



## **From Basic Need to Basic Right: Right to Food in Context**

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# From Basic Need to Basic Right: Right to Food in Context

- *Dr. Abdullah Al Faruque*<sup>©</sup>

## 1. Introduction

Food is a most essential good and important basic need of a human being for survival. One of the important objectives of modern welfare States is to ensure this basic need for their people. Despite the fact that Bangladesh has made impressive progress in social and economic development in the recent years, hunger, malnutrition and poverty are still widespread and remain a reality for millions of its extreme poor. Food insecurity is a chronic problem in Bangladesh. Food security is essential element of human security and fundamental to economic development. Nutritional deficiencies have devastating consequences for the well being and future of the people. Hunger and malnutrition are intrinsic deprivations and severely diminish the quality of life. Furthermore, under-nutrition is associated with reduced learning abilities, greater exposure to disease and other impairments of individual and social opportunities.<sup>1</sup>

Every welfare state is under obligation to ensure basic needs of its people. Article 15 of the Constitution of Bangladesh requires state to ensure people's access to basic necessities including food, clothing, shelter, and medical care as one of the fundamental principle of state policy. Article 18 states that the state is obligated to regard the raising of the level of nutrition and improvement of public health as among its primary duties. Although these social rights are not justiciable, their inclusion as a fundamental principle of State policy is significant because it serves to guide interpretation of fundamental rights, including the right to life under article 32. In many instances, the higher judiciary of Bangladesh has applied the fundamental principles to interpret the meaning of the fundamental rights.

However, despite the constitutional recognition of basic need of food, due to low income level, lack of access to land, unequal distribution of land ownership, disparity, lack of the necessary

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<sup>1</sup> Jean Dreze, 'Democracy and the Right to Food', in: Philip Alston and Mary Robinson (eds.), *Human Rights and Development*, New York, Oxford University Press, 2005, p. 47.

assets or access to credit, rising food prices, many people in Bangladesh are deprived of this basic need. According to reliable data, 20% of the population of Bangladesh is still calorie deficient. Low birth weight among Bangladeshi infants is among the highest in the world.

Relationship between poverty and hunger is well established. Level of calorie intake is one of the methods to measure poverty. Poverty can be a cause and an outcome of food insecurity and hunger. Hunger deprives ability of individuals to learn and work to fulfill potential. It makes them vulnerable to disease and premature death. Food insecurity can strike at multiple levels- individual, household, community, and nationwide- and has multiple impacts ranging from a protein or micronutrient deficiency that has severe health consequences to milder forms that affect attention and cognitive ability.<sup>2</sup> Food insecurity is considered an outcome of social and economic processes that lead to lack of access to food. These are: lack of adequate education and living wages, lack of access to health care and health information, and exposure to unsafe living conditions such as unsafe water, poor housing, and dangerous neighborhood environments.<sup>3</sup>

In his seminal book published in 1981, *Poverty and Famines*, Amartya K. Sen noted that hunger and malnutrition are not necessarily attributable to a lack of available food. The main thesis of Sen's approach is that it is not the lack of food that people are hungry but hunger stems from disempowerment, marginalization and poverty and they lack economic access to adequate food. It is for this reason that the recognition of food as a human right can be vital to achieving sustainable and long-term food security.<sup>4</sup>

## **2. Aims and Objectives of the Study**

The study report will examine the food security situation in Bangladesh, and shed light on current shift from basic need approach to right based approach to food. The study will highlight on the definition and contents of the right to food. The report will also analyse the constitutional provisions of different countries and international instruments on right to food. It will make a critical assessment the laws and policies on food security in Bangladesh and determine to what

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<sup>2</sup> DeRose LF, Messer E, Millman S. 'Who's Hungry? And How Do We Know? Food Shortage, Poverty, and Deprivation'. New York, NY: United Nations University; 1998

<sup>3</sup> Ibid

<sup>4</sup> Olivier de Schutter, Countries tackling hunger with a right to food approach, United Nations Special Rapporteur on the Right to Food, p. 1.

extent the existing legal framework is consistent with the right-based approach. It will also highlight mechanisms of implementation of the right to food. The study will take a right-based approach to food security and will recommend for adoption of specific law on the right to food in Bangladesh.

### **3. Methodology of the Study**

The study report will mainly take an analytical approach as a methodology. This study report will be based on comprehensive literature review on laws and policies in Bangladesh, international instruments, and judicial decisions on right to food in Bangladesh and other jurisdictions. A comparative perspective will be adopted to highlight development of laws on the right to food in other countries.

### **4. Situation of Food Security in Bangladesh**

In order to understand the situation of food security, it is essential to define food security. According to the 1996 World Food Summit,

*“Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for active and healthy life.”*

Food security is generally measured at three levels: national, local, and household. Food security at the national level is determined by the availability of enough resources for the whole population.<sup>5</sup> At the local level, food security can be measured by comparing regional nutritional requirements with availability of dietary calories per head. In Bangladesh, there is considerable regional variation in food security. At the household level, food security is measured by actual dietary intake of all household members using household income and expenditure surveys.<sup>6</sup> At the household level, food security is dependent on a household’s access to enough food.<sup>7</sup> Thus at

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<sup>5</sup> M A Kashem and M A A Faroque, A Country Scenario of food security and governance in Bangladesh, *J. Sci. Foundation*, 9(1&2): 41-50, June-December 2011,

<sup>6</sup> Ibid

<sup>7</sup> Ibid

the household level, food security is closely linked with the issue of poverty, access, sufficiency, vulnerability and sustainability.

Despite progress in reduction of poverty level and growth of food production, widespread hunger exists in Bangladesh because of the increasing population pressure, and the lack of purchasing power among the ultra poor.<sup>8</sup> About half of the population of Bangladesh still lives below the food-based poverty. While availability of food has been increased, accessibility remains a major challenge. Poverty, gender, disability, geographical location and cultural practices are also important factors in shaping food security.

Many poor and vulnerable households, whether food producers or not, do not have food security because they are unable to afford a minimum basket of food items through their own food production, cash income, market purchases and other resources necessary to acquire safe and nutritious food.<sup>9</sup> Low income and increasing international prices of food commodities are also important factors in shaping food insecurity. Adulteration of food is major threat to quality aspect of food security in Bangladesh. Gender discrimination remains a powerful obstacle to the realization of the right to food in Bangladesh as women are more malnourished than men. The fact that women eat last and eat least reflects an unequal distribution within the household.<sup>10</sup>

There are two dimensions of nature of food security problem- chronic and transitory. Chronic insecurity refers to situation when individuals or groups of people suffer from food insecurity all of the time. Chronic insecurity is continuous inadequacy of food. Transitory food insecurity occurs when households face a temporary decline in access to enough food (seasonal or temporary).<sup>11</sup> Food security in Bangladesh is affected by frequent natural disasters, when availability of food is temporarily or permanently disrupted. In Bangladesh, large segments of the population remain vulnerable to transitory food insecurity caused by drought, floods, cyclones and other natural disasters.

