

Exigibilidade:

Mechanisms to claim
the human right to adequate food
in Brazil





RIGHT TO FOOD STUDIES

Exigibilidade: Mechanisms to claim the human right to adequate food in Brazil

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RIGHT TO FOOD STUDIES

Right to Food Studies is a series of articles and reports on right to food related issues of contemporary interest in the areas of policy, legislation, agriculture, rural development, biodiversity, environment and natural resource management.

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List of Abbreviations

ABRANDH	Ação Brasileira pela Nutrição e Direitos Humanos (Brazilian Action for Nutrition and Human Rights)
ACELBRA	Associação dos Celíacos do Brasil (Brazilian Celiac Association)
ACP	Ação Civil Pública (Public Civil Action)
ANVISA	Agência Nacional de Vigilância Sanitária (Brazilian Health Surveillance Agency)
CAE	Conselho de Alimentação Escolar (School Feeding Council)
CDDPH	Conselho de Defesa dos Direitos da Pessoa Humana (National Council for the Defense of the Rights of the Human Person)
CERD	Committee on the Elimination of Racial Discrimination
CEDAW	Committee on the Elimination of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CONSEA	Conselho Nacional de Segurança Alimentar e Nutricional (National Council on Food and Nutrition Security – Brazil)
CPR	Civil and Political Rights
ESCEHR	Economic, Social, Cultural and Environmental Human Rights
ESCR	Economic, Social and Cultural Rights
ESF/MS	Estratégia Saúde da Família/Ministério da Saúde (Family Health Strategy/Ministry of Health)

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FAO	Food and Agriculture Organization of the United Nations
FIAN	FoodFirst Information Action and Network
FIBGE	Instituto Brasileiro de Geografia e Estatística (Brazilian Institute of Geography and Statistics Foundation)
FNDE	Fundo Nacional de Desenvolvimento da Educação (National Education Development Fund)
FNS	Food and Nutrition Security
GAJOB	Gabinete de Assessoria Jurídica às Organizações Populares (Legal Advisory Office for Popular Organizations)
GC 12	General Comment 12
HR	Human Rights
IACourtHR	Inter-American Court of Human Rights
IBGE	Instituto Brasileiro de Geografia e Estatística (Brazilian Institute of Geography and Statistics)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICP	Inquérito Civil Público (Public Civil Inquiry)
IGWG	Intergovernmental Working Group
INCRA	Instituto Nacional de Colonização e Reforma Agrária (National Institute of Colonization and Agrarian Reform)
IPEA	Instituto de Pesquisa Econômica Aplicada (Institute of Applied Economic Research)
IWG	Intergovernmental Working Group
LOSAN	Lei Orgânica de Segurança Alimentar e Nutricional (National Food and Nutrition Security Framework Law – Brazil)
MAB	Movimento dos Atingidos por Barragens (Movement of People Affected by Dams)
MP	Ministério Público (Public Ministry's Office)
MPF	Ministério Público Federal (Federal Public Ministry's Office)
MRE	Ministério das Relações Exteriores do Brasil (Ministry of External Relations)
MS	Ministério da Saúde (Ministry of Health)
MST	Movimento dos Trabalhadores Rurais Sem Terra (Movement of Rural Landless Workers)
NGO	Non-Governmental Organization
OAS	Organization of American States
PBF/MDS	Programa Bolsa Família/Ministério do Desenvolvimento Social e Combate a Fome (Family Grant Programme/ Ministry of Social Development and the Fight Against Hunger)
PNAE	Programa Nacional de Alimentação Escolar (National School Feeding Programme)
SEDH	Secretaria de Direitos Humanos (Special Secretariat for Human Rights)
SISAN	Sistema Nacional de Segurança Alimentar e Nutricional (National Food and Nutritional Security System – Brazil)
TAC	Termo de Ajustamento de Conduta (Term of Conduct Adjustment)
UN	United Nations
UPR	Universal Periodic Review
WG	Working Group
WGHRTAF	Working Group on the human right to adequate food



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Foreword

“Exigibilidade (...) today is an imperative in the theory and practice of human rights. After all, human rights declarations, constitutions and laws in general will be deprived of any practical meaning if they cannot be effectively enforced.”¹

This paper provides a reflection on how implementation of the human right to adequate food² and other human rights can be demanded of competent public institutions – administrative, political or jurisdictional – so as to prevent or remedy violations of these rights.

