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## **State Recognition of the Right to Food at the National Level**

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### **Abstract**

This paper considers to what extent the human right to food has been recognized by countries in the world, by analysing international obligations and constitutional provisions, bearing in mind that the right to food may be either explicitly or implicitly protected at the constitutional level. It considers constitutional examples from Switzerland, South Africa and India.

Keywords: human rights, right to food, law, constitution, jurisprudence

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## Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council
FAO	Food and Agriculture Organization of the United Nations
ICESCR	International Covenant on Economic, Social and Cultural Rights

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## 1 Introduction

The *right to food* has been recognized and affirmed at the international level on many occasions. But to what extent is international recognition reflected at the national level?

This paper provides an overview of the various ways in which the right to food is recognized in different countries. It gives an indication of the number of countries which recognize the right to food, the extent to which they do so, their understanding of this right, and the respective levels of protection provided. The paper is based primarily on reviews of state reports to the Committee on Economic, Social and Cultural Rights (CESCR) and on analysis of constitutional provisions.

Much of the content of this paper was previously published in an FAO Information Paper<sup>1</sup> for the Intergovernmental Working Group on Voluntary Right to Food Guidelines.<sup>2</sup>

### Box 1

#### International Covenant on Economic, Social and Cultural Rights, Article 11

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

Adopted by UN General Assembly on 16 December 1966, Annex to GA Resolution 2200A (XXI)

## 2 Human rights treaties

### 2.1 Ratification

The first step in the inquiry is to gauge the commitment of individual states to the right to food by measuring the status of ratification of food-related human rights treaties. If on the one hand the adoption of resolutions and declarations in international forums is an important indicator of the level of awareness and will to proceed in protecting human

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<sup>1</sup> FAO document IGWG RTFG/INF 2.

<sup>2</sup> The Voluntary Guidelines on the Progressive Realization of the Right to Adequate Food in the Context of National Food Security were adopted by the FAO Council, Report of the 126th Session of the Council, 22-27 November 2004, Rome (FAO document CL127/REP, 2004).

rights, real legal commitment, on the other hand, is only created through the national process leading to ratification of legally binding instruments.

States that have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) have recognized the right to adequate food as part of the right to an adequate standard of living, and the fundamental right to be free from hunger (Article 11 ICESCR). State Parties have committed themselves to progressively realizing this right, to the maximum of available resources through all appropriate means, including particular legislative measures (Article 2 ICESCR). As of January 2005, 151 states were parties (while six remained signatories) to the ICESCR.

State Parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) have agreed to take special measures to eliminate discrimination against women, including assurance of equal access by rural women to food security measures (Article 14 CEDAW) and appropriate nutrition during pregnancy and lactation (Article 12:2 CEDAW). As of January 2005, 179 states were parties to the CEDAW.

State Parties to the Convention on the Rights of the Child (CRC), have undertaken to respect and ensure the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Article 27:1 CRC). State Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall, in case of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing (Article 27:3 CRC).

The right of the child to the highest attainable standard of health (Article 24:1 CRC) must be implemented, *inter alia*, through the provision of adequate nutritious food and clean drinking water (Article 24:2:c CRC). In addition, State Parties shall ensure that parents and children are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents (Article 24:2:e CRC).

These rights are to be ensured for each child within a State Party's jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. (Article 2:1 CRC). As of January 2005, there are 192 State Parties to the CRC, which is close to universal ratification.

Annex I shows the status of ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child (CRC).

## **2.2 International Covenant on Economic, Social and Cultural Rights**

The International Covenant on Economic, Social and Cultural Rights is monitored by the Committee on Economic, Social and Cultural Rights, established in 1987 by the

Economic and Social Council (ECOSOC). The State Parties, according to Article 16 of the ICESCR, have the duty to report on the measures which they have adopted and the progress made in achieving the observance of the rights recognized therein. These reports are submitted to the CESCR every five years after the initial report which must be submitted within two years of ratification. If a report is not submitted, the CESCR may elect to review a state's compliance with the Covenant without a report. The CESCR submits annual reports to ECOSOC.

The CESCR has issued 'general guidelines, regarding the form and contents of reports to be submitted by State Parties under Articles 16 and 17 of the ICESCR'<sup>3</sup>. According to these guidelines, state reports should contain the following information:

- Current standard of living of its entire population, with particular attention to the changes occurring in the short period (e.g., in the last 5-10 years), also through statistical instruments;
- The extent to which the right to adequate food has been realized in the country, through nutritional surveys and detailed information on malnutrition, dividing the population in groups depending on sex, age, race, origin, geographical collocation, and other similar criteria;
- Recent legal and political developments and measures considered necessary by the government to guarantee access to adequate food for each of the vulnerable or disadvantaged groups and for the worse-off areas;
- Measures taken to improve methods of production, conservation and distribution of food, by making full use of technology and scientific knowledge;
- Evidence of any groups lacking knowledge of principles of nutrition;
- Agrarian reforms made in order to improve efficiency of the agrarian system;
- Measures taken to ensure equitable distribution of world food supplies in relation to need, taking into account the problems of both food-importing and food-exporting countries.

These guidelines reflect paragraphs 1 and 2 of Article 11 of the ICESCR, as well as paragraph 2 of Article 2 ICESCR, which forbid discrimination in relation to any of the rights recognized in the ICESCR. It should be noted that these guidelines precede General Comment 12 of 5 May 1999,<sup>4</sup> and are in the process of being revised to take account of normative developments in the understanding of the right to food.

### **2.3 States' reports to CESCR**

In order to provide an overview of State Parties' understanding of state obligations relating to the right to adequate food and freedom from hunger, a survey of the 69 state

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<sup>3</sup> UN document E/C.12/1991/1 (Basic Reference Document), 17 June 1991.

<sup>4</sup> UN document E/C.12/1999/5, Committee on Economic, Social and Cultural Rights, General Comment 12, The right to adequate food (Article 11 of the Covenant).

reports, submitted during the decade 1993-2003, was undertaken by the FAO Legal Office in July 2003. The main findings are reported below.

Thirty-two reports—almost half of those submitted—contain various statistics, such as on poverty levels, cost of living, food consumption, per capita consumption of goods and services, average income and average expenditure, economic production, agriculture. In general, a state report may cover a variety of issues such as agriculture, economic production, health, social security, nutritional habits or poverty in general. This is an indication of a broad understanding of the enabling environment necessary for the enjoyment of the right to food by all.

Many State Parties report on institutional measures taken to implement the right to adequate food. In particular, food safety and control institutions and food security coordination mechanisms such as specific bureaux, agencies or committees are mentioned. Such coordination mechanisms may also have a mandate to identify legislative gaps.