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<sup>8</sup> Ibid

<sup>9</sup> National Food Policy Plan of Action (2008-2015), Food Planning and Monitoring Unit (FPMU) Ministry of Food and Disaster Management, Dhaka, Bangladesh. 5 August, 2008, <http://www.gafspfund.org/sites/gafspfund.org/files/Documents/NationalFoodPolicyPlanofActionFINAL.pdf>

<sup>10</sup> Ibid

<sup>11</sup> Jean Ziegler, 'The Right to Food', Report of the Special Rapporteur on Bangladesh, Commission on Human Rights, E/CN.4/2004/10/Add.1, 29 October, 2003.

According to the Global Food Security Index, 2012, Bangladesh is the least food-secure among the South Asian countries. Globally, Bangladesh ranked 81<sup>st</sup> in terms of food security amongst 105 countries. Level of calorie intake is one of methods to measure poverty. At least 31% of the population of Bangladesh is still calorie deficient and 40% of children are too short for their age due to inadequate calorie intake.<sup>12</sup> While the food availability has increased in recent years, lack of access is largely responsible for over 60 million people going hungry every day.

Natural disaster, lack of education and lack of awareness also contributes to food insecurity in Bangladesh. Although rice productions are largely sufficient in Bangladesh, self-sufficiency in other food items is still to be achieved. Continuing population growth, shrinking of arable land every year due to demand from housing and industries, submersion of land, salinity of water due to climate change, declining soil fertility due to overexploitation of soil and imbalanced use of fertilizers are main threats to achieving food security in Bangladesh.

## **5. Basic Need Approach to Food**

The basic need approach identifies a bundle of basic minimum requirements of human life including such as food, shelter, clothing, clean water, and so on.<sup>13</sup> Although it aims to provide conditions for comprehensive fulfillment of human life (material, social, cultural and political), in operational terms it primarily focuses on the minimum requirements for a decent life – health, nutrition and literacy – and the goods and services needed to realize it.<sup>14</sup> Basic need approach to food is mainly concerned with ensuring food security for people. A need-based approach puts emphasis on charity for solving food insecurity. The needs-based approach assumes that people who lack access to food are passive recipients in need of direct assistance. Programs and policy efforts that use this approach tend to provide assistance without expectation of action from the recipient, without obligation and without legal protections.<sup>15</sup> A needs-based approach does not

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<sup>12</sup> National Demographic and Health Survey (DHS), 2011.

<sup>13</sup> Poverty Perspectives: ‘Basic Needs Approach’ vs ‘Capabilities Approach’, available at <http://hubpages.com/hub/Understanding-Poverty-Comparing-Basic-Needs-and-Capabilities-Approaches>

<sup>14</sup> Ibid.

<sup>15</sup> Marian Chilton, ‘A Rights-Based Approach to Food Insecurity in the United States’, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2696644/>

require informed legislation, political will, and coordinated action. But a rights-based approach creates enabling environments that support people in nourishing themselves while providing a structure for legal recourse.<sup>16</sup>

## **6. Rights - based Approach to Food**

In recent years, there has been an important shift from basic need approach to right based approach in relation to right to food. The right-based approach to food is adopted mainly due to inherent inadequacy in basic need approach, which does not create legal obligation on the states to ensure right to food. In particular, the right-based approach has become popular in view of the global food crisis and increasing number of undernourished people increased around the world. The right-based approach to food represents a paradigm shift from an anti-hunger approach which is centered on food security. A human rights-based approach to food security emphasizes universal, interdependent, indivisible and interrelated human rights, the obligations of States and the roles of relevant stakeholders.<sup>17</sup> The right-based approach puts emphasis on poor and vulnerable people who are often excluded from the processes that determine policies to promote food security.<sup>18</sup> A human rights-based approach requires not only addressing the final outcome of abolishing hunger, but also proposing ways and tools by which that goal is achieved.<sup>19</sup> The right-based approach to food can help the government to reach the poorest and can hold governments accountable.

The rights-based approach seeks to create enabling environments and conditions for people to feed themselves by insisting that nutritious food is not simply a basic need, but a fundamental human right. The right-based approach provides a venue for public participation in the food and nutrition discourse from people most affected by food insecurity.<sup>20</sup> It provides a mechanism

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<sup>16</sup> Ibid

<sup>17</sup> Para 19 of the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, FAO, Rome, 2005, adopted by the 127th Session of the FAO Council November 2004 <ftp://ftp.fao.org/docrep/fao/009/y7937e/y7937e00.pdf>

<sup>18</sup> Ibid

<sup>19</sup> Para 19 of the Voluntary Guidelines

<sup>20</sup> Marian Chilton, 'A Rights-Based Approach to Food Insecurity in the United States,' <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2696644/>

through which the general public can hold the government accountable for making progress in ending food insecurity.<sup>21</sup>

Furthermore, a rights-based approach to ensuring adequate food is advantageous on many levels.<sup>22</sup> First, it introduces the well established principles in international human rights law of non-discrimination and equality; second, it supports a number of other basic human rights, such as the right to the highest attainable standard of health; third, it draws attention to the most vulnerable segments of society.<sup>23</sup>

Recognition of right to food generally entails an important question of its justiciability. Like other economic, social and cultural rights, two arguments are invoked to challenge the justiciability of the right to food. First, it is argued that the right to food and the correlative obligations of States are not clearly formulated, nor precisely defined, precluding, as a consequence, any judicial or quasi-judicial body from determining, in concrete cases whether the right to food had in fact been violated.<sup>24</sup> Second, a judicial or quasi-judicial body could not exercise effective oversight of the right to food given its specific nature.<sup>25</sup> But these arguments are no longer valid because the right to food and the correlative obligations of States are now clearly set forth in international law. Furthermore, a judicial or quasi-judicial body is also capable of identifying violations of the right to food and ordering all necessary corrective measures.<sup>26</sup>

The right-based approach to food is now deeply ingrained in international law instruments on food. Realisation of right-based approach requires the state to adopt appropriate law and policy. In 2004 the FAO Council adopted the “Voluntary Guidelines to support the progressive realisation of the right to adequate food in the context of national food security”, commonly referred to as the Voluntary Guidelines. These guidelines provide guidance to governments to

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<sup>21</sup> Ibid

<sup>22</sup> Charlotte McClain-Nhlapo, ‘Implementing a Human Rights Approach to Food Security’, International Food Policy Research Institute, <http://www.ana.org.nz/sites/default/files/AfricaImplementing.pdf>

<sup>23</sup> Ibid.

<sup>24</sup> Christophe Golay, ‘The Right to Food and Access to Justice: Examples at the National, Regional and International Levels’, FAO, Rome, 2009, p. 9.