The theoretical aspects regarding the realization of human rights are presented and discussed herein, as well as achievements, progress and challenges so far. The aim is that of improving the capacity of both civil society and governments alike to intervene in cases of violation of the right to food and in support of the establishment and strengthening of human rights claim instruments and institutions. In this sense the present publication is intended to serve as an instrument for representatives of social movements, non-governmental organizations and public agents interested in promoting the effective implementation of the human right to adequate food and its claiming mechanisms in their countries or areas of action.

In spite of the many challenges and constraints to realizing human rights, Brazil is one of the countries where important institutional advances have been made towards the development of instruments to claim, investigate and monitor the realization of the right to food. Examples of some of the country’s initiatives and experiences in developing claim mechanisms - instruments and institutions - are provided here. Civil society and government actors in different countries can benefit from these experiences and adapt them to their local realities when developing and consolidating claim mechanisms and practices.

¹ Benvenuto, Jayme. Excerpt from the article *O Caráter Expansivo dos Direitos Humanos na Afirmação de sua Indivisibilidade e Exigibilidade* presented at the workshop on Economic, Social and Cultural Human Rights, within the activities of the World Social Forum in 2001, revised and expanded for publication. The workshop on ESCR held in Porto Alegre, Brazil, in 2002 was promoted by ICCO (The Netherlands), CEDAR INTERNATIONAL (The Netherlands) and the National Human Rights Movement (Brazil), available at: <http://www2.ibam.org.br/municipiodh/biblioteca%2FArtigos/Jayme.pdf>

² The “human right to adequate food”, the “right to adequate food” and the “right to food” are three different ways of referring to this human right. Throughout the document and for editorial reasons these three expressions will alternate but will refer in each case to the human right to adequate food.

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There is no standard recipe for the process of implementing claim mechanisms; several paths are both possible and complementary. Each country and community should seek the most effective ways of demanding rights, in keeping with its own specific context which should be respected in the endeavour to have rights guaranteed.



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Introduction

All human beings are naturally entitled to human rights, among which is the human right to adequate food. Nonetheless, millions of people all over the world experience violations of this human right daily. According to estimates from the Food and Agriculture Organization of the United Nations (FAO), 925 million people worldwide are undernourished – 578 million in Asia and the Pacific; 239 million in Sub-Saharan Africa; 53 million in Latin America and the Caribbean; 37 million in Near East and North Africa and 19 million in developed countries.³ This figure would indicate that there are more hungry people now than at any time since 1970. The aim of the *Millennium Development Goal number 1* which is that of halving the number of people suffering from hunger by 2015, is seriously threatened by the current crisis which has been responsible for increasing the number of people affected by hunger.

This situation requires the urgent adoption of a series of procedures at different levels and in different spheres. Special consideration should be given to ensuring claim mechanisms for the protection of human rights. People need to know that they have rights and that these can and should be claimed; otherwise remedying the current scenario will remain far from a reality.