A vast majority of the reports are selective in the issues they report on, choosing one or two they deem most important, and many provide only major statistics. Less than a dozen of the 69 Reports give a coordinated and complete representation of all aspects of the implementation of Article 11 in the national legal systems.<sup>5</sup>

Legislative measures are mentioned in the vast majority of State Parties' reports. Such measures normally fall into one of three broad categories:

- Specific legal measures adopted in specific fields, in order to guarantee the direct implementation of the right to adequate food in those contexts;<sup>6</sup>
- Analysis on general legislation forming the legal basis for the implementation of large-scale programmes and reforms;<sup>7</sup>
- Description of legal instruments creating coordination mechanisms to implement the right to adequate food.<sup>8</sup>

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<sup>5</sup> Bolivia, 1999 (UN document E/1990/5/Add.44); Japan, 1998 (UN document E/1990/6/Add.21); Panama, 2000 (UN document E/1990/6/Add.24); Paraguay, 1999 (UN document E/1989/5/Add.13); Philippines, 1997 (UN document E/1989/5/Add.11); Sri Lanka, 1997 (UN document E/1990/5/Add.32); Switzerland, 1996 (UN document E/1990/5/Add.33); Syrian Arab Republic, 1999 (UN document E/94/104/Add.23); Trinidad and Tobago, 2000 (UN document E/90/6/Add.30); Tunisia, 1996 (UN document E/1990/6/Add.14).

<sup>6</sup> See for instance Estonia, *Food Act, Consumer Protection Act, Public Health Act, Water Act, Packaging Act*, 2001 (UN document E/1990/5/Add.51); Finland, *Living Allowance Act*, 1999 (UN document E/C.12/4/Add.1); Japan, *Soil Productivity Improvement Law*, 1998 (UN document E/1990/6/Add.21).

<sup>7</sup> See for instance Brazil, *The Food and Nutritional Vigilance System (SISVAN)*, 2001 (UN document E/1990/5/Add.53); Bulgaria, *National Food and Nutrition Policy*, 1996 (UN document E/1994/104/Add.16); Canada, *National Plan of Action and Nutrition*, 1998 (UN document E/1994/104/Add.17); Ireland, *National Anti-Poverty Strategy (NAPS)*, 2000 (UN document E/1990/6/Add.29).

<sup>8</sup> See for instance Slovakia, *Subsistence Minimum Act*, 2001 (UN document E/1990/5/Add.49); Tunisia, *Seventh Economic and Social Development Plan*, 1996 (UN document E/1990/6/Add.14).

Common-law countries may report on relevant jurisprudence, in particular on instances where a court has created *ex novo* rules and constitutionally protected rights. In common law jurisprudence, the right to a decent standard of living, free from need and starvation, has been recognized.<sup>9</sup>

Various programmes and plans may be presented in a report of a State Party with regard to:

- Agrarian reform;<sup>10</sup>
- Economic growth plans;<sup>11</sup>
- Social security measures;<sup>12</sup>
- Distribution of land and resources;<sup>13</sup>
- Public health measures;<sup>14</sup> and
- Special programmes to address the needs of a minority group or a particularly disadvantaged group.<sup>15</sup>

## 2.4 Applicability of the ICESCR at the national level

One of the measures consistently advocated by the CESCR is the incorporation of the provisions of the ICESCR in the constitutions or national legislation of the State Parties, to ensure that the provisions can be directly applied by national courts and other agencies. It should also be noted that some State Parties to the ICESCR follow the so-called monistic system, which means that a treaty, once ratified, becomes part of the

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<sup>9</sup> See Israel, Judgement by the Israel's Supreme Court in the case of Gazmo versus Ishayahu (REC 4905/98) Of 19 March 2001 (document E/1996/6/Add.32).

<sup>10</sup> See for instance Brazil, *National Agrarian Reform Programme*, 2001 (UN document E/1990/5/Add.53); Colombia, *Agrarian Reform Bill*, 2000 (UN document E/C.12/4/Add.6); Philippines, *Comprehensive Agrarian Reform Programme*, 1997 (UN document E/1989/5/Add.11).

<sup>11</sup> See for instance Bolivia, *General Social and Economic Development Plan*, 1999 (UN document E/1990/5/Add.44); Tunisia, *Seventh Economic and Social Development Plan*, 1996 (UN document E/1990/6/Add.14).

<sup>12</sup> See for instance Argentina, *Social Nutritional Programme (PROSONU)*, 1997 (UN document E/1990/6/Add.16); Panama, *Social Assistance Programme*, 2000 (UN document E/1990/6/Add.24).

<sup>13</sup> See for instance Armenia, *Programme of Land Reforms*, 1998 (UN document E/1990/5/Add.36); Philippines, *Comprehensive Agrarian Reform Programme*, 1997 (UN document E/1989/5/Add.11).

<sup>14</sup> See for instance Bulgaria, *Health Nutrition Information and Training Programme*, 1996 (UN document E/1994/104/Add.16); Mexico, *Nutrition and Health Programme*, 1997 (UN document E/1994/104/Add.18).

<sup>15</sup> See for instance Argentina, *Nutritional Programme for Mothers and Children (PROMIN)*, 1997 (UN document E/1990/6/Add.16); see also Australia, *Protection of Health of Indigenous*, 1998 (UN document E/1994/104/Add.22); Panama, laws protecting indigenous ownership of land, 2000 (document E/1990/6/Add.24); Paraguay, *The Food and Nutritional Education Programme*, set up to improve living conditions in rural areas through health, nutrition and education programmes for vulnerable groups, 1999 (UN document E/1989/5/Add.13); Philippines, government policies and social welfare focused on socially disadvantaged women, physically and mentally disabled persons and the more disadvantaged members of labour force, 1997 (UN document E/1989/5/Add.11).

law of the land and thus applicable by courts. States which follow the dualist approach normally need to adopt specific legislation to this effect before the provisions of a treaty become applicable.

Based on a review of constitutions and of State Parties reports to the ICESCR, the FAO survey finds that in 77 State Parties to the ICESCR, the provision of international treaties such as the ICESCR are part of the domestic legal order and directly applicable, while in others the incorporation of such provision in the domestic system is subject to the adoption of specific national laws. In this regard, some countries have taken important steps to incorporate the entire Covenant<sup>16</sup>, while others took action to enforce single rights alone.<sup>17</sup> A full list of the State Parties where the ICESCR is part of the domestic legal order is provided in Annex II.