<sup>25</sup> Ibid

<sup>26</sup> Ibid

realise the right to adequate food. These Guidelines are a human rights-based practical tool addressed to all States. The Voluntary Guidelines require States to adopt a holistic and comprehensive approach to hunger and poverty reduction. Such an approach entails, *inter alia*, direct and immediate measures to ensure access to adequate food as part of a social safety net; investment in productive activities and projects to improve the livelihoods of the poor and hungry in a sustainable manner; the development of appropriate institutions, functioning markets, a conducive legal and regulatory framework; and access to employment, productive resources and appropriate services.<sup>27</sup> The Guidelines state that States should pursue inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land-use, and, appropriate land-reform policies so that farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labour, capital and management, which can ensure food security for them.<sup>28</sup>

## **7. The Right to Food under International Human Rights Law**

Right to food has been recognized as a fundamental human right by different international human rights instruments. The Universal Declaration on Human Rights (UDHR), 1948 is the first international instrument to recognize the right to food. Article 25 of the UDHR declares “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 recognised that everyone has the right to adequate food and that it is the fundamental right of everyone to be free from hunger. Article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living adequate for the health and well-being of himself and of his family, including adequate food, clothing, housing and to the continuous improvement of living conditions. The State parties shall take appropriate steps to ensure the realization of this right. It also recognizes the fundamental right of everyone to be free from hunger. For the purpose of realization of the right to food, the ICESCR requires the State parties:

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<sup>27</sup> Voluntary Guideline 3, para 2.4

<sup>28</sup> Ibid, Guideline 3,

(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; and

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

Any discrimination in access to food, as well as to means and entitlements for its procurement, on the grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin, or other status constitutes a violation of the Covenant.<sup>29</sup>

Bangladesh has ratified this Covenant. Therefore, it is under obligation to ensure right to food for everyone. However, this obligation can be progressively realized. Adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in 2008 makes the right to food justiciable at the international level. The Optional Protocol establishes individual communication for victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. It also provides for inter-state communication in case of not-fulfilling obligations under the Covenant by a State party. However, Bangladesh is yet to ratify the Protocol.

The right to food is also recognized in other international instruments protecting specific groups, such as the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989) and the Convention on the Rights of Persons with Disabilities (2006). The right to food is also recognized in some regional instruments, such as the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador (1988), the African Charter on the Rights and Welfare of the Child (1990) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003).

The CEDAW has a specific provision on women in rural areas, guaranteeing the rights of women to equal treatment, in particular, in land and agrarian reform as well as in land resettlement

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<sup>29</sup> General Comment, para 18.

schemes Article 14 states that the State must ensure that “women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so, and ensure that women have access to or control over means of food production, and actively to address customary practices under which women are not allowed to eat until the men are fully fed, or are only allowed less nutritious food.” The CEDAW also guarantees adequate nutrition for women during pregnancy and lactation (art. 12).

Article 27 of the Convention on the Rights of Child, 1989 states that children have the right to a standard of living that is good enough to meet their physical and mental needs. Governments should help families and guardians who cannot afford to provide this, particularly with regard to food, clothing and housing.

Article 28 of the Convention on the Rights of Persons with Disabilities, 2006 recognises that people with disabilities have the right to an adequate standard of living including food, water, clothing and housing, and to effective social protection including poverty reduction and public housing programs. The right to an adequate standard of living is intrinsically linked with the right to food.

The right to food is also recognized implicitly through other rights under human rights instruments. The African Commission on Human and Peoples’ Rights has interpreted the right to food as being implicitly protected under the African Charter on Human and Peoples’ Rights (1981) through the right to life, the right to health, and the right to economic, social and cultural development. The Rome Declaration on World Food Security reaffirm the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be hunger.

According to the Human Rights Committee under the International Covenant on Civil and Political Rights (1966), the protection of the right to life requires States to adopt positive measures, such as measures to eliminate malnutrition. The Committee against Torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), has pointed out that lack of adequate food in prisons may be tantamount to inhuman and degrading treatment.

## 8. Linkage between the Right to Food and Other Human Rights

Realization of right to health is essential to the fulfillment of other human rights. The ‘right to life’ and the ‘right to health’ are inextricably linked to the ‘right to food’.<sup>30</sup> Hunger and undernourishment directly or indirectly account for over half of the deaths in the world. Nutrition is a component of both the right to health and the right to food. It is related to right to life because when people are not able to feed themselves and face the risk of death by starvation, malnutrition or resulting illnesses, their right to life would also be at stake. Enjoyment of the right to food is contingent upon the realization of the right to education and the right to work as well. Malnutrition impedes learning and psychosocial development of children and may force them to drop out of school. Moreover, to be free from hunger and malnutrition, individuals need to know how to maintain a nutritious diet and have the skills and capacity to produce or obtain food as a livelihood.<sup>31</sup> Poor health, and low education and skill development, in turn, limit access to decent work that is safe and provides incomes above the poverty level.<sup>32</sup> Information is crucial for the right to food. It enables individuals to know about food and nutrition, markets and the allocation of resources. It strengthens people’s participation and free consumer choice. Therefore, right to food is related to right to information.<sup>33</sup>

The UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12 states*: The human right to adequate food is of crucial importance for the enjoyment of all rights.<sup>34</sup> The Committee affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights enshrined in the International Bill of Human Rights.<sup>35</sup>

## 9. Defining the Right to Food

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<sup>30</sup> Fact Sheet

<sup>31</sup> Fact Sheet No. 34,

<sup>32</sup> Susan Randolph, *The Right to Food: A Global Overview*,

<sup>33</sup> Fact Sheet No. 34.

<sup>34</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, available at: <http://www.refworld.org/docid/4538838c11.html> [accessed 27 May 2014]

<sup>35</sup> *Ibid*, para. 4

Broadly speaking the right to food can be interpreted as a claim of individuals on society. It is an entitlement to be free from hunger, which derives from the assertion that the society has enough resources, both economic and institutional, to ensure that everyone is adequately nourished.<sup>36</sup> Many countries have enacted legislation on right to food.

The right to food protects the right of all human beings to feed themselves in dignity, either by producing their food or by purchasing it.<sup>37</sup> The right to food is both a freedom and an entitlement. Freedom denotes freedom from hunger and entitlement signifies entitlement to adequate food that meets dietary needs.<sup>38</sup> An authoritative definition of the right to food has been given by the Committee on Economic, Social and Cultural Rights in its General Comment 12 adopted in 1999: “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”

In 2000, the Special Rapporteur on the Right to Food was established by the Commission on Human Rights. According to the Special Rapporteur, the right to food is:

*The right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.*<sup>39</sup>

According to the UN Fact Sheet on Right to Food, “The right to food is an inclusive right. It is not simply a right to a minimum ration of calories, proteins and other specific nutrients. It is a right to all nutritional elements that a person needs to live a healthy and active life, and to the means to access them.”<sup>40</sup>

There are three misconceptions about the right to food: first, the right to food does not mean that the right to be fed or governments have to provide free food to anyone who needs it but it is primarily the right to feed oneself in dignity. The right to food requires States to provide an

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<sup>36</sup> Jean Dreze, supra note 1, p. 55.

