Right to Food Glossary is available at http://www.fao.org/righttofood/kc/glossary_en.htm

² 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.

³ See <http://www.who.int/inf-pr-2001/en/pr2001-30.html> (Last visited on 13 April, 2013)

Cultural Rights (Herein after referred as ICESCR). An increasing number of countries have also enshrined the right to food in their national constitutions and legislation, thus taking a fundamental step towards the realization of this right. The right to food is being increasingly integrated into ordinary laws and policies relating to food and nutrition security (Herein after referred as FNS)⁴.

Despite this international agreement, however, there is still a significant gap between formal recognition of the right to food in legislative and FNS frameworks and its practical implementation.

Combating hunger and malnutrition is more than a moral duty or a policy choice; in many countries, it is a legally binding human rights obligation. The right to food is recognized in the 1948 Universal Declaration of Human Rights as part of the right to an adequate standard of living, and is enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights. It is also protected by regional treaties and national constitutions. Furthermore, the right to food of specific groups has been recognized in several international conventions. All human beings, regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status have the right to adequate food and the right to be free from hunger.

At the World Food Summit organized by FAO in 1996, States agreed to halve the number of undernourished people by 2015. They also called for the obligations arising from the right to food as provided for under international human rights law to be clarified. In response, the Committee on Economic, Social and Social Rights issued its general comment No. 12 (1999), which defines the right to food. In the United Nations Millennium Declaration, adopted by the General Assembly in 2000, States committed themselves to halving the proportion of people suffering from hunger by 2015. In 2004, FAO adopted the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, providing practical guidance to States in their implementation of the right to adequate food.⁵

UNDERSTANDING THE RIGHT TO FOOD

Key aspects of the right to food

⁴ See <http://www.uncsd2012.org/thefuturewewant.html> (Last visited on 18 feb. 2013)

⁵ See http://www.fao.org/index_en.htm (Last visited on 12 feb. 2013)

The right to food is an inclusive right. It is not simply a right to a minimum ration of calories, proteins and other specific nutrients. It is a right to all nutritional elements that a person needs to live a healthy and active life, and to the means to access them. Every human being has the right to adequate food and the fundamental right to be free from hunger, according to international human rights law. This is called “the Right to Food” for short. The right to adequate food covers quantity, quality, and cultural the right to food. Some obligations are immediate; others should be realized progressively to the maximum of available resources.

The right to food is not a right to be fed, but primarily a right to feed oneself in dignity. Only if an individual is unable, for reasons beyond his or her control, to provide for themselves, does the State have obligations to provide food or the means to purchase it. See also:

- Article 11 and Article 2 of the International Covenant on Economic, Social and Cultural Rights
- Article 25 of the Universal Declaration of Human Rights General Comment 12 of the Committee on Economic, Social and Cultural Rights: The
- Right to Adequate Food (Art. 11)

The right to food can be described by Committee on Economic, Social and Cultural Rights as follows:

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 procurement⁶.

The right to adequate food as a human right was first formally recognized by the United Nations in the Universal Declaration of Human Rights (Herein after referred as UDHR) from 1948, as a part of the right to a decent standard of living. In the UDHR Article 25 it was stated that:

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, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

⁶ See The Committee on Economic, Social and Cultural Rights (Rev.1), Available at <http://www.codexalimentarius.org>

It was further recognized in Article 11 of the International Covenant on Economic, Social and Cultural Rights, a binding instrument for those states having ratified it. In 1999, the right to food was interpreted by the Committee on Economic, Social and Cultural Rights (Herein after referred as CESCR) in the **General Comment 12** establishing that:

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

In addition, the United Nations Special Rapporteur on the Right to Food also defined the right to food:

The right to have regular, permanent and free 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 fear⁷.

It is important to emphasize certain elements of the right to food.

Food must be available, accessible and adequate⁸.

- *Availability* requires on the one hand that food should be available from natural resources either through the production of food, by cultivating land or animal husbandry, or through other ways of obtaining food, such as fishing, hunting or gathering. On the other hand, it means that food should be available for sale in markets and shops.
- *Accessibility* requires economic and physical access to food to be guaranteed. Economic accessibility means that food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as school fees, medicines or rent. For example, the affordability of food can be guaranteed by ensuring that the minimum wage or social security benefit is sufficient to meet the cost of nutritious food and other basic needs. Physical accessibility means that food should be accessible to all, including to the physically vulnerable, such as children, the sick, persons with disabilities or the elderly, for

⁷ See United Nations Special Rapporteur on the right to food, Available at <http://www.fao.org>

⁸ See <http://faolex.fao.org/faolex/index.htm> (Last visited on 12 march 2013)

whom it may be difficult to go out to get food. Access to food must also be guaranteed to people in remote areas and to victims of armed conflicts or natural disasters, as well as to prisoners. For example, to guarantee physical access to food to people living in remote areas the infrastructure could be improved, so that they can reach markets by public transport.

