

## 2 FRAMEWORK LAWS AND ACTION PLANS

### 2.1 Framework laws

Framework laws transpose into legislative commitments policies that aim at the fulfilment of human rights. This not only improves these policies at the operational level, by clearly allocating responsibilities across different branches of government, by setting precise time-bound targets (benchmarks) to be achieved, and by encouraging permanent evaluation and thus improvement of the measures taken to reach the targets set. It also improves the legitimacy of such policies, if framework laws are adopted through participatory mechanisms or are discussed in parliamentary assemblies. Most importantly, framework laws ensure accountability: at a minimum, they oblige different public authorities to explain their choices, and if they do not take the measures expected from them, to offer a proper justification for any delays or failures to take such measures; at best, they invest individual right-holders with what Amartya Sen has referred to as 'metarights' – rights to have policies adopted that aim at the realizing of rights.

**Amartya K. Sen, 'The Right Not to be Hungry' in P. Alston and K. Tomasevski (eds.), *The Right to Food* (Leiden: Martinus Nijhoff, 1984), p. 69 at 70–1:**

A metaright to something  $x$  can be defined as the right to have policies  $p(x)$  that genuinely pursue the objective of making the right to  $x$  realisable. As an example, consider the following 'Directive Principle of State Policy' inserted in the Constitution of India when it was adopted in 1950: 'The state shall, in particular, direct its policy towards securing ... that the citizens, men and women equally, have the right to an adequate means of livelihood.' The wording was careful enough to avoid asserting that such a right already exists, but saying only that policy should be directed to making it possible to have that as a right. If this right were accepted, then the effect will not be to make the 'right to adequate means of livelihood' real – even as an abstract, background right – but to give a person the right to demand that policy be directed towards securing the objective of making the right to adequate means a realisable right, even if that objective cannot be immediately achieved. It is a right of a different kind: not to  $x$  but to  $p(x)$  ...

It is not difficult to see why metarights of this kind have a particular relevance for economic aims such as the removal of poverty or hunger. For many countries where poverty or hunger is widespread, there might not exist any feasible way whatsoever by which freedom from them could be guaranteed for all in the very near future, but policies that would rapidly lead to such freedom do exist. The metaright for freedom from hunger is the right to such a policy, but what lies behind that right is ultimately the objective of achieving that freedom.

In its General Comment No. 15 of 2002 on *The Right to Water*, the Committee on Economic, Social and Cultural Rights notes: 'States parties may find it advantageous to adopt framework legislation to operationalize their right to water strategy. Such legislation should include: (a) targets or goals to be attained and the time-frame for their achievement; (b) the means by which the purpose could be achieved; (c) the intended collaboration with civil society, private sector and international organizations; (d) institutional responsibility for the process; (e) national mechanisms for its monitoring;

and (f) remedies and recourse procedures' (at para. 50). The same recommendation is made, for instance, in General Comment No. 12 (1999) on *The Right to Food*. Arjun Sengupta has summarized the components of such a framework law:

**Arjun Sengupta, 'The Right to Food in the Perspective of the Right to Development' in W. B. Eide and U. Kracht (eds.), *Food and Human Rights in Development* (Antwerp-Oxford: Intersentia-Hart, 2007), vol. II, 'Evolving Issues and Emerging Applications', p. 107 at p. 131:**

1. The targets for the different levels of achievement of the rights over a period of time, will have to be fixed in terms of the indicators of those rights to be realized in phases. The fixing of these targets must follow from an intensive consultation between the stakeholders, the State Party and the civil society organisation, following the human rights principles of equity, non-discrimination and participation.
2. A programme has to be worked out by the State authorities to realise these rights, using their interdependence and by assignment of the direct and indirect duties to all the agents including the State administration at different levels.
3. Mechanisms have to be established to review and monitor each of these agents' performance in terms of their assigned duties, and for that purpose appropriate legislations may have to be enacted when the duties may be directly related to the outcomes of the targets. For this, institutions may have to be created when the existing institutional arrangements are not adequate for the task.
4. With appropriate legislation, part of these rights and their components can be fully justiciable, with a Court of Law deciding on the extent of responsibilities of the different agents and recommending corrective actions.
5. The institutional mechanisms set up in addition to the administrative procedures should monitor and review the programme in the light of the performance of the different duty-holders, and make recommendations about corrective actions which would be binding on the different agents. Again, such a procedure could be carried out with full participation of all the stakeholders and the civil society organisations at the different levels of implementation of the rights.
6. A procedure must be set up, consistent with human rights standards, to revise the targets periodically in order to secure the rights through progressive realisation.