<sup>37</sup> Olivier de Schutter, Right to Food,

<sup>38</sup> Maria Socorro I. Diokno, The Right to Adequate Food in Philippine Development Intervention,

<sup>39</sup> United Nations Special Rapporteur on the right to food

<sup>40</sup> The Right to Adequate Food, Fact Sheet No. 34, The Office of High Commissioner for Human Rights, UN,

enabling environment in which people can use their full potential to produce or procure adequate food for themselves and their families. However, when people are not able to feed themselves with their own means, for instance because of an armed conflict, natural disaster or because they are in detention, the State must provide food directly.

Second misconception is that people are denied their right to food because there is not enough food to go round. However, according to FAO, the world produces enough food to feed its entire population. The root cause of hunger and malnutrition is not a lack of food but a lack of access to available food. For example, poverty, social exclusion and discrimination often undermine people's access to food, not only in developing countries but also in some of the most economically developed countries where there is an abundance of food.<sup>41</sup>

Third, the right to food is not same as food security. The right to food is different from food security. Food security is a precondition for the full enjoyment of the right to food. However, the concept of food security itself is not a legal concept per se and does not impose obligations on the States to provide food.<sup>42</sup>

## **10. Contents of the Right to Food**

Objective 7.4 of the World Food Summit Plan of Action established the task to clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger, as stated in the ICESCR and other relevant international and regional instruments.

According to the General Comment No. 12, food must be adequate, available, and accessible.<sup>43</sup> The three elements also focus on different levels of analysis.

### **10.1 Adequacy**

According to the General Comment No. 12, 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 its procurement. Concept of adequacy has both quantitative and qualitative dimensions. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense

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<sup>41</sup> Fact Sheet 34.

<sup>42</sup> Fact Sheet 34

<sup>43</sup> Fact Sheet 34

which equates it with a minimum package of calories, proteins and other specific nutrients. The precise meaning of “adequacy” is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions.<sup>44</sup>

The UN Committee considers that the core content of the right to adequate food implies: the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.<sup>45</sup> In determining adequacy, the individual’s age, living conditions, health, occupation, sex, etc should be taken into account. Dietary needs implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation.<sup>46</sup> For example, if children’s food does not contain the nutrients necessary for their physical and mental development, it is not adequate. Food that is energy-dense and low-nutrient, which can contribute to obesity and other illnesses, could be another example of inadequate food.

Free from adverse substances sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration. It means that food should be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs.<sup>47</sup> Adequate food should also be culturally acceptable. For example, food containing religious or cultural taboo for the recipients or inconsistent with their eating habits would not be culturally acceptable.<sup>48</sup>

## **10.2 Availability**

The issue of food availability concerns whether a country’s supply of food is sufficient. Availability requires on the one hand that food should be available from natural resources either through the production of food, on the other hand, it means that food should be available for sale

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<sup>44</sup> Para 7 of the General Comment 12.

<sup>45</sup> Para 8 of the General Comment 12.

<sup>46</sup> Fact Sheet No. 34

<sup>47</sup> Ibid.

<sup>48</sup> Fact Sheet No. 34

in markets. For this purpose, well-functioning distribution, processing and market systems is essential.<sup>49</sup>

### 10.3 Accessibility

Accessibility requires economic and physical access to food to be guaranteed. Economic accessibility means that food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as school fees, medicines or rent.<sup>50</sup> For example, the affordability of food can be guaranteed by ensuring that the minimum wage or social security benefit is sufficient to meet the cost of nutritious food and other basic needs. On the other hand, socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special program..<sup>51</sup>

Physical accessibility implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill. Because these group of people face specific hurdles in relation to the right to food. These can result from biological or socio-economic factors, discrimination and stigma, or, generally, a combination of these.<sup>52</sup> Access to food must also be guaranteed to people in remote areas and to victims of armed conflicts or natural disasters, as well as to prisoners. Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food.<sup>53</sup>

Accessibility to food is especially important for the rural poor. The UN Special Rapporteur on the Right to Food Jean Zaegler, chronic hunger is predominantly a rural problem, and the “rural people suffer from hunger because they lack access to resources such as land, do not hold secure

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<sup>49</sup> Ibid, p. 1

<sup>50</sup> Ibid, p. 2.

<sup>51</sup> Fact Sheet 34, p. 3.

<sup>52</sup> Fact Sheet 34

<sup>53</sup> Ibid.

tenure, are bound by unjust sharecropping contracts, or her properties that are so small that they cannot grow enough food to feed themselves.”<sup>54</sup>

## 11. Obligations of a State

While state is mainly responsible for ensuring the right to food, other stakeholders - individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities in the realization of the right to adequate food. The State should provide an environment that facilitates implementation of these responsibilities.<sup>55</sup> The right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to *respect*, to *protect* and to *fulfill*.

### *11.1 The obligation to respect the right to food*

States have to *respect* people’s existing access to food and means of obtaining food.<sup>56</sup> The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access or suspend legislation or policies that give people access to food (e.g., social welfare legislation, nutrition-related programs).<sup>57</sup> States should ensure public institutions, including State-run enterprises or the military, do not undermine people’s access to food by, for example, contaminating or destroying farmland or through forced evictions.<sup>58</sup> States should also regularly review their national policies and programs related to food to ensure that they effectively respect the equal right of everyone to food.<sup>59</sup>

### *11.2 The obligation to protect the right to food*

States have to protect individuals’ enjoyment of the right to food against violations by third parties such as other individuals, groups, private enterprises and other state entities, which is known as horizontal obligation. There is a need for state protection from fraud, unethical behavior in trade and commercial transactions, and the marketing and dumping of hazardous or

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<sup>54</sup> Third Report of the UN Special Rapporteur on the Right to Food Jean Zaegler, UN Doc. E/CN.4/2003/54 (10 January 2003), para. 16.

<sup>55</sup> Para 20 of the General Comment No. 12. .