- *Adequacy* means that the food must satisfy *dietary needs*, taking into account the individual's age, living conditions, health, occupation, sex, etc. For example, if children's food does not contain the nutrients necessary for their physical and mental development, it is not adequate. Food that is energy-dense and low-nutrient, which can contribute to obesity and other illnesses, could be another example of inadequate food. Food should be *safe* for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. Adequate food should also be *culturally acceptable*. For example, aid containing food that is religious or cultural taboo for the recipients or inconsistent with their eating habits would not be culturally acceptable.

WHY IMPLEMENT THE RIGHT TO FOOD?

Legal Obligation: States that have ratified the International Covenant on Economic, Social and Cultural Rights have an obligation to progressively realize the right to food (Art.11 ICESCR).

Politically Popular: People want to be able to feed themselves in dignity. People want legally enforceable rights and predictability. People do not want to see other people starve.

Economically Sound: Reducing hunger fosters economic growth. Food secure people are more productive, less often sick and tend to invest more in the future. Malnourished children on average lose 5-10 % in lifetime earnings.

Empowering: A rights-based approach empowers individuals to participate in decision making, to claim their rights and to demand recourse. It strengthens local communities to take care of their own members.

Accountability: The language of rights and obligations enables rights holders and civil society to hold public officials and governments accountable for their programmes and policies.

Addressing Root Causes: Chronic food insecurity and poverty are often structural, and caused by underlying social and political factors. Rights based approaches provide the powerless with leverage to address such causes.

Ethics: Malnutrition can be addressed and the Right to Food can be implemented in any country. It is unethical not to act.

HOW THE RIGHT TO FOOD ADDS TO FOOD SECURITY

- States have obligations and are accountable;
- Individuals are rights holders;
- Right to Food links to all other human rights;
- Principles of non-discrimination, participation and rule of law are integral to right to food;
- Implementing the right to food includes

THE RIGHT TO FOOD IN INTERNATIONAL LAW

According to the 1948 UDHR, the right to food is one of the human rights to which all human beings are inherently entitled. The first formal reference to this right was made in article 25 of the UDHR, which states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food”.

In 1966, the ICESCR established the right to food as a legally binding right. Article 11 of the Covenant provides for this right in two paragraphs:

..the right to adequate food as part of the right to an adequate standard of living (Article 11.1)⁹; and the fundamental right to be free from hunger (Article 11.2)¹⁰.

⁹ **Article 11.1**, The States Parties to the present Covenant recognizes 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.

For the 30 years that followed the adoption of the ICESCR, little progress was made towards the implementation of the right to food. In 1996, the World Food Summit asked the Committee on Economic, Social and Cultural Rights (CESCR) to clarify what the right to food meant and ways of implementing it. In 1999, CESCR issued General Comment No. 12 (GC12) (CESCR, 1999), which provides an authoritative interpretation of the right to adequate food. This was subsequently complemented by General Comment No. 15 on the right to water, which is inextricably related to the right to food (CESCR, 2002: 3).

According to CESCR, the right to 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” (CESCR, 1999: 6). It emphasizes the scope of this human right, which “shall not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients”. CESCR considers that the core content of the right to 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” (CESCR, 1999: 8). It also explains States’ obligations and recommends the adoption of national strategies “to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks” (CESCR, 1999: 21).

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:

- UDHR: Article 25 recognizes the right to an adequate standard of living, including food;

¹⁰ **Article 11.2**, The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

1. 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;

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

- ICESCR: 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);
- CEDAW¹¹, 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
- CRC: 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).

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 Security¹², 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 food¹³.

CONSTITUTIONAL RECOGNITION OF THE RIGHT TO FOOD

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 land¹⁴ 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,

¹¹ 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).

¹² Adopted by the 127th Session of the FAO Council, November 2004

¹³ <http://www.fao.org/righttofood> (Last visited on 1 March, 2013)

¹⁴ 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 54; 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.

balances and limitations of governmental authority¹⁵. 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. States have the primary obligation to protect and promote human rights. Human rights obligations are defined and guaranteed by international customary law and international human rights treaties, creating binding obligations on the States that have ratified them to give effect to these rights. Several national constitutions also recognize the right to food and corresponding obligations of the State.

States have to *protect* individuals' enjoyment of the right to food against violations by third parties (e.g., other individuals, groups, private enterprises and other entities). For example, States should prevent third parties from destroying sources of food by, for instance, polluting land, water and air with hazardous industrial or agricultural products or destroying the ancestral lands of indigenous peoples to clear the way for mines, dams, highways or industrial agriculture. The obligation to protect also includes ensuring that food put on the market is safe and nutritious. States must therefore establish and enforce food quality and safety standards, and ensure fair and equal market practices. Furthermore, States should take the legislative and other measures needed to protect people, especially children, from advertising and promotions of unhealthy food so as to support the efforts of parents and health professionals to encourage healthier patterns of eating and physical exercise. A State must also take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organizations.