### **3 National constitutions**

#### **3.1 Dimensions of the right to food**

The right to food is a multidimensional right, the realization of which depends on many factors. In a normal situation, the right to food is realized for the majority of persons primarily through their own efforts, by producing or procuring the food they need. This depends on access to land and other productive resources and on access to paid employment. Some people are unable to provide for themselves, for reasons beyond their control, such as unemployment, age, sickness, disability, natural catastrophes, and war. Their food entitlements depend on the transfer of food or cash from their families, communities, countries or international aid organizations. The right to adequate food also implies that the food obtained must be of adequate quality. This entails that food purchased on the free market or given as food aid must fulfil minimum safety standards. The right to food is linked to various other human rights, from property rights and access to justice, labour rights and the right to information and education.

Exploring the constitutional protection of the right to food is, therefore a more complex endeavour than simply searching for keywords such as ‘food’ or ‘nutrition’.<sup>18</sup> On the other hand, if the survey is to remain meaningful, some limits must be set to its scope. The FAO Legal Office undertook a survey of all national constitutions in June and July 2003, using the following criteria for inclusion:

- Explicit recognition of the right to food of everyone;
- Explicit recognition of the right to food of specific groups (such as children, the elderly, pensioners, prisoners);

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<sup>16</sup> See for instance Norway, the Human Rights Act of 21 May 1999 No. 30 gave ICESCR, International Convention on Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms the force of Norwegian Law; Argentina, the 1994 constitutional amendment included ICESCR into the national constitution.

<sup>17</sup> See discussions in the following section on protection of single rights through constitutional provisions.

<sup>18</sup> This was the methodology followed in ‘The Right to Food in Theory and Practice’ (FAO 1998).



- Implicit recognition of the right to food through explicit recognition of a wider right, such as the right to an adequate standard of living, a decent life or livelihood;
- Recognition of a right to social security for non-workers, which constitutes an implicit recognition of the right to food;
- Recognition of the rights of the child, which can normally be taken to include their nutrition rights;
- Recognition of the right to minimum wage for workers, enough to provide for the basic needs of the worker and his or her family, including food needs;
- Recognition of the importance of agriculture, food safety or consumer rights through explicit provisions on rights or on the duty of the state;
- Recognition of the right to health, in such a way as to include food rights.

There is considerable overlap between those different dimensions of protection and recognition of the right to food; some constitutions contain provisions falling into most of these categories. On the other hand, some constitutions contain no such provisions at all.

The most common constitutional provisions are formulated along the lines of the Universal Declaration of Human Rights, recognizing the right of everyone to an adequate standard of living, including food, clothes and shelter. Others refer to a decent living standard or life in dignity. Yet other constitutions list component rights only, such as food or nutrition. There are some constitutions where the right to food as such is not mentioned, and reference is made only to the obligation of the state to ensure an adequate standard of living or level of nutrition of the population, which for the purpose of this paper is deemed equivalent to implicit recognition of the right to food.<sup>19</sup>

Constitutions that recognize the rights of the child almost always state that the parents have the obligation to feed their children; often they also contain reference to obligations to provide state support to parents or to ensure the care of orphans. Specific groups other than children, whose food rights are specifically protected in some constitutions, include pensioners, the elderly, war widows, veterans and prisoners. Such provisions often coexist with more general provisions concerning the right to food.

Some constitutions contain reference to the resources available to the state in connection with the realization of the right to food, which echoes the International Covenant on Economic, Social and Cultural Rights (ICESCR) and should therefore be interpreted in accordance with the obligations of a State Party to that Covenant.

A statistical review of the results reveals that a majority of countries recognize some dimension of the right to food. Table 1 gives a breakdown of the statistics. It should be noted that no account is taken of overlaps between the categories, of which there are some instances. It must also be acknowledged that these categories are, by their nature loose, and the placement of a particular provision in one category rather than another may be disputable.

Annex II contains the full list of constitutional provisions.

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<sup>19</sup> For instance, Article 47 of the Constitution of India.

Table 1  
Constitutional provisions to the right to food

Constitutional provisions		
1	Constitutional provisions making direct mention of the right to food, applicable to the whole of the population <sup>(a)</sup>	22
2	Explicit protection of the right to food of a specific group	17
3	Constitutions protecting a broader right, including the right to food, such as adequate standard of living, or dignified life <sup>(b)</sup>	46
4	Rights of the child constitutionally protected	66
5	Constitutions recognizing a right to social security	114
6	Constitutional provisions on minimum wages	37
7	Constitution provides for state responsibility for food safety, consumers, promotion of agriculture etc.	23
8	Broad constitutional provisions on the right to health, which could include the right to food	13
	Total number of constitutions reviewed	203

Notes: <sup>(a)</sup> See Annex III: High level of constitutional protection of the right to food.

<sup>(b)</sup> See for instance Norway, which has a provision referring to all human rights recognized by Norway.

### 3.2 Level of constitutional protection

Given the considerable overlap between the various constitutional provisions, which is not reflected above, a subjective judgement was made as to how strong the constitutional protection of the right to food is deemed to be. For instance, while the constitution of Bolivia does not have a provision classified by the survey as explicit recognition of the right to food of the entire population, there are provisions about the right to food of various groups and the rights of the child and recognition of the right to an adequate standard of living, as well as protection of the right to social security and to a minimum wage.<sup>20</sup> Taken together, the constitutional protection of the right to food in Bolivia is, in fact, very strong.

Some countries do not have written constitutions. Nevertheless, the judiciary in those countries may recognize constitutional rights, and there are examples of the right to food having been so recognized in case law.<sup>21</sup> These countries have been taken into account in this survey.

Annex III provides the complete list of countries and the assessment of the level of protection. It should be noted that this part of the survey did not distinguish between justiciable and non-justiciable provisions.

The conclusion of this—rather subjective—assessment is that a total of 57 countries provide rather strong constitutional protection, and another 55 countries have medium

<sup>20</sup> See Articles 8, 157, 158, 164 and 199 of the Constitution of Bolivia.

<sup>21</sup> For instance, Israel, see *Gazmo vs Ishayahu* (REC 4905/98) delivered by the Supreme Court of Israel on 19 March 2001, quoted in Israel's report to the CESCR in 2001 (UN document E/1990/6/Add.32, paragraph 284).

level protection, while 28 countries provide some, but more limited, protection of the right to food. The majority of countries therefore recognize and protect the right to food to some extent.

## **4 Jurisprudence on the right to food**

### **4.1 Justiciability**

The review of the constitutional protection of the different dimensions of the right to food referred to above does not distinguish between provisions that are justiciable, and those that are not. Nor does it give an indication as such whether the right to food is well protected in law or in practice. It should furthermore be noted that perceived justiciability may change over time, notwithstanding the original intention or interpretation. At the present time there is little jurisprudence available specifically on the right to food although a growing body of case law exists for various other economic, social and cultural rights.<sup>22</sup> The following sections will briefly review relevant jurisprudence from three countries in different continents.

