

June 2004



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REPORT

**INTERGOVERNMENTAL WORKING GROUP FOR THE
ELABORATION OF A SET OF VOLUNTARY GUIDELINES TO
SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT
TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD
SECURITY**

Rome

**Implementing the Right to Adequate Food: The Outcome of Six Case
Studies**

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A. INTRODUCTION

1. How can the human right to adequate food be implemented at the country level? This is the basic question that this paper sets out to explore. It is based on case studies on implementing the right to food in five countries and a meeting, held from 16-18 February 2004, in which these case studies were discussed.
2. The case studies seek to gather information about practical in-country experiences with different policies, programmes and mechanisms including legal frameworks, institutions and processes that are conducive to the realization of the right to adequate food of the population. In each case, shortcomings of current policies and practices are also covered in order to draw lessons from these. Compilation of such information through in-country case studies is intended to expand understanding of the progressive realization of the right to adequate food in the context of national food security.
3. A number of developing countries, as well as a member country of the Organisation for Economic Co-operation and Development (OECD), were selected for the case studies because of their experience in seeking to pursue a right-to-food approach to national food security. The countries selected were: Brazil, Canada, India, South Africa and Uganda. A separate study was undertaken of the Indian State of Orissa.
4. The case studies attempt to assess i) the extent to which a rights-based approach has been applied in activities related to food security; ii) how the implementation of this approach can be improved; iii) the extent to which the country's experience is replicable; and iv) whether practical lessons can be learnt that can be used as input for the formulation of the Voluntary Guidelines¹.
5. The case studies and the meeting focused on four major areas related to implementing the Right to Food: Food as a Human Right; the Policy Framework; the Legal Framework; and the Institutional Framework. In addition, a number of key issues related to operationalizing the right to food at the country level were examined. As annexes to this report, individual case studies (in English only) are available from the Food and Agriculture Organization of the UN (FAO), on request. They can also be obtained from the FAO website at www.fao.org/righttofood.

B. FOOD AS A HUMAN RIGHT

6. The right to adequate food and to be free from hunger is firmly established in international law, including the 1948 Universal Declaration of Human Rights (Article 25.1), the 1966 International Covenant on Economic, Social and Cultural Rights (Article 11.1 and 2) and the 1989 Convention on the Rights of the Child (Article 24.1). By ratifying these legal instruments, States recognize the obligation to *respect, protect and fulfil* (meaning to *facilitate* and - as a matter of last recourse - *provide for*) the progressive realization of the rights contained therein, including the right to adequate food. The right to adequate food is realized "when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for

¹ The Voluntary Guidelines are in the process of being developed by an Intergovernmental Working Group (IGWG) established by the FAO Council, following the World Food Summit: five years later. The guidelines are intended to support efforts to achieve the progressive realisation of the right to adequate food in the context of national food security.

its procurement”, as defined in General Comment 12, an authoritative legal interpretation of this right².

7. The country case studies are based on this internationally accepted understanding of the right to be adequate food. The studies also highlighted a number of common characteristics of a rights-base approach to food security, as follows.

8. A rights-based approach to food security emphasizes the satisfaction of people’s basic needs as a matter of right, rather than of benevolence. In this approach, people hold their governments accountable and are participants in the process of human development, rather than passive recipients. A rights-based approach is not only concerned with the final outcome of abolishing hunger, but also with ways and tools by which that goal can be achieved. Application of human rights principles is integral to the process. Key human rights principles in policy making and implementation include: accountability, non-discrimination, transparency, empowerment and participation. An independent judiciary is also crucial for the effective protection of human rights at the national level.

9. A rights-based approach empowers rights holders by enabling them to become active participants in realizing the right to food. Such an approach requires accountability from all actors in the process of realizing the right to food. This may be achieved through legal, administrative, or political mechanisms. Rights holders, whether individuals, or groups under certain circumstances, can claim the respect, protection and fulfilment of their rights from their governments.

C. POLICY FRAMEWORK

An enabling policy environment

10. The importance of an enabling policy environment to achieve the right to adequate food is stressed in all the case studies. Although the countries studied have a variety of policies on food, there are some commonalities and lessons to be learnt as to what constitutes an enabling policy environment for the right to adequate food.

11. Public policies considered from a human rights perspective translate into a development approach in which the obligation to achieve universal human rights for all is the starting point. This in turn calls for a focus on those whose rights are not fully realized, and their participation in formulating, implementing and evaluating policies, rather than a top-down approach.

12. Public policy that recognizes the principle of indivisibility and interrelatedness of all human rights views the right to food as related to other rights, such as the right to water, health, work, housing, and other economic, social and cultural rights, as well as to civil and political rights, such as freedom of assembly, information and association. It also recognizes the over-arching right of non-discrimination. When public policy is based on the inseparability of human rights, one right cannot be used to the detriment of other rights.

² General Comment 12 was issued by the UN Committee on Economic, Social and Cultural Rights, the treaty body of the International Covenant on Economic, Social and Cultural Rights (ICESCR), in response to a recommendation by the 1966 World Food Summit to clarify the content of the right to food and ways of its implementation. It defines in detail the normative content of the right to adequate food, deals with State Party obligations and lays down the general criteria for implementing this right.