<sup>56</sup> UN Fact Sheet No. 34

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> Ibid

dangerous products.<sup>60</sup> For example, States should prevent third parties from destroying sources of food by, for instance, polluting land and water with hazardous industrial or agricultural products or destroying the ancestral lands of indigenous peoples to clear the way for mining, or construction of dams, highways or industrial agriculture.<sup>61</sup> The obligation to protect also includes ensuring safe food in the market and for this purpose, States must establish and enforce food quality and safety standards, and ensure fair and equal market practices. Furthermore, States should take the legislative and other measures needed to protect people from advertising and promotions of unhealthy food.<sup>62</sup>

### ***11.3 The obligation to fulfill the right to food***

The obligation to fulfill incorporates both an obligation to *facilitate* and an obligation to *provide*. The obligation to *facilitate* means the States must take proactive measures for strengthening people's access to and use of resources and means of ensuring their food security such as the implementation of agrarian reform program or minimum income regulations.<sup>63</sup>

On the other hand, States have the obligation to *provide*, when individuals or groups are unable, for reasons beyond their control, to enjoy the right to food. In such cases, states must provide food assistance directly or ensuring social safety nets for the most deprived and for victims of natural or other disasters.<sup>64</sup>

According to the ICESCR, the right to food will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger even in times of natural or other disasters.<sup>65</sup>

### **11.4 Progressive and Immediate Obligations**

The ICESCR permits States to achieve the full realization of the right to food progressively. Article 2 (1) of the ICESCR provides:

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<sup>60</sup> Christine Breining-Kaufmann, 'The Right to Food and Trade in Agriculture', in: Thomas Cottier, Joost Pauwelyn, and Elisabeth Burgi, (eds.), *Human Rights and International Trade*, Oxford University Press, New York, 2005, p. 263.

<sup>61</sup> *Ibid*, p. 18.

<sup>62</sup> *Ibid*, p. 18.

<sup>63</sup> *Ibid* p. 18.

<sup>64</sup> *Ibid*, p. 19. See also General Comment, Para 15.

<sup>65</sup> Para 6.

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

The argument for progressive realization of the economic, social and cultural rights including the right to food is mainly premised on the concept of resource constraints of the States. However, this does not mean that States do not need to do anything until they have sufficient resources. While some aspects of the right to food are subject to progressive realization, other State obligations are of *immediate effect*. It means that States must make every possible and constant effort, using all available resources, to better respect, protect and fulfill the right to food.<sup>66</sup> The States must realize the following four categories of obligations immediately:.

- a. ***The elimination of discrimination:*** States must immediately prohibit discrimination in access to food and to the related resources on the basis of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth, disability or other status, and adopt measures to eradicate discrimination on these grounds.
- b. ***Obligation to “take steps”:*** While the full realization of the right to food may be achieved progressively, the following steps towards that goal must be taken within a reasonably short time. Examples of such steps are:
  - Assessing the state of enjoyment of the right to food, including ensuring adequate mechanisms to collect and assess relevant and suitably disaggregated data;
  - Formulating strategies and plans, incorporating indicators, benchmarks and time-bound targets, which are achievable and designed to assess progress in the realization of the right to food;
  - Adopting the laws and policies necessary for the realization of the right to food or revising the laws and policies which may negatively affect it;
  - Establishing the institutional mechanisms necessary for coordinating multi-sectoral efforts to realize the right to food;

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<sup>66</sup> Fact Sheet

- Regularly monitoring the progress made in the realization of the right to food; and
- Establishing recourse mechanisms which can provide remedies for violations of the right to food.

**c. *Prohibition of Retrogressive Measures***

States should not take any measure that undermines the existing level of fulfillment of the right to food unless there are strong justifications for it.<sup>67</sup>

**d. *Protection of minimum essential level of the right to food***

Under the ICESCR, there are obligations considered to be of immediate effect to meet the *minimum essential levels of each of the rights*, including the right to food. They are called *minimum core obligations*. For the right to food, States have to ensure the satisfaction of the minimum essential level required to be free from hunger, even in times of natural or other disasters. If a State fails to meet these obligations owing to resource restraints, it must demonstrate that it has made every effort to use all available resources to satisfy, as a matter of priority, these core obligations.<sup>68</sup>

## **12. Implementation of the Right to Food at the National Level**

### **12.1 Legal and Institutional Framework on the Right to Food**

The national legal and institutional framework is decisive for the implementation of the right to food. Many countries have included the right to food in their constitutions, either specifically or as part of the provisions on the right to an adequate standard of living. Several countries are developing a framework law on the right to food. A framework law is essential for clarifying rights and obligations, as well as elaborating on institutional roles and coordination for the realization of the right to food.<sup>69</sup> It can also provide for remedies for violations of the right to food and strengthen the mandates of national human rights institutions. The framework law should include provisions on its purpose; the targets or goals to be achieved and the time frame to be set for the achievement of those targets.<sup>70</sup> There is a general recognition that establishing a framework law may significantly contribute to the realization of the right to food, in a number of ways: (a) by ensuring that governmental bodies

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<sup>67</sup> Fact Sheet, p. 21.

<sup>68</sup> Fact Sheet 34, p. 22.

<sup>69</sup> Para 29 of the General Comment 12.

<sup>70</sup> Para 29.

will be held accountable if they do not comply with the obligations the said framework imposes on them; (b) by ensuring that the right to food will be at the centre of national development strategies; (c) by strengthening the position of governments in negotiations related to trade or investment.<sup>71</sup>

Apart from legal framework, it may also be necessary to reform and improve the public institutions relevant to the realization of the right to food. States should ensure that the coordinated inter-sectoral mechanisms are necessary for the concerted implementation, monitoring and evaluation of policies, plans and programs on the right to food.<sup>72</sup> The institutional mechanisms should provide for the full and transparent participation of all stakeholders, in particular representatives of the groups most affected by food insecurity.”<sup>73</sup>

## **12.2 National Strategies on the Right to Food**

Laws alone are not sufficient to realize the right to food in a country. The adoption of a national strategy for the realization of the right to food is essential so that the right to food is operationalised and put into action at the local level.<sup>74</sup> Participation of the affected people is key to the success of such a strategy. This implies that people need to be included in the decision-making processes surrounding the right to food as this ensures that real needs are identified and effectively responded to such needs. Participation further increases the awareness around the right to food and thus empowers people to realize and claim their right to food.<sup>75</sup>

A National Strategy should include the following criteria<sup>76</sup>:

- (a) Its formulation and implementation should comply with human rights principles, such as accountability, transparency and participation;
- (b) It should be based on a systematic identification of policy measures and activities derived from the normative content of the right to adequate food and the corresponding State obligations;

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<sup>71</sup> Oliver, p. 5

<sup>72</sup> Fact Sheet 34

<sup>73</sup> Fact Sheet 34

<sup>74</sup> Oliver, p. 7.

<sup>75</sup> Oliver, p. 8.

<sup>76</sup> Report of the Special Representative of the Secretary-General on business and human rights, “Protect, Respect and Remedy: a Framework for Business and Human Rights” (A/HRC/8/5).