### **4.2 Switzerland**

An important case on the right to food and minimum subsistence comes from Switzerland. In 1996 the Swiss Federal Court, which is the highest court in Switzerland, recognized the right to minimum basic conditions, including ‘the guarantee of all basic human needs, such as food, clothing and housing to prevent a situation where people ‘are reduced to beggars, a condition unworthy of being called human’. The case was brought by three state-less Czech refugee brothers, who found themselves in Switzerland with no food and no money. They could not work, because they could not get a permit, and without papers they could not leave the country. Their request for assistance to the cantonal authorities in Bern was refused.<sup>23</sup>

The court in this case deemed that it lacked the legal competence to set priorities for the allocation of resources necessary to realize the right to minimum conditions of existence, including food. However, it determined that it could set aside legislation if the outcome of this legislative framework failed to meet the minimum claim required by constitutional rights. In this case, the exclusion of three non-nationals from social welfare legislation was found to be a violation of their right to food, despite the fact that they were illegal immigrants. The Swiss Federal Court decision determined that the

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<sup>22</sup> Databases of such caselaw are available from various organizations, including the International Network on Economic, Social and Cultural Rights (ESCR-Net) [www.escr-net.org](http://www.escr-net.org), Interights [www.interrights.org](http://www.interrights.org) and the Nordic Human Rights Network [www.nordichumanrights.net/tema/tema3/caselaw/](http://www.nordichumanrights.net/tema/tema3/caselaw/) and the Centre for Housing Rights and Evictions (COHRE) [www.cohre.org/litigation](http://www.cohre.org/litigation).

<sup>23</sup> *The Right to Food*, Report by the Special Rapporteur on the right to food, Mr Jean Ziegler, submitted in accordance with Commission on Human Rights Resolution 2001/25 and General Assembly Resolution of [sic] (UN document E/CN.4/2002/58, 20 December 2001, paragraph 58).

right to food in this sense could be the foundation of a justiciable claim for official assistance.<sup>24</sup>

Transforming the hitherto unwritten constitutional right, the 1999 Swiss Constitution contains an explicit constitutional provision on the right to assistance in situations of distress, as set out in Box 2.

Box 2  
Federal Constitution of Switzerland

Article 12: *Right to assistance in situations of distress*  
Anyone, who is in a situation of distress and unable to provide for his or her basic needs, has a right to help and assistance and to receive the necessary means for an existence consistent with human dignity.

### 4.3 India

The Indian Constitution recognizes the right to life, and contains a specific provisions related to food, as shown in Box 3.

According to the ‘right to food campaign’, the year 2001 witnessed a time of widespread drought across the country. In many states, it was the second or third successive year of drought. In this time of crisis, state governments often failed to meet their responsibilities towards drought-affected citizens, as spelt out in their respective ‘famine codes’ or ‘scarcity manuals’. This failure was all the more shocking in view of the country’s gigantic food stocks (approximately 50 million tons at that time).

Box 3  
The Constitution of India

Part III – FUNDAMENTAL RIGHTS

Article 21: *Protection of life and personal liberty*  
No person shall be deprived of his life or personal liberty except according to procedure established by law.

Part IV – DIRECTIVE PRINCIPLES OF STATE POLICY

Article 47: *Duty of the state to raise the level of nutrition and the standard of living and to improve public health.*  
The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

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<sup>24</sup> Malcolm Langford (2001). ‘Right to Food in International Law: Obligations of States and the FAO’ LLM Thesis presented to the European University Institute, 1 October 2001, Florence.

In response to this situation, the People's Union for Civil Liberties (Rajasthan) filed a writ petition in the Supreme Court in April 2001, demanding the immediate utilization of the country's food stocks for drought relief and prevention of hunger. The scope of the petition was not restricted to drought situations alone. It also focused on the general need to uphold the 'right to food'. The respondents to the lawsuit were the Union of India, all the state/UT governments, and the Food Corporation of India.<sup>25</sup>

The Supreme Court held its first hearing on 9 May 2001 and has held regular hearings in the case since then. The case is still ongoing, but a number of interim orders have been issued. In its Interim Order of 2 May 2003 the Court stated:

Article 21 of the Constitution of India protects for every citizen a right to live with human dignity. Would the very existence of life of those families which are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families? Reference can also be made to Article 47 which inter alia provides that the state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.<sup>26</sup>

The Supreme Court has thus formally recognized the right to food, and has ordered the central and state governments to take a number of measures to improve the situation. The justiciability of this right is therefore confirmed, and the Court has issued a number of orders to government, entailing expenditure of resources. Among the decisions of the court case to date are:

- Benefits of eight nutrition-related schemes (public distribution system, mid-day meals, integrated child development services, Annapurna [food assistance to senior citizens], old-age pensions, national maternity benefit and national family benefit schemes) have become legal entitlements;
- All state governments have been directed to begin cooked mid-day meals for all children in government and government-assisted schools;
- State and central governments have been ordered to adopt specific measures to ensure public awareness and transparency of assistance programmes;
- Government of India must develop a system to ensure that all poor families are identified as below poverty line;
- Licences of ration shop dealers to be cancelled if they (i) do not open on time, (ii) overcharge, (iii) retain ration cards, (iv) make false entries in 'below poverty line' cards, or (v) engage in black marketing;
- Especially vulnerable groups have been identified amongst the poor, including widows, the elderly, infirm, disabled, pregnant and lactating women without assured means of subsistence, as well as 'primitive tribes';

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<sup>25</sup> Right to Food Campaign (India) website, Legislative Action. Available at: [www.righttofood.com](http://www.righttofood.com), consulted on 9 September 2003.

<sup>26</sup> PUCL versus Union of India and others, Writ Petition (Civil) No. 196 of 2001. Available at: [www.righttofood.com](http://www.righttofood.com)

- All state governments have been ordered to implement food for work schemes in scarcity areas.

In its interim orders of 2 and 8 May 2002, the Supreme Court appointed two Commissioners of the Court ‘for the purpose of monitoring the implementation of all orders relating to the right to food’. The commissioners are empowered to enquire about any violations of these orders and to demand redress, with the full authority of the Supreme Court. They may enlist the assistance of NGOs and individuals. Resident Commissioners have also been appointed in each state, to assist the Commissioners of the Court. At the time of writing the commissioners have submitted four reports to the Supreme Court, making a number of observations and recommendations.<sup>27</sup>

#### 4.4 South Africa

The South African Constitution adopted in 1994 after the abolition of apartheid, is in many ways very progressive. The way in which the social, economic and cultural rights are drafted leaves no doubt as to the justiciability of those rights. In section 7 (2) of the constitution the state is required to respect, protect, promote and fulfil the rights in the

Box 4  
Constitution of the Republic of South Africa

Chapter 2, Bill of Rights

Section 27: *Health care, food, water and social security*

- (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 dependants, 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.