Centrality of human rights

13. Policy makers at the international level and in the countries covered by the case studies, are increasingly aware and accepting of the centrality of human rights to development and of the significance of a rights-based approach to food and nutrition security.

14. In South Africa, for instance, the right to food is enshrined in the Constitution and the South African Human Rights Commission (SARHC) is mandated to monitor the implementation of this right. Brazil is in the process of building an institutional structure that incorporates a vision of human rights, including the right to food among the principal objectives of the country's food security policy of Zero Hunger (*Fome Zero*). The Indian Constitution is construed as protecting the right to food as an integral part of the right to life. And in Uganda, measures to restore and promote constitutionalism, democracy, human rights, peace and stability, and efforts to advance decentralized, participatory governance are helping the emergence of an enabling political, social and economic environment for the right to food. An international environment supportive of human rights has played a significant role in this.

Integrated and coordinated national plans

15. The development of an overarching and integrated food security policy based on human rights principles is central to the achievement of the right to adequate food at country level. An essential starting point of such policy is a thorough socio-economic analysis of the people whose right to food is violated or not realized, where they are located, and why they are vulnerable.

16. South Africa has a number of integrated policies, including an Integrated Rural Development Strategy (ISRDS), an Integrated Nutrition Programme, and an Integrated Food Security Strategy (IFSS). This strategy sets out the aims of the World Food Summit Declaration and Plan of Action and the Millennium Development Goals to halve hunger by 2015 and supports the Integrated Sustainable Rural Development Strategy (ISRDS). The IFSS calls for a cross-departmental and cross-sectoral management structure. It represents the most coherent departmental statement on food security policy in South Africa to date and reflects a rights-based approach to addressing food insecurity, although the cross-sectoral parts of the strategy still need further articulation.

17. Another example is the Food and Nutrition Policy (FNP) in Uganda. The FNP is the first Ugandan socio-economic policy which – while not explicitly framed within a human rights dimension – calls for a rights-based approach to its implementation. This is to be assured by a strategic action and investment plan.

18. Experiences from the countries also show that, for optimal effectiveness, national right to food and food security plans should reach across governmental departments, including finance and justice.

19. A highly decentralized federal state such as Canada presents complex issues of governance in terms of achieving priority attention for food security, the development and implementation of an integrated food and nutrition policy, and an adequate and secure social safety net informed by the human right to adequate food. As a result, Canadian food policy tends to be fragmented, despite a food security policy formulated in the follow-up to the World Food Summit, which recognizes the right to adequate food.

20. Such fragmentation could be overcome by developing an integrated national food and nutrition policy and a national action strategy with the goal of the optimal

nourishment of the population. Such a national action plan would include the full participation of the relevant ministries, including federal and provincial justice departments, and representatives of civil society and the food industry. Ideally, the plan would set benchmarks, targets, time frames and accountability. It would also need to be costed and have appropriate funding mechanisms in place.

21. Social policy has tended to be fragmented also in Brazil. However, the Zero Hunger Programme is making a major effort towards better institutional coordination. Direct income transfer programmes are being unified under the *Bolsa Familia* programmes, under which low-income families are eligible for the monthly benefits of various programmes, on a case by case basis. One of its main programmes, the *cartao alimentacao* (food card) diverges from traditional policies of supplying basic food baskets to fight hunger, by linking consumers with low-purchasing power and small-holder food producers. The programmes will be decentralized, with state and municipal government playing an active role.

22. While coordination has its advantages, the case studies generally showed that decentralized control over right to food programmes, which encourages citizens' participation in decision making and provides for greater exercise of their rights and obligations, tends to reduce corruption. There were examples where misuse of public funds was contained through control either by central government or NGOs.

23. In Uganda central policy making, programme design, implementation, monitoring and evaluation is based on wide-ranging stakeholder consultations, including the private sector, civil society and other development partners within a framework of decentralized government.

Balancing the components of food security

24. It is not always easy for food policies to balance the four components of food security: availability, stability, access and utilization. Until recently, the food security policies of South Africa and India, for instance, may have over-emphasized the availability of food by concentrating on increased food production for national self-sufficiency without paying sufficient attention to other factors hindering people's access to food.

25. In India, food policies since the 1960s have aimed at boosting food and agricultural production while attempting to ensure access by the poor to a minimum quantity of food grains through the public distribution system. The growth strategy in agriculture has emphasized subsidies to inputs such as power, water and fertilizer. Private capital has grown at a fast pace, particularly in the Green Revolution regions that experienced rapid agricultural growth. This has been accompanied by meagre investment in rural roads, irrigation and rural power.

26. The Government of India's National Agricultural Policy (2000) and related programmes have attempted to remedy these shortcomings by developing a regionally differentiated strategy for infrastructural development, based on agro-climatic conditions and natural resources as well as more effective mechanisms for the operation of a decentralised food procurement policy.