The Portuguese word – *exigibilidade* – which, in its Spanish form (*‘exigibilidad’*), is used by different human rights organizations in Latin America and means the possibility of claiming rights before competent public institutions –administrative, political or judicial– so as to prevent or redress violations of such rights. Furthermore, in addition to the right to claim, the concept of *exigibilidad* or *exigibilidade* includes the right to have a timely response and action on the part of public authorities with a view to providing a remedy to the given violation.⁴

³ FAO, *Global hunger declining, but still unacceptably high. International hunger targets difficult to reach*, Economic and Social Development Department, Policy Brief, available at: <http://www.fao.org/docrep/012/al390e/al390e00.pdf>

⁴ According to Ana María Suarez Franco, “The essence of a human right is that apart from generating certain obligations it also allows its holder to demand the fulfilment of such obligations from the state. In the Latin American doctrine this power to demand has been recognized as the *exigibility* of human rights. In order to be a right *strictu sensu* and not a mere expectancy or wish, it is crucial that a legal position be actionable. (...) Without the possibility of being enforced, rights lose their reason to be and can be seen as what is commonly being referred to as ‘sharks without teeth.’” FIAN International, *How to Promote the Justiciability of the Human Right to Food*, November 2008, Heidelberg, available at: <http://www.fian.org/resources/documents/others/how-to-promote-the-justiciability-of-the-right-to-food/pdf>

In practice, one cannot talk about human rights and exclude claim mechanisms or *exigibilidade*. Fundamental to the effective realization of human rights is right holders' entitlement to demand the fulfilment of such rights. Each state has the obligation to develop and provide appropriate mechanisms to ensure that all those residing in its territory have access to procedures for claiming their rights.

The past six years have witnessed important institutional advances towards the development of claim mechanisms for the realization of the human right to adequate food in Brazil. This was due in particular to international and domestic political scenarios that clearly favoured expanding and intensifying the debate on the fight against hunger and the implementation of the right to food.

At international level, the approval by FAO Member States of the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*⁵ in 2004 (hereafter referred to as the Right to Food Guidelines), and the launching of several international initiatives to reduce poverty and hunger, have constituted tangible progress. However, many important challenges are still to be overcome when monitoring the implementation of rights and/or investigating reports of alleged violations. Both of these tasks require expertise and experience in order to better contribute to the progressive realization of the right to food.

THE RIGHT TO FOOD: ORIGINS AND LEGAL FOUNDATION

a) INTERNATIONAL INSTRUMENTS

The human right to adequate food is enshrined in article 25 of the Universal Declaration of Human Rights - adopted by the UN General Assembly on 10 December 1948 - in the context of the right to an adequate standard of living. This right is reaffirmed in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which was adopted by the UN General Assembly in 1966 and came into force in 1976.

After *World Food Summit I* in 1996, FAO began engaging actively in the promotion of the right to food as an issue requiring urgent attention. Objective 7.4 of the World Food Summit Plan of Action⁶ invited the Office of the United Nations High Commissioner for Human Rights to define article 11 of the ICESCR and proposed ways for realizing the right to food, taking into account the possibility of formulating voluntary guidelines for its implementation. In this context, in 1999 the UN Committee on Economic, Social and Cultural Rights (CESCR) drafted *General Comment 12* on the human right

⁵ FAO, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the context of National Food Security*, 2004, Rome, available at: <http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.HTM>. Translated and published by ABRANDH: <http://www.abrandh.org.br/downloads/Diretrizes.pdf> (Portuguese version).

⁶ See World Food Summit Declaration and Action Plan, especially objective 7.4.: http://www.direitoshumanos.usp.br/counter/FAO/texto/texto_3.html

to adequate food,⁷ which is the document that best defines and interprets article 11 of the ICESCR. In 2000, the former UN Human Rights Commission (1946-2006) appointed the UN Special Rapporteur on the Right to Food. Several meetings were held between 2000 and 2002, in preparation for the World Food Summit: five years later. These meetings were successful in strengthening the understanding of and support for the implementation of the human right to adequate food.

The *World Food Summit: five years later* (2002) was the occasion for states to acknowledge the promotion and implementation of the right to food as a major duty. Negotiations held before and during the Summit led to a consensus on the need to develop Voluntary Guidelines to support the progressive realization of the human right to adequate food. In its 2002 Session, the FAO Council formally established an Intergovernmental Working Group (IGWG)⁸ to draft the Right to Food Guidelines. That was the first time ever that the right to food was discussed substantially among governments and comprehensively debated within FAO. It was also the first time that FAO Member States reached an agreement on the meaning of this right.