(c) It should give particular attention to preventing and eliminating discrimination in access to food or resources for food and to the needs of the marginalized population groups. This requires a systematic analysis of disaggregated data on the food insecurity, vulnerability and nutritional status of different groups in society;

(d) It should address all aspects of the food system, including production, processing, distribution, marketing and consumption, as well as other relevant areas, such as health, water and sanitation, education, employment, social security, and access to information;

(e) It should clearly allocate responsibility for implementing the necessary measures and lay down a precise time frame;

(f) It should define institutional mechanisms including the coordination between relevant ministries and between the national and sub-national levels of government;

(g) It should also identify the resources available to meet the objectives and the most cost-effective way of using them, including in times of severe resource constraints;

(h) It should identify steps to ensure that activities of non-State actors are in conformity with the right to food.

The strategy should also include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners..<sup>77</sup>

According to the Special Rapporteur on the Right to Food, a national strategy should establish the appropriate mechanisms that (1) utilize monitoring systems to identify emerging threats to the right to adequate food, (2) improve coordination between relevant agencies at the national, state, and local level, (3) improve accountability, with a clear allocation of responsibilities and timeframes for progressive implementation of the right to food, and (4) ensure the adequate public participation that includes the most food-insecure segments of the population.<sup>78</sup>

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<sup>77</sup> Para 26 of the Voluntary Guidelines

<sup>78</sup> De Schutter O. Statement of the Special Rapporteur on the Right to Food. Rome, Italy: United Nations; 2008.

### 12.3 Access to Remedy

Violations of the right to food can occur through the direct action of States or non-state entities. According to General Comment 12, these include: the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to food; denial of access to food to particular individuals or groups; the prevention of access to humanitarian food aid in internal conflicts or other emergency situations; adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to the right to food; and failure to regulate activities of individuals or groups that violate the right to food of others, or the failure of a State to take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organizations.<sup>79</sup> Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels.<sup>80</sup>

## 13. Obligations of Non-State Actors

The right to food as envisaged under the human rights treaties is essentially state-centric as they mainly impose on the States to implement this right. But this state-centric approach is increasingly problematic on several grounds. First, it fails to address the responsibilities of key global actors such as transnational corporations and international financial institutions that are not themselves states but can influence human rights outcomes significantly. Second, the current state-centric approach adopts far too narrow a view of state responsibilities, which does not include ‘extra-territorial obligations’ to prevent harm to people affected by the state's economic or other policy actions, who happen to live in other states.<sup>81</sup> Therefore, non-state actors such as multinational corporations or enterprises have special obligation to realize the right to food as they exercise now unprecedented level of control over the production, processing and distribution of food. In this context, the right to food entails a protective obligation which

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<sup>79</sup> General Comment Para 19.

<sup>80</sup> General Para 32.

<sup>81</sup> Susan Randolph, *The Right to Food: A Global Overview*

requires measures to ensure that enterprises and others do not deprive people of their access to adequate food.<sup>82</sup>

#### **14. Examples of Constitutional Provisions of the Right to Food**

The recognition of the right to food as a justiciable right at the national level is gaining ground as many countries now explicitly recognize right to food in their constitutions. Currently eleven countries such as Belarus, Bolivia, Brazil, the Democratic Republic of the Congo, Ecuador, Guyana, Haiti, Malawi, Nepal, Nicaragua, and South Africa - explicitly provide a constitutional right to adequate food for all persons. Other countries recognize a more limited right to food in their constitutions. They either restrict the populations that can rely on the right, like the young, sick, or imprisoned, or by refer to the right as a mere directive principle to guide legislators and national policy.<sup>83</sup>

For example, Article 82 of the Constitution of Costa Rica of 1949 provides that the State shall provide food and clothing for indigent pupils, according to the law. Article 47 of the Indian Constitution includes the right to food in the directive principles part of the constitution. South Africa's constitution of 1996 explicitly addresses justiciable social and economic rights, including rights to healthcare, social security, social assistance, water, and food. Article 27 of the South African constitution provides the right to access "sufficient food and water." The constitution requires the state to take reasonable legislative measures to "achieve the progressive realization . . . of these rights." Emphasizing the importance of childhood nutrition, the constitution guarantees every child the right to "basic nutrition." To better interpret these socio-economic rights, South African courts have looked beyond national laws and incorporated international law.<sup>84</sup>

In 2008, Ecuador includes the Right to Food in its Constitution stating that the right to food is "the right to have unrestricted and permanent access to sufficient and nutritious food corresponding to the cultural traditions of the people to which the consumer belongs, for a

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<sup>82</sup> Susan Marks and Andrew Clapham, *International Human Rights Lexicon*, Oxford, Oxford University Press (2005), p. 172.

<sup>83</sup> *ibid*

<sup>84</sup> *Ibid*

healthy and dignified life”. Bolivia inserted the right to food in Article 16 of its Constitution in 2009. Brazil has included the right to food in its constitution in 2010.

A constitutional recognition of the right to food provides the strongest possible basis of such right since all laws and policies must conform to the constitutional provisions. Including the right to food in the constitution implies that this right cannot be easily withdrawn ensuring greater permanency than ordinary laws.<sup>85</sup> Direct recognition has the advantage of avoiding the uncertainty of judicial interpretation since the right is clearly spelled out. The insertion of the right to food in the constitution of countries improves accountability since the constitutional provisions limit the actions and policies of all branches of the government.<sup>86</sup> The insertion of the right to food into the constitution is thus not of mere symbolic significance. It imposes on all branches of the State to take measures to respect, protect and fulfill the right to food by adopting adequate laws, and by implementing policies and programs aimed at the progressive realization of the right to food.<sup>87</sup> At the same time, constitutional recognition is an important step in empowering people to realize their right to food as they can use it to demand those adequate policies and laws which establish an enabling environment for them to realize their right to food.<sup>88</sup>

## **15. Examples of National Laws on the Right to Food**

The entrenchment of the right to food in domestic law makes the right to food operational at the national level as victims of right to food violations can obtain ownership, and utilize the law to seek remedy and accountability.<sup>89</sup> It “can give a precise definition of the scope and content of this human right, set out obligations for state authorities and private actors, establish necessary institutional mechanisms and give the legal basis for subsidiary legislation and other necessary measures to be taken by the competent state authorities.”<sup>90</sup> Examples of national laws on the right to food can be categorized in two ways: inclusion of the right to food in a framework law and inclusion of the right to food in sectoral law. A framework law is imperative in the

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<sup>85</sup> Oliver p. 5.

<sup>86</sup> Oliver p. 5.

<sup>87</sup> Oliver p. 5

<sup>88</sup> Oliver, p. 5.

<sup>89</sup> Oliver p. 6

<sup>90</sup> FAO Methodological Toolbox on the Right to Food – Guide on Legislating for the Right to Food, pag.4

implementation of the right to food at the national level as it may a) include specific monitoring institutions who constantly assess the progress made as regards the realization of the right to food in a country, and b) recognize the justiciability of the right to food or provide other recourse mechanisms before independent bodies.