27. South Africa's current food security policies, in contrast to the policies of national self-sufficiency of the apartheid regime, recognize that sufficient food production and food availability at national level is not the only requirement for food security. Other factors such as the failure of livelihoods to guarantee access to sufficient food, may contribute to food insecurity despite national food sufficiency. This points to the

importance of enabling people to feed themselves, and, where this is not possible, to put into place strategies, plans and programmes to address food insecurity.

Balancing economic growth with the right to food

28. Planning is required to balance economic growth and trade policies with right to food policies. This can be illustrated in Uganda, which has a policy environment broadly oriented towards pro-poor development objectives. The principal development policy framework, the Poverty Eradication Action Plan (PEAP), seeks to balance economic growth with poverty reduction objectives; however, to date, more attention has been paid to the growth pillar than to targeted interventions or redistribution. The Plan for Modernization of Agriculture and the Food and Nutrition Policy (FNP), both of which have food and nutrition security as a major objective, seek to redress this imbalance.

29. While economic growth and pro-poor development policies can be complementary, under certain circumstances, economic growth policies can jeopardize the realization of the right to food for some. In Uganda, for example, the Government's drive to promote foreign investment to stimulate economic growth, has allegedly threatened, in some cases, to deprive small-holder farmers of land their key source of food and livelihood.

30. Policies for promoting privatization of social services, such as agricultural extension, need public regulation so that they do not impact negatively on the right to food. In Uganda, for instance, agricultural extension has been renamed the agricultural advisory services with a simultaneous shift towards private service provision. Farmer groups are expected to articulate their needs, and demand and receive service from private service providers. Care will have to be taken to ensure that small-holder farmers can access and afford these services.

The nexus between food insecurity and inequalities

31. Non-discrimination and substantive equality are fundamental principles to be promoted in rights-based food security policies. Equitable access to resources and assets such as natural resources, including land, is very important for the right to food in rural areas. This can be seen in South Africa where land dispossession was a key feature of colonialism and apartheid. It has remained a critical and often contentious issue in the new democratic dispensation. Many people in the former homelands lack secure tenure rights or legal title to land they have inhabited and worked on for generations. This is a direct legacy of colonial dispossession, racist legislation and communal tenure. The result is a vicious cycle in which rural communities remain desperately poor, partly because they cannot use their only asset as collateral, for example to finance a modest cash-crop enterprise. Since the establishment of democracy in South Africa, a number of laws and policies have been adopted in an attempt to re-balance land ownership and protect tenure rights.

32. Brazil also has a legacy of unequal access to land that is proving difficult to redress despite efforts by the National Institute of Land Settlement and Reform, which was instrumental in settling 372 866 families between 1995 and 1999. The need for accelerated land reform has been emphasized by the United Nations Special Rapporteur for the Right to Food, and is promoted by the National Programme for the Promotion of Family Agriculture (PRONAF) and social organizations such as the Landless Workers' Movement (*Movimento dos Trabalhadores Rurais Sem Terra*).

33. Lessons learnt in Brazil show the need to develop public policies that encourage the economic improvement of the most vulnerable groups including improved access to

land and credit, and to tailor them to the particular needs and circumstances of vulnerable groups so that the needed resources can be channelled to them efficiently and effectively. As in many countries, however, policies to guarantee the right to food for the most vulnerable groups have not always succeeded.

34. While economic growth is central to achieving food security, social transfers are also needed to realize human rights. For example, even in a food secure country such as Canada that has been at the top of country rankings for the Human Development Index (HDI), economic growth policies have not completely ensured the right to food for its most vulnerable citizens. Structural changes and tight fiscal discipline in the nineties, are said to be at the root of deterioration in social services, which in turn has led to more reliance on private benevolence, such as food banks.

35. The core principle of the Integrated Food Security Strategy in South Africa is that food security should be addressed by ensuring that the target population gains access to productive resources and is empowered to obtain nutritious and safe food. Where a segment of the population is unable to gain access to productive resources, food security interventions will ensure access to income and job opportunities to enhance purchasing power. Finally, any segment of the target population that is still excluded as a result of disability or extreme destitution will receive relief from the State.

36. A rights-based approach to food requires that food is accessible to all. When people cannot provide food for themselves by their own means, plans or programmes need to be put in place to address their inability to access adequate food. Only when there are not enough resources to do this, or concrete means are lacking, should a strategy of targeting benefits primarily to the poorest families be followed. Even then, the goal should be to make the strategy universal in the medium term so that it reaches all the food insecure and vulnerable and not just the poorest.

37. In South Africa, for example, not everyone who is entitled to social security receives it, for lack of registration, information and other access problems. In addition, there are destitute persons who do not qualify for any assistance; i.e. if they are not old, young, disabled or sick enough for social security. The Basic Income Grant (BIG) Campaign has been launched by a group of NGOs in response to this shortcoming. The BIG Campaign argues that an entitlement for every single individual to a small monthly stipend would solve the problem of under-targeting and lack of registration, and allow individuals to use their energies productively. The grant would be recuperated through the tax system from those earning more than a certain minimum.