Section 28: *Children*

- (1) Every child has the right to:
  - ...
  - (c) basic nutrition, shelter, basic health care services and social services;

Section 35: *Arrested, detained and accused persons*

- (2) Everyone who is detained, including every sentenced prisoner, has the right to:
  - ...
  - (e) conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment;

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<sup>27</sup> www.righttofood.com, Commissioners’ work, consulted on 9 September 2003.

Bill of Rights. Section 38 of the constitution states that a class, group or individual can ‘approach a competent court, alleging that a right in the bill of rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights’.

The justiciability of social, economic and cultural rights in South Africa has been confirmed in a supreme court judgement, in the Grootboom case,<sup>28</sup> which concerned the right to adequate housing. The judgement developed a test of ‘reasonableness’ against which to measure the performance of the government in dealing with the right to adequate housing, and established that priority must be given to those in desperate need.

The right to food is protected in three different articles of the constitution, shown in Box 4. While the general right to food is subject to available resources, no such limitation is listed on the nutrition rights of the child and of prisoners. In addition to the right to food being justiciable in South Africa, the constitution also established a human rights commission, with the mandate to monitor all human rights. The commission has developed a set of questionnaires sent to relevant government departments at central and state levels, soliciting information about actions taken to implement the right to food.<sup>29</sup>

## 5 Conclusions

Food-related rights are recognized to some extent in a majority of countries, often on the same basis as the right to food is recognized in the ICESCR. However, the actual respect, protection and fulfilment of this right remains elusive and in most countries there is lack of clear definition and understanding of the content of these rights at the national level, let alone clear justiciable provisions on the right to food as such.

The right to food is underdeveloped as of yet; the understanding of the right, its content, limitations and application by oversight mechanisms, remain largely unexplored. The progress in the realization of the right to food is also very uneven in the world; while hunger and malnutrition have been largely eradicated in some countries, yet in others the situation remains critical, and many people have no effective entitlements and no effective ways of holding their governments accountable if they suffer from hunger and malnutrition. The ICESCR specifies the adoption of legislative measures for the realization of the rights recognized in the ICESCR, yet very few countries have taken legislative steps regarding the right to food beyond simple constitutional provisions, which, while being important first steps, probably do not suffice for effective action.

Specific legislation, such as framework law, is urgently needed in order to ensure the process side of the progressive realization of the right to adequate food in all its implications, especially in countries where incidence of undernutrition is high. As noted earlier, the right to food is a multidimensional issue and demands cross-sectoral approaches. This may inadvertently lead to less accountability on the part of the state. It

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<sup>28</sup> See *Government of the Republic of South Africa v. Grootboom* 2001 (1) SA 46 (CC).

<sup>29</sup> See presentation entitled ‘The Right to Food: The South African Experience’ by Commissioner Charlotte McClain at the ‘Forum national sur le droit à une alimentation adéquate’ in Bamako (Mali) 19-21 March 2003.

is therefore of crucial importance to assign responsibilities for coordination of efforts and for the various areas and levels of government that may help or hinder the enjoyment of the right to adequate food.

To date there have been very few instances in which national courts have adjudicated on the basis of provisions related to food rights. However, there are some signs of progress in the strengthening of judicial and other mechanisms, and as jurisprudence and administrative review cases gradually build up, the ways and means by which effective remedies for violations of the right to food can be provided will become increasingly clear.



## Annex I: Status of ratification of relevant treaties

The table shows the status of ratification, as of January 2005, of three relevant human rights treaties, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The year refers to the entry into force of the instrument of ratification or accession. The symbol (s) denotes that the country in question has signed, but not ratified the instrument.

Country	ICESCR	CEDAW	CRC
Afghanistan	1983	2003	1994
Albania	1992	1994	1992
Algeria	1989	1996	1993
Andorra	–	1997	1996
Angola	1992	1986	1991
Antigua and Barbuda	–	1989	1993
Argentina	1986	1985	1991
Armenia	1993	1993	1993
Australia	1976	1983	1991
Austria	1978	1982	1992
Azerbaijan	1992	1995	1992
Bahamas	–	1993	1991
Bahrain	–	2002	1992
Bangladesh	1999	1984	1990
Barbados	1976	1981	1990
Belarus	1976	1981	1990
Belgium	1983	1985	1992
Belize	2000(s)	1990	1990
Benin	1992	1992	1990
Bhutan	–	1981	1990
Bolivia	1982	1990	1990
Bosnia and Herzegovina	1992	1993	1992
Botswana	–	1996	1995
Brazil	1992	1984	1990
Brunei Darussalam	–	–	1996
Bulgaria	1976	1982	1991
Burkina Faso	1999	1987	1990
Burundi	1990	1992	1990
Cambodia	1992	1992	1992
Cameroon	1984	1994	1993
Canada	1976	1982	1992
Cape Verde	1993	1981	1992
Central African Republic	1981	1991	1992
Chad	1995	1995	1990
Chile	1976	1990	1990
China	2001	1981	1992
Colombia	1976	1982	1991
Comoros	–	1994	1993

Table continues

Annex Table (con't)  
Ratification status of relevant treaties

Country	ICESCR	CEDAW	CRC
Congo	1984	1982	1993
Cook Islands	–	–	1997
Costa Rica	1976	1986	1990
Côte d'Ivoire	1992	1996	1991
Croatia	1991	1992	1991
Cuba	–	1981	1991
Cyprus	1976	1985	1991
Czech Republic	1993	1993	1993
Democratic People's Republic of Korea	1981	2001	1990
Republic of Korea			
Democratic Republic of the Congo	1977	1986	1990
Denmark	1976	1983	1991
Djibouti	2003	1999	1991
Dominica	1993	1981	1991
Dominican Republic	1978	1982	1991
Ecuador	1976	1981	1990
Egypt	1982	1981	1990
El Salvador	1980	1981	1990
Equatorial Guinea	1987	1984	1992
Eritrea	2001	1995	1994
Estonia	1992	1991	1991
Ethiopia	1993	1981	1991
Fiji	–	1995	1993
Finland	1976	1986	1991
France	1981	1984	1990
Gabon	1983	1983	1994
Gambia	1979	1993	1990
Georgia	1994	1994	1994
Germany	1976	1985	1992
Ghana	2000	1986	1990
Greece	1985	1983	1993
Grenada	1991	1990	1990
Guatemala	1988	1982	1990
Guinea	1978	1982	1990
Guinea-Bissau	1992	1985	1990
Guyana	1977	1981	1991
Haiti	–	1981	1995
Holy See	–	–	1990
Honduras	1981	1983	1990
Hungary	1976	1981	1991
Iceland	1979	1985	1992
India	1979	1993	1993
Indonesia	–	1984	1990
Iran (Islamic Republic of)	1976	–	1994
Iraq	1976	1986	1994