Several countries have adopted framework laws on the right to food. These include Nicaragua in 2009, Brazil in 2006, and Guatemala in 2005. In 2005, Guatemala adopted a law creating a national system for food and nutrition security, which recognizes “the right of every person to have physical, economic and social access at all times to food of adequate quantity and quality, in accordance with cultural preferences, preferably of national origin, and biologically adequate, in order to sustain a healthy and productive life” (art. 1). The law also creates the National Council on Food and Nutrition Security, in charge of implementing the national system of food and nutrition security, involving representatives of the Government, civil society and international cooperation partners. The law also mandates the Ombudsman for Human Rights to monitor the Government’s fulfilment of its obligations to respect, protect and fulfil the right to food.

Some other countries have included the right to food in sectoral laws. Mali for example, adopted it in 2006 its Agriculture Policy Act, which aims at facilitating the physical and economical access to natural resources for rural producers, including vulnerable groups such as women.

## **16. Assessment of Food Laws and Policies in Bangladesh**

There are many laws and policies on food security and safe food in Bangladesh. Recently Bangladesh has enacted the Safe Food Act, 2013 in order to ensure right to have safe food for protection of human life and health through control by coordination in food production, import, processing, storage, supply, sale and distribution. This Act establishes an institutional mechanism called ‘Bangladesh Safe Food Authority’ for this purpose. The Act defines safe food and adulterated food. The Act also defines composition, power and function of the Authority. Thus, the main purpose of this Act is to ensure right to safe food, but not right to food as such. According to section 13 of the Act, the main functions of the ‘Authority’ are the following:

- To assist concerned agencies or institutions to define safety aspects of foods and to determine the standard and quality of food;
- To formulate guidelines for determining standard and quality of foods;
- To update standard and quality of foods under the existing laws;
- To assist the concerned agencies to determine the acceptable level of radiation in food;
- To formulate policy for safe food management and guideline for safe food accreditation;
- To formulate policy on safe food and nutrition
- To coordinate among different government, non-governmental agencies and international organizations concerned about ensuring quality of food;
- To create public awareness about quality of safe food.

This Act also prohibits use of harmful substances in food, use of radiated substances, production and marketing of adulterated food, use of food additives, and control of consumption of genetically modified food.

Right to safe water is an important element of the right to food. The Bangladesh Water Act, 2013 provides for coordinated development, management, exploration, distribution, use, and protection of water resources. It specifically states that all rights relating to water in superjacent, subsoil, sea water, rain water and water of atmosphere will be exercised by the State on behalf of the people. The Act establishes right to have safe water. The 2005 Pure Food (Amendment) Act makes provision for greater vigilance against food fraudulence. The Consumer's Rights Protection Act, 2009 aims to establish institutional mechanisms and for punishment for certain offences. Vitamin-A enriched edible Oil Act, 2013 aims to ensure availability of the Vitamin-A enriched edible Oil for all.

Apart from laws, Bangladesh has formulated several policies on food security. The Food Policy of 1988 aims to encourage the farmers in producing more food grains by purchasing their products at a fair/subsidised price. According to Poverty Reduction Strategy, food security is the core element in the struggle against poverty). The Poverty Reduction Strategy Paper of 2005 of Bangladesh puts emphasis on human development of the poor for raising their capacity through education, health, nutrition, and social interventions. The National Food Policy (NFP) in 2006 aims at to ensure dependable and sustained food security for all, at all times. Its objectives are to: (i) ensure the adequate and stable supply of safe and nutritious food; (ii) enhance the purchasing

power of the people for increased accessibility; and (iii) ensure adequate nutrition for all (particularly for women and children). The National Food Policy Plan of Action (2008-2015) identifies responsible actors (government and non-government) and suggests a set of policy targets and indicators for monitoring progress. Despite the government's commitment to fight hunger, according to UN World Food Programme, its policies are ineffective due to limited distribution of nutritional supplements, inadequate growth monitoring and lack of skilled personnel. under the Policy and Action Plan.

However, the above mentioned laws and policies are not based on the right-based approach and they are mainly concerned with the food security which is premised on basic need approach. But this legal and policy framework can be guideline for formulating a comprehensive law on right to food in Bangladesh given its international and constitutional obligation.

## **17. Social Safety Net Programs in Bangladesh**

The government of Bangladesh uses two broad approaches to increase access to food, particularly for the poor: first, the short-run approach in which direct transfer of food or cash is provided through a number of programs which are known as social safety net programs and second, the long-run approach, through which the government designs policies, implements programs, and invests in development projects with a view of raising incomes of the poor and their capacity to acquire food through employment generating activities.<sup>91</sup> Bangladesh has well designed food based social safety net programs for poor for ensuring their food security such as- Test Relief, Open Market Sale (OMS), KABIKHA, Vulnerable Group Feeding, allowance for destitute women. The social safety net programs are also sometimes called as Public Food Distribution System (PFDS)- the main of purpose of which is to stabilize foodgrain market prices for the simple reason that foodgrain prices are a crucial determinant of welfare for both producers and consumers particularly for the poorest groups in Bangladesh.<sup>92</sup> For the poorest, large price increases force them to reduce their food consumption, threatening their very lives.<sup>93</sup> Targeted food distribution programs like Integrated Food Security (IFS), Vulnerable Group

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<sup>91</sup> Md. Ruhul Amin and Naser Farid, 'Food Security and Access to Food: Present Status and Future Perspective', A paper presented in National Workshop on Food Security in Bangladesh, Dhaka, 19-20 October, 2005.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid

Development (VGD), Food-For-Work and Cash/Food-For-Education to reach some of the poor are one method to increase household food security for the poor.<sup>94</sup>

So far there are approximately 27 food security and social safety net program in Bangladesh and currently nearly 2.2 percent of the GDP are allocated for safety nets and social protection. However, proper implementation of such schemes and coordination among different agencies remains the main challenge for their effectiveness. Coverage of social safety net programs is still inadequate. Inflexibility of the programs, misappropriation and corruption also undermines the effectiveness of such programs.

Apart from the above programs, Bangladesh introduced a 100-day Employment Generation Program (EGP) in 2008 aimed at the poorest and jobless poor, particularly those affected by seasonal unemployment, in response to the soaring food prices. But its efficiency has been severely hampered by targeting problems, and by the absence of adequate accountability mechanisms.

## **18. Access to Land**

Access to land and security of tenure are essential for the enjoyment of the right to food.<sup>95</sup> The pressures on land are increasing dramatically in Bangladesh due to population growth, increasing industrial uses of land and urbanization. Moreover, establishment of special economic zones aimed at creating conditions favourable for the arrival of foreign investors, large infrastructure projects such as dams and highways have also an important impact on access to land of small ethnic minorities and small land owners in rural areas.