D. LEGAL FRAMEWORK

38. The right of everyone to adequate food enjoys some degree of legal protection in each of the countries studied. This legal protection takes different forms, but each country has some way in which individuals and, in some cases, groups can claim adequate food as a right, rather than as a matter of benevolence.

Constitutional protections

39. In some countries the right to food is written directly into the constitution, while in others the courts have interpreted the constitution as protecting the right to food. Different countries also have different types of legislation that protect the right and

various legal mechanisms by which individuals and/or groups can claim it. In some countries the right is justiciable; i.e. claims brought to State authorities are enforceable by the courts. The constitutional protections and legislation of the countries studied are described below.

Justiciability of rights means that the courts can enforce the rights. The concept of justiciability of rights is not new. The Universal Declaration of Human Rights of 1948 calls for judicial remedies. Article 8 states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”. In a broader sense, justiciability could be understood as having access to an "effective remedy" of a legislative, administrative or judicial nature. This is the concept of effective remedy under the International Covenant on Civil and Political Rights (Article 2.3).

40. A legal basis for the right to food can be found in the constitutions of several of the countries examined by the case studies. This is strongest in South Africa whose Constitution directly makes provision for the right to food with three explicit references. It i) requires the State to take reasonable legislative and other measures, within its available resources, to progressively realize everyone’s right to access to sufficient food and water; ii) provides the right for every child to basic nutrition, shelter, basic health care services and social services; and iii) makes provision for every detained person and sentenced prisoner to have adequate nutrition.

41. The Constitution of South Africa also states that “the Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state” (section 8); and imposes the obligations on the State to respect, protect, promote and fulfil the provisions of the Bill of Rights. These detailed constitutional provisions provide an enabling environment for the progressive realization of the right to food and can be invoked in a court of law.

42. Even without such a strong constitutional framework with a clear justiciable right to food, support for this right and for its justiciability can be found in the constitutions of other countries.

43. A legal basis for the right to adequate food is present in the Constitution of Brazil, which contains several provisions that either directly or indirectly require the State to respect, protect and fulfil citizens’ right to food. The 1998 Constitution established a nationally uniform minimum wage “capable of providing for the basic vital needs of housing, food, education, health” among others (art. 7). It stated that the family, society, and State had the duty “to guarantee the child and adolescent the right to life, health, food, education...” (art. 227). In 2003, a constitutional reform included the right to food as being a part of social rights for every citizen. The new text reads: “As defined by this Constitution, social rights include education, health, food, work, housing...” (art. 6)

44. Although the 1995 Constitution of Uganda does not recognize adequate food as a fundamental, justiciable right, it does protect and promote “fundamental and other human rights and freedoms”, and stipulates that these “shall be respected, upheld and promoted by all organs and agencies of Government and by all persons”. It also stipulates that the “State shall endeavour to fulfil fundamental rights of all Ugandans to social justice and economic development” and specifically refers to food security, adequate food and proper nutrition to which the State shall ensure access.

45. The Constitution of India distinguishes between: i) fundamental rights, which are

primarily civil and political, and which are justiciable; and ii) social, economic and cultural rights, which are not. However, the right to life (a fundamental right) has, over the years, come to be interpreted as encompassing the social, economic and cultural rights contained in the Constitution as Directive Principles of State.

46. While the right to food is not explicitly written into the Constitution of Canada, the Charter of Rights and Freedoms (1982), as interpreted by the Supreme Court of Canada, does protect internationally recognized economic, social and cultural rights. The Supreme Court has also recognized the rights of Aboriginal peoples to traditional food gathering.

47. Irrespective of the existence of constitutional protection of the right to food, States that have ratified the relevant international human rights instruments accept to incorporate this and other human rights in national law.

Case law and justiciability

48. A constitutional framework that can be interpreted to protect the right to food provides a basis for legal provisions that promote the progressive realization of the right to food, as well as a yardstick against which legislation and policies can be measured.

49. In India, for instance, the Supreme Court has issued a number of Interim Orders in a Public Interest Litigation (PIL) case of which the central premise is that the right to food flows from the right to life guaranteed in the Article 21 of the Constitution. This case is awaiting final judgment.

50. Another effect of the Interim Orders has been to transform provisions of various schemes and programmes established by the Indian states and the central Government to the status of a legal entitlement for the populations concerned. These orders have i) stressed the utmost importance of provision of food to aged, infirm, disabled, destitute women and men, pregnant and lactating women and destitute children, especially when they or their family members do not have sufficient funds to provide food for them; ii) given direction to the States to see that all the public distribution system (PDS) shops are functioning; iii) ordered the States to implement food-for-work programmes in all scarcity areas; and iv) ordered implementation of the food based schemes, including mid-day meals in schools.

51. Elements of the right to food can also be found in federal and provincial laws of Canada, and in policies on agriculture, food safety, nutrition and health and the welfare state. Notably, in 2002, Quebec passed an Act to Combat Poverty and Social Exclusion, which commits the government to: “facilitating dignified access, for persons living in poverty, to a food supply that is both sufficient and nutritious, at reasonable costs...” (2002, c. 61, s. 9). Canada’s Action Plan for Food Security (1998) recognizes the links between poverty and domestic food insecurity.

