



**REPORT SUMMARY:  
ACCESS TO JUSTICE  
& THE RIGHT TO  
FOOD**

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UN SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD, HILAL ELVER

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# INTRODUCTION

In her first annual report submitted to the Human Rights Council in accordance with resolution 22/9, Special Rapporteur on the right to food, Hilal Elver, explores the obstacles faced by those wishing to seek remedy for violations related to the right to food by analysing the current international legal framework and identifying examples of good practice as a means of encouraging States to develop judicial remedies in accordance with the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The report will also examine the question of extraterritorial implementation in relation to the justiciability of the right to food. This report will build on the work of the Special Rapporteur's predecessors in this area.

## LEGAL FRAMEWORK

### INTERNATIONAL LEGAL FRAMEWORK: OPTIONAL PROTOCOL

In response to reluctance from a number of States to recognize that economic, social and cultural rights, including the right to adequate food, are justiciable, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted in 2008. The Optional Protocol establishes an individual complaints procedure intended to complement national legal system. With the ratification of the Covenant, the right to food will have greater publicity, especially when NGOs and individuals start to use various remedies. The right to food is now a right that can be legitimately claimed. Complaint procedures remind governments of their responsibility to respect, protect and fulfil the right to adequate food. The Optional Protocol will be influential in ensuring the implementation of the right to food at the international and national level.

# RECENT FRAMEWORK LAWS & JURISPRUDENCE

More than 8 countries possess specific laws aimed at promoting and protecting the right to food. This right is also referred to or explicitly recognized in several constitutions, including those of Brazil, Colombia, Cuba, Ecuador, Guatemala, Haiti, Nicaragua and Paraguay.

**LATIN  
AMERICA**

In 2013, the Child and Adolescence Court of the Zacapa Department in Guatemala relied on the constitution, as well as article 11 of the ICESCR and article 25 of the Universal Declaration to find violations of the right to food, right to life, right to adequate housing and right to an adequate standard of living.

In 2001, the Supreme Court of India ruled in *PUCL v. Union of India* that the right to food was enshrined in the Constitution under the right to life provision that requires the State to undertake measures to improve the nutritional state of the population.

**ASIA**

In 2013, India passed the National Food Security Act--the largest food security programme in the world, which aims to reduce malnutrition and improve food security.

In the case *Centre for Minority Rights Development v. Kenya*, the African Commission found that Kenya violated articles of the African Charter when it removed a primarily pastoralist indigenous community from their lands to create a wildlife reserve.

**AFRICA**

In *SERAC v. Nigeria*, the African Commission held that irresponsible oil development displacing the Ogoni indigenous community violated the right to food as implied in the African Charter.

In general, European countries have been reluctant to accept the justiciability of economic, social and cultural rights. In 2012, however, the German Federal Constitutional Court judgment 1 BvL 10/10, considered cash benefits for asylum seekers, and reiterated that a State is under an obligation to ensure "dignified minimum existence," which includes access to food to persons in need.

**EUROPE**

# OBSTACLES TO JUSTICIABILITY AND THE RIGHT TO FOOD

While there has been considerable legislative and judicial progress in many countries throughout the world since the adoption of the Right to Food Guidelines, examples of cases whereby national courts have actually issued rulings on the regulations relating to the right to food are scarce.

## A. Resistance from States and lack of political will

To date, only 15 States are party to the Optional Protocol to the ICESCR. Even when justiciable rights are enshrined in constitutions, there is a reluctance to acknowledge and enforce these rights.

## B. Lack of awareness and obstacles for rights holders

Access to public information in relation to the adoption of new laws is crucial for ensuring justiciability, but often lacking. Women, migrants, persons with disabilities and those with low levels of literacy, as well as a minority groups, face significant barriers to accessing justice and information and knowledge about their rights.

## C. Institutional and structural barriers

For those living in rural and remote areas, and peri-urban settings, accessing courts is a significant challenge. In many countries, municipal courts do not exist, or complex and inflexible court systems often require a high burden of proof. In many countries, it is often the case that judges based outside of urban area have little knowledge of human rights law, and are therefore less inclined to consider international standards when making a judgement.

## Extraterritorial Obligations

Economic globalization and the increasing involvement of corporate entities in State affairs have challenged the traditional understanding of territoriality of human rights. The powerful influence of transnational corporations (TNCs) and international financial institutions (IFIs) has led to a marked change in the way in which the principles of territoriality intersect with international human rights standards.

# RECOMMENDATIONS

The Special Rapporteur recommends that States:

- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- Ensure recognition of the justiciability of the right to food by judicial, quasi-judicial at the national, regional, and international levels;
- Ensure renewed political commitment to the progressive realization of the right to adequate food by adopting policies, constitutional principles and framework laws that provide an appropriate institutional structures;
- Provide mechanisms that offer adequate, effective and timely remedies in cases of violations of right to food, especially for groups living in rural areas, living in extreme poverty, persons with disabilities and indigenous communities;
- Empower women by guaranteeing their basic right to access adequate food and mainstream gender in domestic policies on agricultural, property, and inheritance rights;
- Ensure that everyone is afforded access to social protection;
- Cooperate with civil society organizations to organize training programmes for rights holders;
- Develop awareness-raising campaigns to ensure that rights holders have access to information
- Ensure policy coherence when implementing national food strategies;
- Develop necessary legal structure in order to protect resources directly related to the right to access adequate and nutritious food;
- Further clarify States' extraterritorial obligations in relation to non-regulatory means, identify best practices and adopt a resolution to draw attention to the Maastricht Principles;
- Consider requesting an advisory opinion from the International Court of Justice to determine the legal obligations relating to the extraterritorial implementation of the right to food.