More equitable land distribution and the development of owner-operated land have significant implications for realization of the right to food. There are strong arguments, however, in favour of land reform as contributing to the progressive realization of the human right to food, at least in contexts characterized by (a) a high degree of concentration of land ownership combined with (b) a significant level of rural poverty attributable to landlessness or the cultivation of

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<sup>94</sup> Ibid

<sup>95</sup> Olivier De Schutter, 'The Right to Food', GA Res. A/65/281, 11 August 2010

excessively small plots of land by smallholders.<sup>96</sup> The States should monitor existing inequalities in terms of access to land and, and implement the programs on redistribution of land.

In Bangladesh, agrarian reform initiatives have not produced much result as expected as landlessness is increasing. Government should ensure security of tenure and take measures to confer legal security of tenure upon those persons, households and communities currently lacking such protection.<sup>97</sup> Government should also respect the needs of special groups. Government should implement the specific rights of indigenous peoples by demarcating their lands and by providing them with specific protection. Government should also avoid development models that lead to evictions, disruptive shifts in land rights and increased land concentration.<sup>98</sup>

## **19. Public Interest Litigations (PIL) on the Right to Food**

PIL cases can play an important role in establishing the right to food for poor and marginalized communities. Many PIL cases have been filed in different countries to establish right to food as enforceable right. In 2001, the Supreme Court of India recognized the right to food in the *People's Union for Civil Liberties (PUCL)* case, transforming policy choices into enforceable rights. In this case, one NGO- People's Union for Civil Liberties filed a case before the Supreme Court claiming that starvation deaths had occurred in drought-affected rural areas while public granaries were overflowing. The Court acknowledged that preventing hunger and starvation was one of the Government's prime responsibilities and failure to do so would constitute a violation of the right to live with human dignity as well as the State's duty to raise the level of nutrition and the standard of living of its people under the Constitution. It directed the central and State Governments to implement several existing schemes on food safety to improve the situation.

In Nepal, in response to public interest litigation, the Supreme Court issued an interim order in 2008 directing the Government to supply food immediately to 32 districts which were seriously affected by food shortages. The Court observed that the Constitution guaranteed the right to food as a fundamental right and the Government should ensure adequate food supplies for all. In

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<sup>96</sup> Ibid, para 37.

<sup>97</sup> Ibid, para 40

<sup>98</sup> Ibid.

South Africa, a group of individuals and organizations representing fishermen filed a case claiming that the Government had failed to provide them fair access to fishing rights which resulted in the violation of a number of basic socio-economic rights, most notably the right to food. In 2008, the High Court issued an order that the policy framework developed by the Government on the allocation of fishing rights must accommodate the socio-economic rights of artisanal fishers and ensure their equitable access to marine resources, based on South Africa's international and national legal obligations.<sup>99</sup> In 2008, the Supreme Court of Nepal in the case of *Prokash Moni Sharma* delivered a verdict in favour of the right to food in view of chronic food insecurity in the country.<sup>100</sup>

Given the deplorable conditions of food safety in Bangladesh, some PIL cases had been filed to protect the rights of consumers. *BLAST vs. Bangladesh*<sup>101</sup> is one of the important of such cases. This case was concerned with the sale of edible salt without or inadequate iodine contents, which affects the ordinary people of this country causing Cretinism and Goitre, two deadly diseases. In this case, the Rule was issued upon the respondent (a) to take necessary steps and action to ensure that all licensed manufacturers of salt do produce, pack and sell salt with Iodine content conforming with the quality and standard as specified in the Iodine Diseases Prevention Act, 1989; (b) to revoke licences and take action against respondent and other manufacturers of iodized salt, those failed to comply with the provisions as enumerated in the said Act; and (c) to identify the unlicensed and fake manufacturers of edible salt and to take action against those manufacturers as per provisions of the Act. It was found by the court that the iodine content in the salt samples were not up to the requirement and that the packaging were not as per requirements of the Act and the Rules; but those salt are being marketed without any check and control by the respondents. The court directed the respondents to perform their respective functions ensuring compliance of the provisions of the Iodine Deficiency Diseases Prevention Act, 1989 and the Rules 1994 so that the iodized salt produced and marketed for consumption of the people do comply with the provisions of the Act, 1989.

## 20. Recommendations

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<sup>99</sup> Fact Sheet 34

<sup>100</sup> Dr. Mizanur Rahman, 'Food, Human Rights and State', CSRL, Dhaka, 2011.

<sup>101</sup> Writ petition no. 1043 of 1999

- Constitution may be amended like other countries to include right to food as a fundamental human right.
- A framework law should be adopted to ensure the right to food in Bangladesh.
- Existing legislation on land issues should be reviewed, revised and harmonized in order to improve protection of the land rights of the poorest, minorities and women, including improving access to khas land and challenging the illegal acquisition of land by powerful people. The land registration and recording system should also be made reliable, transparent and accountable.<sup>102</sup>
- Remedies for violation of the rights to food must be available in the framework law in order to address impunity for these violations.
- Since food security is a multi-sectoral, issue, an integrated approach should be developed to bring together all the diverse players and stakeholders as well as to make them accountable for improving food security.
- Strong market monitoring is needed to curb the artificial price hike of essential food products through organized syndicates.

## 21. Conclusion

Although Bangladesh has adopted specific policies and programs to address the chronic food insecurity and also institutional mechanisms have been put in place to deal with food crisis in times of natural disaster, these do not constitute a right-based approach.<sup>103</sup> Existing laws on food are concerned with safety aspect of food security and are not based on right-based approach. Since Bangladesh has acceded to the ICESCR, it is under obligation to respect, protect and fulfill the right to food. In order to realize the right to food, it is imperative that Bangladesh should enact a specific legislation on right to food. Without national legal enforcement mechanism, an international right to food fails to serve as an effective tool for combating hunger.<sup>104</sup> Because international treaties only require states to respect, protect, and fulfill the international right to

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<sup>102</sup> Jean Ziegler, 'The Right to Food', Report of the Special Rapporteur on Bangladesh, Commission on Human Rights, E/CN.4/2004/10/Add.1, 29 October, 2003.

<sup>103</sup> Quazi Shahabuddin, 'The Right to Food: Bangladesh Perspectives', The Bangladesh Development Studies, Vol. XXXIII, March-June 2010, No. 1&2, p. 128.

<sup>104</sup> Michael J. McDermott, *Constitutionalizing an Enforceable Right to Food: A Tool for Combating Hunger*, 35 B.C. Int'l & Comp. L. Rev. 543 (2012), <http://lawdigitalcommons.bc.edu/iclr/vol35/iss2/7>

food, a truly effective right to food relies on action and implementation in national legal systems.<sup>105</sup>

Any proposed law on the right to food should elaborate the rights and responsibilities of different agencies and institutions, define contents of the right to food, include mechanisms for implementation and provide remedies for violation of such right.

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<sup>105</sup> Ibid

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