Writing in the context of the right to food, S. Khoza outlines the benefits of framework legislations as follows:

**Sibonile Khoza, 'The Role of Framework Legislation in Realising the Right to Food: Using South Africa as a Case Study of this New Breed of Law' in W. B. Eide and U. Kracht (eds.), *Food and Human Rights in Development* (Antwerp-Oxford: Intersentia-Hart, 2005), vol. I, 'Legal and Institutional Dimensions and Selected Topics', pp. 187–204 at pp. 196–7:**

*Managing a complex process.* Implementing the right to food ... involves a complex process. Access to food is multi-dimensional and cross-sectoral in nature requiring legislative and

other measures in many sectors pertaining to the right. Framework law provides a useful tool in ensuring comprehensiveness and better coordination in the conception and implementation process of national strategies and policies.

*Instructing role players and ensuring accountability* Framework law allocates specific responsibilities to different spheres and departments of government as well as to the public institutions such as Ombudsmen/Public Protectors. This ensures that specific government departments and agents bear express responsibility for implementing the right, and are held accountable for failure to do so.

*Reinforcing human rights and democratic principles.* The process leading to enacting framework law is grounded on human rights and democratic principles of transparency, participation, accountability and inclusivity. In this regard, it would demand the full participation of a wide range of sectors in addressing the currently inadequate measures, and at the same time, would command the holding of extensive public consultations to allow vigorous debates and submissions on the draft legislation.

*Defining purpose and principles of law in respect of the right.* Framework law provides for the description of its purpose and the governing principles. It would also provide a detailed description of the nature and scope of the right. It would identify the right-holder and duty-holder in respect of the ... entitlements. It arguably purports to confirm the judicial enforceability of the right and sets the remedial procedures that would enable people to claim their right.

*Operationalizing the implementation process.* Depending on the approach adopted to include the crucial elements, framework law could be seen as a transformed policy framework. By featuring such operational [elements] as benchmarks, indicators and time-framed targets and goals, framework law provides a systematic approach and viable tool for measuring and monitoring progress towards achieving the progressive realisation of the right.

*Tangibly re-affirming government's commitment.* By adopting framework legislation, government would be making a firm political and legislative statement that it is committed to realising the constitutional right to food progressively, and would ensure immediate access to basic food needs for those most vulnerable ...

The absence of framework legislation tends to have the opposite effects of maintaining a fragmented, and often weak and inadequate legislative system relating to the implementation of the right to sufficient food at the expense of people's basic needs, human dignity and life. Without such a law, there is also no assured way of measuring progress in and monitoring the implementation of the right.

One example of such a framework law is the Brazilian Law of 15 September 2006 establishing a National Food and Nutritional Security System (SISAN). In 2003, Brazil launched a multisectoral Zero Hunger programme, and it re-established the National Food and Nutritional Security Council (CONSEA), which had briefly functioned in 1993–5 but had been dismantled under the pretext of its mandate being incorporated under a broader poverty eradication strategy. SISAN was set up as a result of the need to improve the co-ordination of the variety of programmes set up under 'Zero Hunger', and to improve the accountability of the agencies responsible for implementing these programmes. It provides that it will be the task of an inter-ministerial taskforce to develop a National Policy and Plan on Food and Nutritional Security, which should

include guidelines, objectives, an identification of the resources needed for the implementation, and adequate monitoring and evaluation procedures. This national strategy should be set up in accordance with the guidelines agreed upon in CONSEA, which is composed of civil society organizations (representing two-thirds of its membership) and of governmental representatives (for the remaining third):