52. On the legislative front in Uganda, a bill is being drafted for adoption by Parliament, which would provide the legal framework for the rights-based implementation of the Food and Nutrition Policy, with its action and investment plan and related institutional arrangements.

53. The Parliament of South Africa has conducted public hearings on food security and called on the Government to submit a Food Security Bill, which has been drafted by Government, but not yet submitted. Such a Bill would have to pass constitutional muster. On the other hand, the Government could also be held accountable under the Constitution for failing to take legislative action.

Beyond legislation

54. Legal and constitutional recognition of the right to food is important but not sufficient to ensure its implementation, even if it is a justiciable right. Other elements need to be in place, including the rule of law, good governance, accountability, and people's participation.

55. Efficient, accessible and workable legal mechanisms for claiming the right to adequate food are needed. An example of a potential legal mechanism can be found in Brazil in the public civil suit. This is the most important judicial instrument in Brazil for protecting rights. It not only protects individuals' rights, but makes it possible to enforce collective rights, including the right to food. Although individual persons cannot request a public civil suit, it can be claimed by a state or municipality, an NGO, a public or mixed enterprise or directly through a government ministry. The public civil suit has been used in connection with a wide range of social rights, including health, environmental and consumers' rights. Although it has not yet been used for the right to food, the public civil suit has the potential to be used to protect this right.

56. An independent judiciary capable of exercising its responsibility is also crucial in guaranteeing the right to food. This may require reform of the judiciary. Because of their particular historical and socio-economic situations, South Africa and Brazil, for example, need to redress racial and gender imbalances in the judiciary at all levels.

57. Training of judges and lawyers on human rights, the right to food and international conventions and increased exchanges with national and international human rights organizations may also be needed. The country case study on Brazil noted that Brazilian judges need greater knowledge of human rights norms and the obligations of the judiciary at the international level. This is also generally the case in other judiciary systems in the world.

58. All three spheres of government - executive, legislative and judicial - should be clear as to their obligations to respect, protect and fulfil the right to adequate food. The South African Constitution is very clear on the responsibility of each of the main branches. In Brazil, on the other hand, the awareness of the judiciary of its obligation to protect the economic rights of the most vulnerable is not clear. Judges generally consider dealing with the vulnerability of particular social groups to be the exclusive province of public policy. Hence compliance with international treaties and programmatic norms is considered to be an activity proper to the executive branch. Canadian courts have been reluctant to recognize economic and social rights under the Canadian Charter of Rights and Freedoms.

National Human Rights Institutions and Mechanisms

59. National human rights institutions also have a prime role to play in monitoring the implementation of the right to food, as well as in receiving complaints from groups and individuals. Several countries have human rights commissions or similar mechanisms that play important roles in ensuring the right of everyone to adequate food. National human rights organizations are most effective when they are fully autonomous and have authority to issue recommendations.

60. The South African Human Rights Commission (SAHRC) is a constitutionally entrenched body mandated to promote respect for, and to monitor and assess the observance of human rights. Its functions are elaborated in the South African Human Rights Commission Act. This Act makes provision for the Commission to litigate on behalf of a group or person and to advise the State on rights-related legislation. The

Commission has a broad mandate that covers the full range of human rights issues and recognizes the universality, interdependence, interrelatedness, and indivisibility of human rights. It is an independent and impartial body that reports directly to Parliament, and is established in accordance with the Paris Principles.

Paris Principles

The Paris Principles were developed in 1991 at a meeting in Paris of human rights institutions. These principles, subsequently endorsed by the UN Commission on Human Rights and the UN General Assembly, have become the foundation and reference point for the establishment and operation of national human rights institutions. The key criteria of the Paris Principles are: independence guaranteed by statute or constitution; autonomy from government; pluralism, including in membership; a broad mandate based on universal human rights standards; adequate powers of investigation; and sufficient resources.

61. The SAHRC has a specific responsibility to monitor the progressive realization of the economic, social and cultural rights recognized in the Constitution. To this effect, it has developed a number of questionnaires or “protocols”, to which the different governmental departments are bound to respond. The SAHRC has recommended, among other things, the development of a legislative framework on the right to food. The Constitutional Court also requested the SAHRC to monitor implementation of its landmark judgment in a case on the interpretation of the right to adequate housing.

62. Brazil has a Special Secretariat for Human Rights, which, however, lacks the full autonomy and pluralism required by the Paris Principles. This weakness has been partially compensated for by the *Ministerio Publico*, an autonomous governmental body for the defence of individual and collective rights. Operating at both the federal and state levels, the *Ministerio Publico* is currently the most important institution in Brazil that assists citizens to obtain legal protection. This institution is able to initiate inquiries into violations of basic rights and to issue recommendations to the Government. It has acted in connection with the right to food, particularly regarding malnutrition among children and indigenous groups and in connection with the National School Food Programme. This body is also intended to guarantee participation of the beneficiaries of policies and programmes; to cooperate with NGOs in promoting human rights; and to create new fora for coordination and consensus building.