Some treaties and national constitutions permit States to achieve the full realization of the right to food *progressively*. For example, article 2 (1) of the International Covenant on Economic, Social and Cultural Rights provides:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

¹⁵ 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, which 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.

This is an implicit recognition that States may have resource constraints and that it may take time to fully implement the obligations towards the right to food. However, this does not mean that States do not need to do anything until they have sufficient resources. On the contrary, it means that States must lay down a roadmap towards the full realization of the right to food immediately, and demonstrate that they are making every possible effort, using all available resources, to better respect, protect and fulfil the right to food.

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.

Right to food case in India

The decision of the Supreme Court of India in both *Kishen Pattnayak & another v. State of Orissa*¹⁶, and *People's Union for Civil Liberties (PUCL) v. Union of India and others*¹⁷ 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

¹⁶ AIR 1989 SC 677

¹⁷ *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.

official poverty line. The court case continued for several years and included the appointment of Court Commissioners¹⁸ to monitor the implementation of interim orders¹⁹.

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.

Types of constitutional recognition of the right to food

The national legal and institutional framework is decisive for the implementation of the right to food. Many countries have included the right to food in their constitutions, either specifically or as part of the provisions on the right to an adequate standard of living²⁰. Several countries are developing a framework law on the right to food. This is useful for fleshing out any constitutional provisions, clarifying rights and obligations, as well as elaborating on institutional roles and coordination for the realization of the right to food. It can also provide for remedies for violations of the right to food and strengthen the mandates of national human rights institutions (NHRIs). The legal framework for institutional coordination is particularly important for the right to food, responsibilities for which typically go well beyond the mandate of any one sectorial ministry.

Sectorial legislation is also important because it regulates the economic environment in which people are, or are not, able to feed themselves in dignity and the adequacy of the food marketed and sold, determines how markets function, regulates access to natural resources, and provides for entitlements to State support. These must be reviewed to ensure there is nothing that hinders people's ability to feed themselves or their right to social assistance²¹. 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;

¹⁸ Available at: <http://www.sccommissioners.org>

¹⁹ See the website of the Indian right to food campaign for additional information: <http://www.righttofoodindia.org>

²⁰ The Right to Food Guidelines: Information Papers..., pp. 134–137.

²¹ See FAO, Guide on Legislating for the Right to Food (Rome, 2009).

(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.

Explicit and direct recognition of the right to food

According to the survey of Food and Agriculture Organization of the United Nations (FAO), 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 an independent right applicable to everyone. An example of such a constitutional provision is South Africa Constitution has explicit and direct recognition of the right to food for all²². 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. Constitution Colombia²³ has explicit and direct recognition of the right to food for children.

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*²⁴.

CONCLUSION

Amartya Sen once remarked in his characteristically economical prose, that ‘the law stands between food availability and food entitlement’²⁵. What he meant is that unless we take seriously our duties towards the most vulnerable, and the essential role of legal entitlements

²² 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 dependents, 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.

²³ Article 44: States that Children have fundamental rights to: life, integrity, health and social security, and adequate food.

²⁴ See UN Declaration on the Right to Development, proclaimed in 1986 by UN General Assembly resolution 41/128.

²⁵ Amartya K. Sen, *Poverty and Famines. An Essay on Entitlements and Deprivation*, Clarendon Press, Oxford, 1981, p. 166.

in ensuring that the poor have either the resources required to produce enough food for themselves or a purchasing power sufficient to procure food from the market, our efforts at increasing production shall change little to their situation. For they are hungry not because there is too little food: they are hungry because they are marginalized economically and powerless politically.

Over the past few years, significant progress has been made in the implementation of the human right to adequate food, the result of the co-construction of issues by civil society, social movements, and governments. Governments now understand that hunger is not simply a problem of supply and demand, but primarily a problem of a lack of access to productive resources such as land and water, of unscrupulous employers and traders, of an increasingly concentrated input providers sector, and of insufficient safety nets to support the poor. They understand that while attention has been focused on addressing the mismatch between supply and demand on the international markets -- as if global hunger were the result of physical scarcity at the aggregate level --, they should now pay greater attention both to the imbalances of power in the food systems and to the failure to support the ability of small-scale farmers to feed themselves, their families, and their communities. They understand the importance of more equity in the food chains, of empowerment, and of accountability: they understand that the right to food can constitute a tool to improve the effectiveness of policies that seek to combat hunger and malnutrition.