The IGWG held four sessions and an intersession meeting during its two-year term of office. The first session was held in March 2003. By November 2004 the WG completed its work and the Voluntary Guidelines were approved by the 151 countries comprising the FAO Council. The work of the IGWG showed that realizing the human right to adequate food was a cross-cutting issue and that its implementation at national level was fundamental for the effectiveness of all programmes and policies related to international development.

Although voluntary in nature, the Right to Food Guidelines provide orientation on how to develop international obligations at national level in order to reach effective implementation of the human right to adequate food within the context of the indivisibility of human rights. The Guidelines target all states, whether or not signatories to the ICESCR, thus including developing and industrialized countries alike.

In general, the Right to Food Guidelines require states to promote good governance of public affairs as an essential factor for achieving sustainable economic growth, sustainable development and the eradication of poverty and hunger. They also recommend states to adopt a holistic and global approach through direct and immediate measures to guarantee access to adequate food as part of a social security network; to invest in productive activities, including projects intended to improve the livelihoods of the population affected by poverty and hunger, in a sustainable manner. Fundamental components for the development of a right to food strategy at national level are the creation of appropriate institutions, markets that actually work without excluding vulnerable populations, and a legal and normative framework. Furthermore, access to basic conditions such as employment, productive resources, and adequate public services are required as a minimum starting point in such an endeavour.

⁷ UN Committee on Economic, Social and Cultural Rights, General Comment 12, 1999, available at: <http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9> (English version), <http://www.abrandh.org.br/downloads/Comentario12.pdf> (Portuguese version).

⁸ The Intergovernmental Working Group was formed by FAO and UN Member States. Observers included the Office of the High Commissioner for Human Rights and the Special Rapporteur on the right to food. Stakeholders - particular regional institutions, non-governmental organizations (NGOs) and academic institutions - participated in the discussions.

Considering the practical recommendations contained in the Right to Food Guidelines, its utilization by public executives, civil society organizations and other social actors engaged in the promotion of the right to food constitutes enormous value added to their work.

b) THE HUMAN RIGHT TO ADEQUATE FOOD

In 2002, the United Nations Special Rapporteur on the Right to Food summarized the human right to adequate food as being: “The human right inherent in all people to have regular, permanent and unrestricted 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.”⁹

The right to food starts with the fight against hunger. According to international human rights instruments, there are **two indivisible dimensions of the human right to adequate food**: the right to be **free from hunger** and the right to adequate food. The right of everyone to be free from hunger implies an obligation that takes **immediate effect** and is not subject to the standard of progressive realisation. Indeed, since states may not be able to ensure immediately the **full realization** of the right to food, due to its complexity and multifaceted nature, they can realize this human right to adequate food ‘**progressively**’. This does not mean that states should not move as expeditiously and effectively as possible towards that goal. In practical terms, it requires the relevant state to adopt legal, administrative, financial, social and other measures at national and international level.

As human beings need much more than nutritionally balanced food alone, the human right to adequate food should be interpreted with due respect for its cultural significance. For many ethnic groups, food is an expression of the symbiotic relationship between nature and the individual.¹⁰ Thus, in order to achieve both dimensions, the human right to adequate food requires that all other human rights be guaranteed. The right to food is indivisibly linked to human dignity, social justice and the realization of other human rights such as the human right to a healthy environment, to a highest attainable standard of health, to education, to work, and to freedom of information, among others.

c) MAIN OBLIGATIONS OF STATES

Pursuant to **articles 2 and 11 of the ICESCR**, state obligations regarding the realization of the human right to adequate food include, *inter alia*:

- a) To take steps, individually and through international assistance and cooperation (in particular, economic and technical), to the maximum of its available resources, towards achieving progressively the full realization of the right to adequate food

⁹ ZIEGLER, J, *Report of the United Nations Special Rapporteur on the Right to Food*, Commission on Human Rights, 7 February 2001, E/CN.4/2001/53, para. 14.