Table continues

Annex Table (con't)  
 Ratification status of relevant treaties

Country	ICESCR	CEDAW	CRC
Ireland	1990	1986	1992
Israel	1992	1991	1991
Italy	1978	1985	1991
Jamaica	1976	1984	1991
Japan	1979	1985	1994
Jordan	1976	1992	1991
Kazakhstan	2003(s)	1998	1994
Kenya	1976	1984	1990
Kiribati	–	2004	1996
Kuwait	1996	1994	1991
Kyrgyzstan	1994	1997	1994
Lao People's Democratic Republic	2000 (s)	1981	1991
Latvia	1992	1992	1992
Lebanon	1976	1997	1991
Lesotho	1992	1995	1992
Liberia	2004	1984	1993
Libyan Arab Jamahiriya	1976	1989	1993
Liechtenstein	1999	1996	1996
Lithuania	1992	1994	1992
Luxembourg	1983	1989	1994
Madagascar	1976	1989	1991
Malawi	1994	1987	1991
Malaysia	–	1995	1995
Maldives	–	1993	1991
Mali	1976	1985	1990
Malta	1990	1991	1990
Marshall Islands	–	–	1993
Mauritania	2004	2001	1991
Mauritius	1976	1984	1990
Mexico	1981	1981	1990
Micronesia (Federal States of)	–	2004	1993
Monaco	1997	–	1993
Mongolia	1976	1981	1990
Morocco	1979	1993	1993
Mozambique	–	1997	1994
Myanmar	–	1997	1991
Namibia	1995	1992	1990
Nauru	–	–	1994
Nepal	1991	1991	1990
Netherlands	1979	1991	1995
New Zealand	1979	1985	1993
Nicaragua	1980	1981	1990
Niger	1986	1999	1990
Nigeria	1993	1985	1991
Niue	–	–	1996

Table continues

Annex Table (con't)  
Ratification status of relevant treaties

Country	ICESCR	CEDAW	CRC
Norway	1976	1981	1991
Oman	–	–	1997
Pakistan	2004(s)	1996	1990
Palau	–	–	1995
Panama	1977	1981	1991
Papua New Guinea	–	1995	1993
Paraguay	1992	1987	1990
Peru	1978	1982	1990
Philippines	1976	1981	1990
Poland	1977	1981	1991
Portugal	1978	1981	1990
Qatar	–	–	1995
Republic of Korea	1990	1985	1991
Republic of Moldova	1993	1994	1993
Romania	1976	1982	1990
Russian Federation	1976	1981	1990
Rwanda	1976	1981	1991
Saint Kitts and Nevis	–	1985	1990
Saint Lucia	–	1982	1993
Saint Vincent and the Grenadines	1982	1981	1993
Samoa	–	1992	1994
San Marino	1986	2003	1991
Sao Tomé and Príncipe	1995 (s)	2003	1991
Saudi Arabia	–	2000	1996
Senegal	1978	1985	1990
Serbia and Montenegro	1992	1982	1991
Seychelles	1992	1992	1990
Sierra Leone	1996	1988	1990
Singapore	–	1995	1995
Slovakia	1993	1993	1993
Slovenia	1992	1992	1991
Solomon Islands	1982	2002	1995
Somalia	1990	–	2002 (s)
South Africa	1994 (s)	1996	1995
Spain	1977	1984	1991
Sri Lanka	1980	1981	1991
Sudan	1986	–	1990
Suriname	1977	1993	1993
Swaziland	2004	2004	1995
Sweden	1976	1981	1990
Switzerland	1992	1997	1997
Syrian Arab Republic	1976	2003	1993
Tajikistan	1999	1993	1993
Thailand	1999	1985	1992

Table continues

Annex Table (con't)  
Ratification status of relevant treaties

Country	ICESCR	CEDAW	CRC
The former Yugoslav Republic of Macedonia	1994	1994	1991
Timor-Leste	2003	2003	2003
Togo	1984	1983	1990
Tonga	–	–	1995
Trinidad and Tobago	1979	1990	1992
Tunisia	1976	1985	1992
Turkey	2003	1986	1995
Turkmenistan	1997	1997	1993
Tuvalu	–	1999	1995
Uganda	1987	1985	1990
Ukraine	1976	1981	1991
United Arab Emirates	–	2004	1997
United Kingdom	1976	1986	1992
United Republic of Tanzania	1976	1985	1991
United States of America	1977 (s)	1980 (s)	1995 (s)
Uruguay	1976	1981	1990
Uzbekistan	1995	1995	1994
Vanuatu	–	1995	1993
Venezuela	1978	1983	1990
Viet Nam	1982	1982	1990
Yemen	1987	1984	1991
Zambia	1984	1985	1992
Zimbabwe	1991	1991	1990
Total remaining signatures	7	1	2
Total ratifications	151	179	192

## **Annex II: Constitutional protection of the right to food**

The list below gives the countries containing constitutional provisions under each category, with reference to the article or section of the constitution in brackets.

### **II.1 Constitutional provisions making direct mention of the right to food, applicable to the whole of the population**

Bangladesh (15); Brazil (6); Democratic People's Republic of Korea (25); Ecuador (23); Ethiopia (90); Guatemala (99); Guyana (40); Haiti (22); Iran (Islamic Republic of) (3, 43); Malawi (13, 30); Namibia (95); Nicaragua (63); Nigeria (16); Pakistan (38); Panama (106); Puerto Rico (2); Republic of Moldova (47); South Africa (27); Sri Lanka (25); Suriname (24); Uganda (14, 22); Ukraine (48).

### **II.2 Explicit protection of the right to food of a specific group**

Bolivia (8); Brazil (208, 227); Colombia (44,46); Costa Rica (82); Cuba (9, 38); Dominican Republic (8); Ecuador (49,50); Guatemala (51); Honduras (121, 123); Panama (52); Paraguay (54, 57); Philippines (15); Peru (6); South Africa (28, 35); Sri Lanka (22); The former Yugoslav Republic of Macedonia (40); Uruguay (56).

### **II.3 Constitutions protecting a broader right, including the right to food, such as adequate standard of living, or dignified life**

Bangladesh (18); Belgium (23.1); Bolivia (158); Brazil (170); Canada (7); Colombia (46); Dem. Rep. of Congo (48); Cyprus (9); Dominican Republic (8); El Salvador (101); Eritrea (Preamble,10); Ethiopia (89); Finland (19); Germany (1); Ghana (36); Guatemala (119); Honduras (150); India (21, 47); Indonesia (28); Ireland (45); Liberia (8); Mozambique (41); Netherlands (20); Nigeria (16, 17); Norway (110 c); Pakistan (38); Paraguay (53); Peru (2); Puerto Rico (2); Republic of Korea (34); Romania (43); Russian Federation (7); Sierra Leone (8); Slovakia (39); Spain (Preamble); Sudan (11); Sweden (2); Switzerland (12); Syrian Arab Republic (44); Tajikistan (1); The former Yugoslav Republic of Macedonia (40); Trinidad and Tobago (Preliminary, Sec. I); Turks and Caicos Islands (2); United Republic of Tanzania (8, 11); Vanuatu (5); Venezuela (3, 299).