**[Brazil] Law No. 11.346 of 15 September of 2006 establishing SISAN – National Food and Nutritional Security System – to guarantee the human right to adequate food and nutrition (Official Gazette of 18 September 2006) (unofficial translation):**

### **Chapter 1. General provisions**

Art. 1. This Law establishes the definitions, principles, guidelines, objectives, and composition of the National Food and Nutritional Security System – SISAN, through which the government, together with the organized participation of the civil society, shall formulate and implement policies, plans, programs, and actions which seek to guarantee the human right to adequate food.

Art. 2. Adequate food is a basic human right, inherent to human dignity and indispensable to the realization of the rights established by the Federal Constitution. The government shall adopt the policies and actions needed to promote and guarantee food and nutritional security for the population.

S1. The adoption of these policies and actions shall take into account environmental, cultural, economic, regional, and social dimensions.

S2. The government shall respect, protect, promote, provide, inform, monitor, supervise, and evaluate the realization of the human right to adequate food, as well as guarantee the mechanisms for its exigibility.

Art. 3. Food and nutritional security consists in the realization of the human right to regular and permanent access to good quality food, in sufficient quantity, without compromising the fulfillment other basic needs, having as its basis healthy nutritional habits that respect cultural diversity and that are environmentally, culturally, economically and socially sustainable.

Art. 4. Food and nutritional security comprises:

- I. Expansion of access to food through its production, particularly via family and traditional farming, food processing, industrialization and commercialization, including international agreements; better food supply and distribution, including of water; job creation and redistribution of wealth;
- II. The conservation of biodiversity and the sustainable use of resources;
- III. The promotion of health, food, and nutrition for the population, including specific population groups and those more socially vulnerable;
- IV. The guarantee of the biological, sanitary, nutritional, and technological qualities of the food, as well as its good use, which stimulates healthy food practices and lifestyles that respect the ethnic and racial diversity of the population;
- V. The production of knowledge and the access to information; and
- VI. The implementation of public policies and sustainable and participatory strategies of food production, commercialization and consumption, respecting the diverse cultural characteristics of the country.

Art. 5. The realization of the human right to adequate food and the attainment of food and nutritional security require respect for sovereignty, which confers to countries primacy in their decisions regarding the production and consumption of food products.

Art. 6. The Brazilian State shall make an effort to promote technical cooperation with foreign countries, thus contributing to the realization of the human right to adequate food worldwide.

## Chapter II. The National Food and Security System

Art. 7. The realization of the human right to adequate food and the attainment of food and nutritional security will be made possible through SISAN, constituted by agencies and entities of the Federal Union, States, the Federal District and of municipalities, and private institutions, profitable or not, related to food and nutritional security and interested in integrating the System, provided that the applicable legislation is respected.

S1. The participation in SISAN to which this article refers shall obey the principles and guidelines of the System and will be defined based on the criteria established by the National Council for Food and Nutritional Security – CONSEA – and by the Inter-Ministerial Chamber for Food and Nutritional Security, to be created by the Federal Executive Power.

S2. The agencies which are responsible for the definition of the criteria to which S1 refers may establish distinct and particular requirements for the private and public sectors.

S3. The private or public agencies and entities which are part of SISAN shall work in an interdependent manner, but their autonomy to make decisions shall be preserved.

S4. The obligation of the State does not exclude the responsibility of those entities of the civil society that are part of SISAN.

Art. 8. SISAN shall be ruled by the following principles:

- I. Universality and equity in the access to adequate food, without any kind of discrimination;
- II. The preservation of autonomy and respect for the dignity of all;
- III. Social participation in the formulation, execution, examination, monitoring, and control of the policies and plans on food and nutritional security in all spheres of the Government; and
- IV. Transparency in the programs, actions, and public and private resources, and in the criteria for their concession.