¹⁰ VALENTE, F.L.S, *Do combate à fome à Segurança Alimentar e Nutricional: o direito à alimentação adequada, Direito Humano à Alimentação: desafios e conquistas*, 2002 Cortez, São Paulo.

- b) To take the necessary measures to ensure the fundamental right of everyone to be free from hunger; and
- c) To promote non-discrimination.

Every human right entails obligations on the part of the state and responsibilities on the part of different social actors (individuals, families, local communities, non-governmental organizations, civil society organizations and the private sector). Recognition of a human right implies, first of all, the direct recognition of a right holder and a duty bearer. Indeed, within the scope of the human rights instruments, obligations fall ultimately under the responsibility of the state. The state's obligation is based on the understanding that it controls the use of public resources, whether financial, human, material or legal, and that it has the monopoly over the legal use of force through the police, the army, etc. The state has the obligation to use this power in a way that:¹¹

- Does not violate the human rights of those residing in its territory (**respect**);
- Protects the human rights of those residing in its territory against the actions of third parties that violate these rights (**protect**);
- Promotes actions aimed at reducing discrimination and social inequality, such as public programmes on agrarian reform, income generation, support to family agriculture, among others (**fulfil-facilitate**); and
- Ensures that all human beings can live with dignity even in adverse situations that are out of their control (**fulfil-provide**).

As part of the obligation to promote the human right to adequate food and other human rights, states also have the obligation to create and strengthen accessible mechanisms to claim and ensure the effective realization of human rights at the national level.

(d) VIOLATIONS OF THE RIGHT TO FOOD

Violations of the right to food occur when the right is not respected, protected, or fulfilled. Violations can also occur when a state does not ensure accessible mechanisms to claim this right before public institutions. Actions or omissions on the part of state representatives can represent a violation of the right to food and other human rights even when such action has been committed by third parties/actors. Despite the emphasis on violations resulting from actions committed by the Executive branch, in many cases violations occur due to actions and/or omissions on the part of the Judiciary and the Legislative branches.

Those who are most affected by human rights violations are the socially excluded, and people belonging to ethnic, religious or sexual minorities. However, any person at any time can be a potential victim of human rights violations, including those related to the right to adequate food.

¹¹ For more detailed information on the different levels of state obligations related to the human right to adequate food, see General Comment 12 at: <http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9?Opendocument> (Para informações mais detalhadas sobre os diferentes níveis de obrigação do Estado em relação ao DHAA, ver *Comentário Geral número 12*: <http://www.abrandh.org.br/downloads/Comentario12.pdf>).

THE HUMAN RIGHT TO ADEQUATE FOOD IN BRAZIL: BROAD CONTEXT

As a result of multi-sectorial actions and considerable creativity over the past 20 years, Brazil has progressively included the human right to adequate food on its national public agenda. Although poverty, hunger and other violations of the right to food still represent an enormous challenge, the country has gradually advanced in the promotion of right to food claim mechanisms and, to a certain extent, stands out as a role model for the practical realization of this right.

Brazilian legislation provides a strong legal basis for the human right to adequate food. The country is a State Party to all international conventions relevant to the right to food, and ratified, without reservation, the ICESCR, which was incorporated into the Brazilian legal system¹² in 1992. The Brazilian Constitution of 1988 is one of the most advanced in the world with respect to protecting and promoting human rights. On 3 February 2010, the Constitutional Amendment Project (PEC 47/2003) was adopted, following approval by both chambers of Congress. This amendment establishes the right to food as a constitutional right among other social rights that were already part of article 6 of the Brazilian Constitution. The approval of this constitutional amendment has strong significance for the progressive realization of the right to food. Political commitment is embedded in the highest level of the Supreme Law of the State. Furthermore, the Federal Constitution of 1988 establishes the dignity of the human person as the foundation of the Federative Republic of Brazil and the right to food is also implicit in the principles and in several constitutional provisions, such as the articles regarding the right to a minimum wage, agrarian reform, social welfare, education, school feeding, non-discrimination and the right to life. The human right to adequate food is also embedded in several laws in force in the country, including the National Food and Nutrition Security Framework Law (LOSAN),¹³ and the law that re-established the National Council on Food and Nutrition Security (CONSEA).¹⁴

Following the decision of the Government of President Luiz Inácio Lula da Silva (elected in 2002 and re-elected in 2006) to prioritize the eradication of hunger, a set of political, administrative and legal initiatives were adopted in 2003 to promote the human right to adequate food.