### **II.4 Right of the child constitutionally protected**

Bahrain (5); Bolivia (199); Brazil (203); Bulgaria (47); Cambodia (48, 73); Cape Verde (71, 86); Colombia (44, 45, 50); Comoros (Preamble); Congo (33,34); Costa Rica (55); Côte d'Ivoire (6); Croatia (62); Cuba (9, 38); Ecuador (50); Egypt (10); El Salvador (35); Ethiopia (36); Guatemala (51); Haiti (260); Honduras (121, 123); Hungary (16); Iceland (76); India (39); Indonesia (28b); Ireland (45); Italy (31); Kuwait (10); Latvia (110); Lesotho (27); Lithuania (39); Namibia (15); Nepal (26); Nicaragua (105); Nigeria (17); Pakistan (35); Panama (52); Paraguay (53, 54); Peru (4); Philippines (15); Poland (72); Portugal (69); Puerto Rico (2); Qatar (22); Republic of Moldova (50); Romania (45); Russian Federation (7); Sao Tomé and Príncipe (51); Seychelles (31); Slovenia (56); South Africa (28); Spain (39); Sri Lanka (22); Sudan (14); Suriname (37);

Switzerland (11); Syrian Arab Republic (44); Tajikistan (340); Thailand (53); The former Yugoslav Republic of Macedonia (40, 42); Timor-Leste (18); Turkey (41, 61); Uganda (34); United Arab Emirates 916); Uruguay (41); Venezuela (78); Viet Nam (59, 65).

## **II.5 Constitutions recognizing a right to social security**

Albania (59); Algeria (59); Andorra (30); Angola (47); Armenia (33); Azerbaijan (38); Bahrain (3); Bangladesh (15); Belgium (23); Belarus (47); Bolivia (164); Brazil (203, 230); Bulgaria (51); Burkina Faso (18); Cambodia (36, 72, 75); Cape Verde (7, 67, 72); Chile (19); China (45); Hong Kong Province of China (36, 145); Colombia (44, 46, 47, 48, 49); Côte d'Ivoire (6); Croatia (57, 58, 64); Cuba (9, 48); Cyprus (9); Democratic People's Republic of Korea (72); Democratic Republic of the Congo (47, 50); Dominican Republic (8); Ecuador (55, 56, 57); Egypt (17); El Salvador (66, 70); Eritrea (21); Estonia (28); Ethiopia (41, 89); Finland (19); France (Preamble); Gabon (1); Georgia (32); Germany (20); Ghana (37); Greece (21, 22); Guatemala (94); Haiti (22, 260); Honduras (142); Hungary (70e); Iceland (76); India (41); Indonesia (34); Iran, Islamic Republic of (29); Ireland (45); Italy (38); Kazakhstan (24, 28, 29); Kuwait (11); Kyrgyzstan (27); Latvia (109); Liberia (8); Liechtenstein (26); Lithuania (48); Luxembourg (11, 23); Madagascar (30); Malawi (13); Maldives (28); Mali (17); Malta (Sec.17); Marshall Island (Sec. 15); Mexico (123); Mongolia (16); Namibia (95); Nepal (26); Netherlands (20); Nicaragua (82, 105); Nigeria (16, 17); Oman (12); Pakistan (38); Panama (109); Paraguay (58, 70, 95); Peru (4, 10, 11); Philippines (15); Poland (67, 69); Portugal (63, 72); Puerto Rico (2); Qatar (23); Republic of Korea (34); Republic of Moldova (47, 51); Romania (33, 43, 45, 46); Russian Federation (7, 39); Sao Tomé and Príncipe (27, 43); Saudi Arabia (27); Seychelles (37); Sierra Leone (8, 22); Slovakia (39); Slovenia (50); South Africa (27); Spain (41, 49, 50); Sri Lanka (22, 25); Sudan (11); Suriname (50); Sweden (2); Switzerland (12, 41); Syrian Arab Republic (46); Tajikistan (39); Thailand (52, 54, 55); The former Yugoslav Republic of Macedonia (34, 35, 36); Timor-Leste (20, 21, 56); Togo (33); Turkey (60, 61); Turkmenistan (34); Uganda (35); Ukraine (46); United Arab Emirates (16); United Republic of Tanzania (8, 11); Uruguay (44, 46, 67); Uzbekistan (39); Venezuela (80, 81, 86); Viet Nam (59, 67).

## **II.6 Constitutional provision of minimum wage**

Armenia (29); Azerbaijan (38); Belarus (42); Bolivia (157); Brazil (7); Bulgaria (48); Costa Rica (57); Croatia (55); Cuba (9); Democratic Republic of the Congo (37); Ecuador (35); El Salvador (37, 38); Guatemala (102); Honduras (128); India (43); Italy (36); Kazakhstan (28); Kyrgyzstan (29); Lesotho (30); Lithuania (48); Madagascar (63); Mexico (123); Namibia (95); Nicaragua (82); Nigeria (16); Norway (110); Panama (62); Paraguay (92); Peru (24); Portugal (59); Russian Federation (7); Slovakia (39); Spain (35); Turkey (55); Turkmenistan (31); Uzbekistan (39); Venezuela (91).

## **II.7 Constitution provides for state responsibility for food safety, consumers, promotion of agriculture etc.**

Andorra (29); Argentina (42); Brazil (200); Bulgaria (21); Cambodia (64); Costa Rica (46); Ecuador (42, 43); El Salvador (69); Germany (74); Guatemala (96); Haiti (247, 249); Honduras (146, 347); Iran (43); Nicaragua (105); Panama (114); Paraguay (72); Philippines (13); Republic of Moldova (37); Sierra Leone (7); Spain (51); Ukraine (50); Venezuela (305); Yemen (9).

## **II.8 Broad constitutional provisions on the right to health, which could include the right to food**

Albania (59); Bangladesh (18); Burkina Faso (26); Cape Verde (68); Comoros (preamble); India (47); Philippines (13); Portugal (64); Romania (33); Russian Federation (7); Seychelles (29); Spain (43); Uruguay (44).

## **II.9 State Parties to the ICESCR in which it is constitutionally directly applicable**

(Note: Brackets refer to article or section of the constitution, or to the source of the information).