63. Recently, the Brazilian Department of Justice, in collaboration with NGOs, established the position of a national rapporteur on the right to food, water and rural land, whose function it is to monitor the realization of these rights. This was the initiative of the Economic, Social and Cultural Human Rights Platform - Brazil, a national network of civil society organizations (CSOs) and was based on the model of the United Nations special rapporteurs.

64. Uganda has an independent constitutional body, the Uganda Human Rights Commission (UHRC). This Commission has brought the issue of the right to food before the Government’s Constitutional Review Commission, suggesting that the right to adequate food be given the status of a fundamental, justiciable right. It also was one of the key organizers of a national seminar on the right to food held in 2003. The success of the UHRC can be explained both by its constitutional mandate and its application by a proactive group of commissioners and staff. Their advocacy has found positive resonance among key decision makers and is taking roots among a broader spectrum of

stakeholders.

65. The National Human Rights Commission (NHRC) of India is also an independent and autonomous body. Over more than a decade, the Supreme Court of India and the National Human Rights Commission have been parties to a civil society debate that has led to a substantive transformation of the perspective of benevolence into a perspective of human rights. Prompted by a civil society submission concerning the situation of the right to food in the State of Orissa, the NHRC has been instrumental in gaining recognition that destitution and chronic distress, rather than mortality alone, are proof of starvation; and that starvation constitutes a gross denial and violation of the fundamental right to be free from hunger.

66. The Supreme Court of India has appointed two commissioners to look into persisting grievances regarding violations of rights that are not amenable to established procedures of redress. It is obligatory for the State Governments to provide information that the commissioners require. The latter have been empowered to recommend a course of action to the Governments to ensure compliance of the directions of the Court.

Role of civil society

67. The country studies showed that civil society can play a crucial role in putting pressure on all spheres of government, as well as assist vulnerable groups to empower themselves to claim their rights and improve their access to recourse mechanisms, including the courts.

68. In South Africa, for example, the Treatment Action Campaign (TAC), a broad social movement, brought a case relating to socio-economic rights and in particular the right to health care to the South African Supreme Court and was instrumental in shaping the Government's decision to act.

69. In India, the People's Union for Civil Liberties (PUCL) filed a case regarding the right to food in Rajasthan. The pressure brought to bear on central and State Governments by non-governmental organizations in this Public Interest Litigation has had results in many states, but in others the Interim Orders of the Supreme Court have been partly or totally ignored. On the other hand, it must be acknowledged that India is a vast country and many of its states are very resource poor. This clearly points also to the need to examine the federal level organization and funding of social programmes.

E. INSTITUTIONAL FRAMEWORK

Allocation of responsibilities, coordination and accountability

70. Implementing right to food policy and legal frameworks requires effective institutions at all levels. The cross-sectoral nature of the right to food requires efforts of coordination across government ministries and offices at the national, sub-national and local levels. Clarifying the allocation of roles and responsibilities between the different sectors and levels of government leads to better accountability and more effective action.

71. In Brazil the right to food is the guiding principle of the country's food security policy, *Fome Zero*. It is institutionally enshrined in the new Ministry for Social Justice that incorporates the former Special Ministry for Food Security and Combating Hunger (MESA) as a secretariat in the new ministry. Another cornerstone of the

institutionalization of the right to food approach in Brazil is the re-creation of the National Food Security Council (CONSEA) as a forum for civil society participation.

72. A beginning has been made in Uganda to establish institutional arrangements for overseeing a rights-based approach to food security. The new Food and Nutrition Council has been tasked with coordinating and joining the forces of duty bearers and rights holders.

73. Accountability is central to an effective institutional framework for the implementation of the right to food. The State must establish mechanisms to ensure the accountability of those who are responsible for the implementation of this right.

74. In South Africa, the Government has proposed the establishment of food security officers at the local level who would report to the "cluster" of social sector ministries. The draft Food Security Bill also foresees the establishment of a Food Security Council which would play a pivotal role in policy coordination.

Changing from benevolence to a rights-based approach

75. In Canada, according to the case study, benevolent approaches to meet the food needs of hungry people in the form of charitable food banks have become institutionalized over the past twenty years and have, at least partially, relieved the State (federal, provincial and territorial governments) of its obligations to respect, protect and fulfil the right to food through ensuring adequate social security entitlements. Demands on food banks continue to grow. Institutional measures would be required to revert to a rights-based approach.

Implementation strategies

76. An important lesson learnt from the case studies is that right to food policy needs to be accompanied by an implementation strategy with clear, quantified targets and benchmarks, as well as the allocation of institutional responsibilities and accountability. Furthermore, implementation needs to be monitored and evaluated according to rights-based indicators.

77. A useful starting point would be a national audit of all policies, programmes and other initiatives geared towards the realization of the right to access adequate food in order to help identify which existing elements are working and why, as well as to provide a basis for corrective action.