¹² Decree 591/92 of 6 July 1992, available in portuguese at: http://notes.ufsc.br/aplic/edulei.nsf/viewLegislacao_PorTipo/04CEA3C1086F620203256CD7004449DC?OpenDocument

¹³ National Food and Nutrition Security Framework Law - Law 11,346 of 15 September 15 2006, available at: <http://www.abrandh.org.br/downloads/losanfinal15092006.pdf> (Portuguese version), https://www.planalto.gov.br/Consea/3Conferencia/Static/Documentos/Losan_Ingl%EAs.pdf (English version), https://www.planalto.gov.br/Consea/3Conferencia/Static/Documentos/Losan_Espanhol.pdf (Spanish version).

¹⁴ Law 10,683 of 28 May 2003, available at: https://www.planalto.gov.br/ccivil_03/Leis/2003/L10.683compilado.htm

These include:

1. The re-establishment of the National Council on Food and Nutrition Security (CONSEA)¹⁵ in 2003. Since then, CONSEA has played an important role in advising the President of the Republic on the formulation of Food and Nutrition Security policies and in defining guidelines for the country to ensure the human right to adequate food for all. The council is composed of 57 councillors, two thirds of whom represent civil society and one third the government. In addition, there are observers that may join CONSEA as invitees of the President of CONSEA. It is presided by one of the civil society counsellors appointed by the President of the Republic. The other counsellors are also appointed by the President.
2. As a result of action by CONSEA and with the broad participation of government and civil society representatives, the above-mentioned National Food and Nutrition Security Framework Law (LOSAN) was passed in September 2006. This Law represents a great step forward towards guaranteeing claim mechanisms for right to food violations in Brazil. The Law reaffirms the obligation of the state to respect, protect, promote and provide the human right to adequate food and provides for the obligation to inform, monitor, supervise and evaluate the realization of this right. It also establishes that it is the duty of public authorities to ensure mechanisms that allow for this right to be claimed before public institutions. The Law determines the creation of the National Food and Nutritional Security System (SISAN)¹⁶ with a strong right to food component. It also establishes that the National Food and Nutrition Security Policy should aim at ensuring the human right to adequate food and should be formulated and implemented through SISAN.
3. In September 2004, CONSEA approved the establishment of the Standing Commission on the Human Right to Adequate Food, with the mandate to analyze public programmes and policies from a human rights perspective.
4. CONSEA has greatly influenced the creation of public food and nutrition security (FNS) programmes such as the *Programa de Aquisição de Alimentos* (Food Acquisition Programme), which is one of the major gains for family agriculture, and the approval of legislation in Parliament (e.g. LOSAN and the law on the *Programa Nacional de Alimentação Escolar* (National School Feeding Programme).
5. The Special Commission to Monitor Violations of the Human Right to Adequate Food was created in May 2005, within the National Council for the Defense of the Rights of the Human Person. Its task is that of receiving and investigating violations of the human right to adequate food.
6. Approval of the Constitutional Amendment Project (PEC 47/2003) on 3 February 2010 by the Brazilian Congress establishes the right to food explicitly as a constitutional right. The amendment is aimed at including the right to food among other social rights that were already part of article 6 of the Brazilian Constitution and are equally important for living a dignified life.