Albania (122); Algeria (132); Angola (21); Armenia (6); Austria (9); Azerbaijan (148,151); Belarus (21); Belgium (1993/1997 Report to CESCR); Benin (146); Brazil (5); Bulgaria (5:4); Burundi (10); Cambodia (31); Cape Verde (11); Central African Republic (69); Chad (222); Congo (176); Costa Rica (7); Croatia (134); Cyprus (169); Czech Republic (10); Democratic Republic of the Congo (200); Djibouti (37); Ecuador (18); Egypt (151); El Salvador (144); Estonia (3); Ethiopia (9:4); Finland (1999 Report to CESCR); France (55); Gabon (114); Georgia (6); Germany (25); Ghana (37); Greece (28); Guatemala (46); Guinea (49); Honduras (16); Côte d'Ivoire (87); Kyrgyzstan (12); Latvia (89); Lithuania (138); Madagascar (82); Malawi (211); Mali (116); Republic of Moldova (8); Mongolia (10); Namibia (144); Netherlands (93); Nicaragua (46); Niger (132); Norway (110c); Paraguay (141); Peru (55); Philippines (XIII); Poland (91); Portugal (8:2); Republic of Korea (6); Romania (11); Russia (15:4); Rwanda (190); Senegal (79); Serbia and Montenegro (16, 124:2); Seychelles (48); Slovakia (11); Slovenia (8); Spain (10, 96); Sri Lanka (XXVI); Suriname (105, 106); Switzerland (189, 191); Tajikistan (10); The former Yugoslav Republic of Macedonia (98); Timor-Leste (9); Togo (140); Turkey (90); Ukraine (9); Venezuela (23).



### **Annex III: Assessed level of constitutional protection**

The list below shows the assessment made of whether the constitutional provisions of different countries, taken together, are deemed to be high, medium high, medium, medium low or low, with reference to the article(s) or section(s) of the constitution in brackets.

#### **III.1 High level of constitutional protection of the right to food**

These are the constitutions containing explicit provisions relating to the right to food.

Bangladesh (15); Brazil (6); Democratic People's Republic of Korea (25); Ecuador (23); Ethiopia (90); Guatemala (99); Guyana (40); Haiti (22); Iran (Islamic Republic of) (3, 43); Malawi (13, 30); Nicaragua (63); Nigeria (16); Pakistan (38); Panama (106); Puerto Rico (2); Republic of Moldova (47); South Africa (27); Sri Lanka (25); Suriname (24); Uganda (14, 22); Ukraine (48).

#### **III.3 Medium high level of constitutional protection of the right to food**

These constitutions protect the right to food implicitly, through broader provisions dealing with the right to an adequate standard of living, as well as through provisions on either social security or worker's rights, or both, cumulatively, providing a high degree of protection of the right to food. The protection thus afforded may be in one or several sections of the constitution.

Belgium (1, 23); Bolivia (8, 157, 158, 164, 199); Colombia (44, 46, 47, 48, 49); Congo, Democratic Republic of (37, 47, 48, 50); Cyprus (9); Dominican Republic (8); El Salvador (35, 37, 38, 66, 69, 70, 101); Eritrea (preamble, 10, 21); Finland (19); Germany (1, 20, 74); Ghana (36, 37); Honduras (121, 123, 128, 142, 146, 150, 347); India (21, 39, 41, 43, 47); Indonesia (28, 28b, 34); Ireland (45); Israel (courts); Liberia (8); Netherlands (20); Norway (110, 110c); Paraguay (53, 54, 57, 58, 70, 95); Peru (2, 4, 10, 11, 24); Republic of Korea (34); Romania (33, 43, 45, 46); Russian Federation (7, 39); Sierra Leone (7, 8, 22); Slovakia (39); Spain (preamble, 35, 39, 41, 43, 49, 50, 51); Sudan (11, 14); Sweden (2); Switzerland (11, 12, 41); Syrian Arab Republic (44, 46); Tajikistan (1, 39, 340); United Republic of Tanzania (8, 11); The former Yugoslav Republic of Macedonia (34, 35, 36, 40, 42); Venezuela (3, 78, 80, 81, 86, 91, 299, 305).

#### **III.4 Medium level of constitutional protection of the right to food**

These constitutions either protect the right to adequate standard of living, or social security and worker's rights.

Armenia (29, 33); Azerbaijan (38); Belarus (42, 47); Bulgaria (48, 51); Croatia (55, 57, 58, 64); Cuba (9, 48); Italy (36, 38); Kazakhstan (24, 28, 29); Kyrgyzstan (27, 29); Lithuania (48); Madagascar (30, 63); Mexico (123); Mozambique (41); Portugal (59, 63, 72); Trinidad and Tobago (I); Turkey (55, 60, 61); Turkmenistan (31, 34); Turks and Caicos Islands (2); Uzbekistan (39); Vanuatu (5).

These countries provide for direct applicability of the ICESCR, which is assessed as equivalent to medium level of constitutional protection. Only those countries are listed which would otherwise not be listed at all or would be ranked as having lower level of protection.

Albania (122); Algeria (132); Angola (21); Austria (9); Benin (146); Burundi (10); Cambodia (31); Cape Verde (11); Central African Republic (69); Chad (222); Congo (176); Costa Rica (7); Côte d'Ivoire (87); Czech Republic (10); Djibouti (37); Egypt (151); Estonia (3); France (55); Gabon (114); Georgia (6); Greece (28); Guinea (49); Latvia (89); Mali (116); Mongolia (10); Niger (132); Philippines (XIII); Poland (91); Rwanda (190); Senegal (79); Serbia and Montenegro (16, 124:2); Seychelles (48); Slovenia (8); Timor-Leste (9); Togo (140).

### **III.5 Medium low level of constitutional protection of the right to food**

These constitutions protect only the right to social security or the right to minimum wage.

Andorra (30); Bahrain (3); Burkina Faso (18); Chile (19); China (45); Costa Rica (57); Timor-Leste (20, 21, 56); Hungary (70e); Iceland (76); Kuwait (11); Lesotho (30); Liechtenstein (26); Luxembourg (11, 23); Maldives (28); Malta (17); Marshall Islands (15); Nepal (26); Oman (12); Qatar (23); Sao Tomé and Príncipe (27, 43); Saudi Arabia (27); Thailand (52, 54, 55); United Arab Emirates (16); Uruguay (44, 46, 67); Vietnam (59, 67);

### **III.6 Low level of constitutional protection of the right to food**

These constitutions have other, less important provisions, such as protection of the rights of the child, or promotion of agriculture, food safety etc.

Argentina (42); Canada (7);<sup>30</sup> Comoros (preamble); Yemen (9).

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<sup>30</sup> It has been argued that this article protects social rights, but it is uncertain (See Right to Food Case Study: Canada).