F. OPERATIONALIZING THE RIGHT TO FOOD: SOME KEY ISSUES

Awareness building and education

78. Awareness building is key to operationalize the right to food. Citizens must be aware of their rights while public servants must be instilled with a clear consciousness of obligation. This is possible only through appropriate policies on information and education that also encourage people to utilize their rights.

79. In South Africa, one of the functions of the South African Human Right Commission is to develop an awareness of human rights among the people of South Africa. In Brazil the National Rapporteur's Office for the Right to Food, Water, and Rural Land conducts research on the exercise of the different rights, and writes national reports, aimed especially at policy makers. A national seminar in Uganda, sponsored by the International Project on the Right to Food in Development (IPRFD), played a significant

role in awareness building in the country. The NGO Right to Food Movement in India has organized a number of events, including public hearings in which persons suffering from hunger have told their stories.

80. Awareness building is needed at all levels, including that of the media and the voluntary and the corporate sectors to counterbalance the tendency among some in these sectors to consider hunger and food poverty as a matter of charity and not as a political issue of social justice and human rights.

81. Awareness building can be institutionalized in the educational system through inclusion of nutrition and basic human rights education in primary and secondary school curricula and in relevant higher education curricula; e.g. professional education: agricultural, health, nutritional and environmental sciences and business, education, law, social work and social policy. Civil servants who are responsible for implementing the right to food could benefit from in-service training. Community education, especially geared towards vulnerable groups is another way to contribute to the improvement of food and nutrition security at the local level.

82. In South Africa, a number of universities and academic institutions conduct research on food insecurity and vulnerability, including the University of Natal, which offers post-graduate courses in food security. Other research institutions include the Community Law Centre of the University of Western Cape and the Centre for Human Rights of the University of Pretoria which both focus on the right to food in their academic research.

Capacity building

83. All the case studies showed that there is a critical need to build capacity, as well as to raise awareness, to ensure that policies are implemented. Duty bearers and rights holders often lack the capacity to use the instruments available for the realization of the right to adequate food. Capacity development using a rights framework requires targeting both rights holders and duty bearers. It should be directed at communities and households as well as to those in the public and private sphere.

Identifying the vulnerable and targeting benefits

84. An overriding challenge that emerges from the country experiences is inadequate attention to identifying those whose right to food is not realized. No matter how much emphasis is given in the overall policy environment to reduce poverty and food and nutrition insecurity, mechanisms to identify the food insecure and to understand the reasons for their vulnerability are needed.

85. Implementation plans are generally vague in defining target groups or the vulnerable in sufficient detail to be operationally relevant. This is not so much a question of technical obstacles linked to data and analytical capacities as it is a question of a fundamental approach to development. Strategies and action plans must be based on a thorough socio-economic assessment of different groups of people, in order for national food security plans to identify the food insecure and vulnerable groups. Vulnerability mapping can be useful in this regard. A human rights approach, through its constant concern with those whose right is not realized or violated and why, is a powerful tool to sharpen the focus on people.

86. In identifying vulnerable groups, there is a need to address those with HIV/AIDS and other chronic diseases so that holistic food and nutrition plans can be developed for

and with people living with these diseases.

Monitoring and Indicators

87. Indicators for the progressive realization of the right to adequate food would make it possible to measure the extent to which policy, legal and institutional frameworks are effective. An initial step in formulating such indicators and benchmarks is coming to a common understanding and consensus of rights-based indicators and benchmarks. Process indicators are needed, as well as progress indicators, in order to measure effectiveness of elements such as legal mechanisms, judiciary reform, and the participation of CSOs.

88. In South Africa, the judiciary has provided invaluable guidance on what progressive realization of some of the economic and social rights entail. However, commonly understood indicators of progress in service delivery are still needed, and the State needs to set clearer goals and objectives. The setting of targets with clear deliverables is key and should be done in consultation with vulnerable groups. This would assist the South Africa Human Rights Commission which is tasked to monitor the progressive realization of these economic and social rights by organs of State.

89. The administration of programmes aimed at the progressive realization of the right to food could be improved by involving the stakeholders in monitoring and designing projects. Indicators for assessing public participation, budgetary practices and effective implementation are required for this.

Role of civil society

90. There is a growing recognition of the importance of a participatory approach and the inclusion of civil society in designing and implementing food-based schemes. The case studies revealed that civil society plays significant roles in operationalizing the right to food in many countries. Community based organizations and NGOs are at times more successful than central or state administered programmes in reaching the poor. Civil society also plays a significant role in monitoring the implementation of the right to food in several of the countries examined.

91. Civil society organizations have played an essential role in promoting the human right to food in Brazil. One of the most important initiatives was the creation of the Brazilian Food and Nutrition Security Forum (*Fórum Brasileiro de Segurança Alimentar e Nutricional*, or FBSAN) in 1998. This is a network of organizations, social movements, individuals, and institutions now comprising over 100 organizations with representation in all of the country's states. The overwhelming importance of the civil society movement was obvious in the beginning of Luiz Inácio Lula da Silva's presidency as the majority of CSOs and NGOs backed his food security programme known as *Zero Hunger (Fome Zero)*.