¹⁵ For further information on CONSEA, please visit: <https://www.planalto.gov.br/consea/exec/index.cfm>

¹⁶ The objective of SISAN is to formulate and implement Food and Nutrition Security policies and plans, encourage concerted efforts between the government and civil society, and promote the follow-up, monitoring and evaluation of Food and Nutritional Security in the country.

7. The implementation of public policies and programmes such as the *Fome Zero* (Zero Hunger) Programme, launched in 2003. The *Fome Zero* Programme is currently defined as a strategy articulating a set of 31 actions and programmes implemented by several ministries, related to four priority areas: (1) improving access to food; (2) strengthening family agriculture; (3) promoting income generation processes; and (4) social articulation, mobilization and control. However, although the right to food is one of the objectives of *Fome Zero*, the issue of accessible human rights claim mechanisms is still a challenge to be dealt with.¹⁷

In the past decades, Brazilian civil society has ensured strong mobilization around the theme of food and nutrition security and hunger prevention. “The progressive inclusion of FNS and of the human right to adequate food on Brazil’s political agenda resulted from both the implementation of concrete action at all levels of government and civil society organizations, and a permanent tension between the state and society in this area. Over time, pressured by social claims and by the struggle towards the achievement of food and nutrition security in several parts of the country, the government - particularly at federal level - slowly began to draft Brazil’s current set of initiatives. The concepts and measures drawn up were gradually discussed, improved and agreed upon.”¹⁸

However, despite the progress achieved so far and the existence of a set of rules which are quite innovative in the Brazilian legal and institutional system, these steps forward have not been sufficient to ensure the full realization of the right to food and other human rights. Most of Brazil’s written texts on the prevalence of poverty, hunger and malnutrition indicate that the country has maintained a historically high level of structural inequality, expressed in wealth, land and income concentration. A study prepared by the Brazilian Institute of Geography and Statistics (IBGE) entitled *Pesquisa Nacional por Amostra de Domicílios - Segurança Alimentar 2004*¹⁹ (National Household Sampling Survey – Food Security 2004), revealed that 72 million Brazilians – approximately 40% of the population – live in some degree of food insecurity, in that they have their human right to adequate food undermined. Of these, 14 million – or 7.7% of the population – are living in a serious state of food insecurity.

Most Brazilians still do not know that they are entitled to human rights and the few who do know are not always aware of how to claim their rights. Furthermore, a large number of public authorities are not aware of their obligations regarding the realization of the right to food and other human rights. There are very few administrative claim mechanisms and those in existence are not addressed from a human rights-based perspective. It is also worth noting that Brazil has not yet established such an institution that really meets the Paris Principles. After his latest mission to Brazil (October 2009), the UN Special Rapporteur on the Right to Food, Olivier De Schutter, encouraged

¹⁷ VALENTE, F.L.S, BEGHIN, N, Realization of the human right to adequate food and the Brazilian experience: Inputs for Replicability, September 2006.

¹⁸ *Ibidem*.

¹⁹ Brazilian Institute of Geography and Statistics (IBGE): *Pesquisa Nacional por Amostra de Domicílios - Segurança Alimentar 2004*, 2006, Rio de Janeiro, p. 50, available at: http://www.ibge.gov.br/home/estatistica/populacao/trabalhoerendimento/pnad2004/suplalimentar2004/supl_alimentar2004.pdf

“the Brazilian government to consider setting up a national human rights institution with a mandate in conformity with the Paris Principles, ensuring the participation of civil society, and allowed to receive individual complaints.”²⁰

Over and above the significant steps made in constituting the formulation of rules, Brazil now faces the challenge of regulating and implementing these laws in the most effective way, so as to ensure the necessary conditions to make them operational. This includes establishing procedures to promote claim mechanisms for the human right to adequate food and other economic, social and cultural rights (ESCR). In this context, the major challenge to making the provisions of LOSAN effective is that of ensuring that the human right to adequate food is actually mainstreamed into its regulation process; otherwise, the progress represented by this Law will be lost. Ensuring the effectiveness of LOSAN requires strengthening the existing right to food claim mechanisms and creating new ones under its regulation.