Art. 9. SISAN is based on the following guidelines:

- I. Promotion of the inter-sectorality of policies, programs, and governmental and non-governmental actions;
- II. Decentralization of actions and articulation, under cooperation, among the spheres of the government;
- III. Monitoring of the food and nutrition condition of the population, seeking to subsidize the management cycle of policies for the area in the different spheres of the government;
- IV. Conjunction of immediate and direct measures which guarantee access to adequate food, through actions that improve the resources and means of autonomous subsistence of the population;
- V. Articulation between budget and management; and
- VI. Encouragement of research development and training of human resources.

Art. 10. SISAN seeks to formulate and implement policies and plans on food and nutritional security, motivate the integration of efforts between the government and civil society, as well as promote the examination, monitoring, and evaluation of food and nutritional security in the country.

Art. 11. SISAN is composed by:

- I. The National Conference for Food and Nutritional Security, responsible for the recommendation to CONSEA of the guidelines and priorities of the National Policy and Plan on Food and Nutritional Security, as well as for the evaluation of SISAN;
  - II. CONSEA, which is responsible for the immediate advising of the President of the Republic, is in charge of:
    - (a) Arranging for the convocation of the National Conference for Food and Nutritional Security, periodically, not more than four years apart, as well as defining the parameters of its composition, organization, and operation, based on its own regulation;
    - (b) Suggesting to the Federal Executive Power, in view of the deliberations of the National Conference for Food and Nutritional Security, the guidelines and priorities of the National Policy and Plan on Food and Nutritional Security, including the budgetary requirements for its execution.
    - (c) Articulating, examining, and monitoring, in collaboration with other members of the System, the implementation and convergence of actions which are inherent to the National Policy and Plan on Food and Nutritional Security;
    - (d) Defining, in collaboration with the Inter-Ministerial Chamber for Food and Nutritional Security, the criteria and procedures of integration into SISAN;
    - (e) Instituting permanent mechanisms of articulation with related agencies and entities of food and nutritional security in the States, the Federal District, and municipalities, seeking to promote dialogue and the convergence of the actions which integrate SISAN;
    - (f) Mobilizing and supporting entities of civil society in the discussion and implementation of public actions for food and nutritional security;
  - III. The Inter-Ministerial Chamber for Food and Nutritional Security, composed of Ministers of State and Special Secretaries who are responsible for the portfolios related to the attainment of food and nutritional security, has the following responsibilities, among others:
    - (a) To elaborate, in view of the guidelines from CONSEA, the National Policy and Plan on Food and Nutritional Security, suggesting the guidelines, goals, basis of resources and tools to examine, monitor, and evaluate its implementation;
    - (b) To coordinate the execution of the Policy and of the Plan;
    - (c) To articulate the policies and plans of their related state agencies as well as those of the Federal District;
  - IV. Agencies and entities of food and nutritional security of the Federal Union, states, Federal District, and municipalities;
  - V. Private institutions, profitable or not, which are interested in integrating the System and respect the criteria, principles, and guidelines of SISAN.
- S1. The National Conference for Food and Nutritional Security will be preceded by state, district, and municipal conferences, which shall be summoned and organized by related agencies and entities in the states, Federal District, and municipalities, from which the delegates to the National Conference will be chosen.

§2. CONSEA shall be composed based on the following criteria:

- I. (one third) of governmental representatives constituted by Ministers of State and Special Secretaries responsible for the portfolios related to the attainment of food and nutritional security;
- II. (two thirds) of civil society representatives chosen based on appointment criteria approved at the National Conference for Food and Nutritional Security; and
- III. observers, including representatives of allied Federal Councils, international bodies, and of the Federal Public Ministry.

§3. CONSEA shall be presided over by one of its members, a civil society representative, appointed by collegiate jury, according to regulations, and chosen by the President of the Republic.

§4. The performance of advisers, and permanent and substitute members of CONSEA shall be considered of relevant public interest and non-remunerated service.