92. One of the most important efforts to create a system for monitoring the realization of social rights has emerged from a group of prosecutors in the federal *Ministerio Publico* who have shown interest in publicizing and promoting the right to food, as well as in influencing public policy in this area. As a result, 26 federal prosecutors, in collaboration with a number of social organizations, created a public civil inquiry to monitor public policy and funding designed to realize the right to food.

93. In India, 2001 witnessed a major landmark in terms of people's awareness of and participation in anti-poverty programmes, particularly regarding distribution of food to

the needy. Following monsoon failure for the third successive year and the incapacity of several state Governments to provide food to poor drought-affected people, a number of NGOs and public spirited citizens launched the people's Right to Food Movement in India. This movement has spread in many states, particularly those with a high concentration of poverty and starvation. The movement has created an awareness of legal entitlements among disempowered citizens and has also helped to improve accountability in the official machinery and local power structures dealing with social programmes.

94. Civil society across Canada plays an important role in advancing the priority of food security and the debate about the human right to food. However, despite a recommendation by the National Action Plan that the sector also perform a national monitoring function, it is financially too weak to do this. Civil society organizations are more prominent at provincial and local levels where they advance the right to food and food security through the activities of charitable food networks, alternative community food projects, voluntary-cooperative-public partnerships, food security networks, farm organizations, and food policy councils, as well as conduct research, public education and policy advocacy.

G. CONCLUSIONS

95. Human Rights are above all about empowerment and accountability. A rights-based approach shifts the focus from technocratic to political solutions and to greater equality in power relations and wealth/income distribution. It emphasises State obligations rather than political will when addressing food insecurity, poverty and the empowerment of rights holders. Enabling policy, legal and institutional frameworks are important to achieve the right to food.

96. Public policies considered from a human rights perspective translate into a development approach in which the obligation to achieve universal human rights for all is the starting point. This in turn calls for a focus on those whose rights are not fully realized, and their participation in formulating, implementing and evaluating policies, rather than a top-down approach.

97. The development of an overarching and integrated food security policy based on human rights principles is central to achieve the right to adequate food at country level. It is not always easy for food policies to balance the four components of food security: availability, stability, access and utilization. Sufficient food production and food availability at national level is not the only requirement for food security. Policies must also take into consideration the importance of livelihoods and equitable access to resources to guarantee access to sufficient food. Planning is required to ensure that economic growth and trade policies are supportive of poverty reduction and right to food policies. When people cannot feed themselves by their own means, programmes need to be put in place to address the inability of the poor to access adequate food.

98. Legal protection of the right to food is essential. This takes different forms in different countries. In some countries the right to food is written directly into the constitution, while in others the courts have interpreted the constitution as protecting the right to food. Different countries also have different types of legislation that protect the right, and various legal mechanisms by which individuals and/or groups can claim it. In some countries claims relating to the right to food can be brought to the courts.

99. Legal and constitutional recognition of the right to food is important but not sufficient to ensure its implementation, even if it is a justiciable right. Other elements need to be in place, including the rule of law, good governance and accountability. Efficient, accessible and workable legal mechanisms for claiming the right to adequate food are needed. An independent judiciary capable of exercising its responsibility is crucial in guaranteeing the right to food. Judges and lawyers need to be aware of rights provisions in this regard. National human rights institutions have a prime role to play in monitoring the implementation of the right to food, as well as in receiving complaints from groups and individuals.

100. Implementing right to food policy and legal frameworks requires effective institutions at all levels. The cross-sectoral nature of the right to food requires efforts of coordination across government ministries and offices at the national, sub-national and local levels. Accountability is central to an effective institutional framework for the implementation of the right to food. The State must establish mechanisms to ensure the accountability of those who are responsible for the implementation of this right.

101. Right to food policy needs to be accompanied by implementation strategies with clear, quantified targets and benchmarks, as well as the allocation of institutional responsibilities and accountability. Strategies and action plans must be based on thorough socio-economic assessments for national food security programmes to target food insecure and vulnerable groups. Indicators for the progressive realization of the right to adequate food would make it possible to measure the extent to which policy, legal and institutional frameworks are effective.

102. Awareness raising, human rights education and capacity building are needed on a large scale to realize the right to food. In the long run, these measures will help lead to a shift in the perception of governments and civil society so that economic, social and cultural human rights become an intrinsic part of societal values.

103. There is a growing recognition of the importance of a participatory approach and the inclusion of civil society in designing and implementing programmes to facilitate or provide access to food. Civil society contributes significantly to operationalizing the right to food in many countries by advocating for policy change, by monitoring implementation, and by helping groups and individuals and groups claim their rights.

List of Case Studies

Case study on the Right to Food in Brazil

Right to Food Case Study: Canada

Right to Food Case Study: South Africa

Right to Food Case Study: Uganda

Right to Food Case Study: India

The above documents are available in English from FAO and can be obtained from:
www.fao.org/righttofood.