Despite undeniable achievements so far, nearly all the actions and initiatives described in the present study still need to be achieved and/or strengthened at the operational level. In Brazil, as in many other countries throughout the world, the fostering of claim mechanisms is fundamental in the promotion and realization of human rights.

This study comprises three major chapters: Chapter I presents the different types of claim mechanisms available at national level and addresses more specifically some of the innovative experiences that are being developed from an institutional perspective in Brazil. Chapter II illustrates the international human rights framework to which Brazil is a part and presents existing claim mechanisms at regional and global level. Chapter III raises considerations about the effectiveness of claim mechanisms in Brazil and indicates the strategies needed to strengthen such mechanisms aimed at overcoming right to food violations in different local realities.

²⁰ UN Special Rapporteur on the Right to Food, Preliminary conclusions: mission to Brazil, October, 12-18 2009, available at: http://www.srfood.org/images/stories/pdf/medias/20091016_press-release_brazil_annex-preliminary-conclusions_en.pdf



Exigibilidade: Mechanisms to claim the human right to adequate food in Brazil

LIST OF BOXES AND ABBREVIATIONS

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INTRODUCTION

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1. Claiming the Right to Food at national level

A right is not effective if there is no possibility of claiming its realization. For right holders, this implies the right to demand the fulfilment of agreements, treaties and other norms, including the protection of these rights. Towards this end, states have the obligation to create and strengthen instruments and institutions, so that each individual can effectively claim his or her rights.

These mechanisms should be established within the Executive, Legislative and Judicial branches at local and/or national level. There is also an impelling need to create, implement and strengthen claim instruments and institutions at federal, state and municipal level. Besides the state obligation to set up effective institutions and instruments to claim human rights, such mechanisms should also guarantee the right to obtain timely responses and action from public authorities to remedy given violations.

In practice, claim mechanisms are often associated with the idea of *justiciability*, meaning the possibility of claiming rights in Court. When discussing the possibility of claiming rights, most people still think of ‘judicial recourse’ only. However, claim mechanisms mean much more than just going before the Courts. The promotion of justice, in its broader sense, is not an obligation of the judicial system alone. On the contrary, it is an obligation of all public branches of the state and, in particular, of the Executive, which is the branch in charge of implementing policies and programmes to provide public services as a basis to ensure the realization of constitutional rights.

1.1 THE LEGAL AND POLITICAL BASIS OF HUMAN RIGHTS CLAIM MECHANISMS

Mechanisms to claim human rights are legally based on international human rights instruments, including declarations and treaties negotiated and ratified by several states.

The right to demand the effective realization of the human right to adequate food and other human rights is based on the Universal Declaration of Human Rights, on the ICESCR, on the General Comments elaborated by the CESCR, and on the Right to Food Guidelines, among other international instruments.

The Right to Food Guidelines invite states to ensure administrative, quasi-judicial and judicial mechanisms for obtaining adequate, effective and prompt remedies to rights violations. Such remedies, according to the Right to Food Guidelines, may be accessible in particular to members of vulnerable groups (Guideline 7.2). It is important to mention

that the Right to Food Guidelines also invite states to inform the general public of the rights and remedies to which they are entitled (Guideline 7.3).

Moreover, according to General Comment 3 of the CESCR which explains the nature of states' obligations to realize human rights and the obligation to take steps by "all appropriate means, including in particular the adoption of legislative measures", it is recognized that in many instances legislation is highly desirable and in some cases it may be even indispensable. Among other measures that might be considered appropriate, in addition to legislation, the CESCR emphasizes the need to guarantee the provision of judicial remedies or other effective solutions, as well as administrative, financial, educational and social measures.

By signing international human rights treaties, such as the ICESCR, each state recognizes its obligation to implement actions of any nature that promote equity and progressively reduce inequalities at both national and international level. However, the protection of human rights is not conditioned to the ratification of an international instrument. Since human rights are universal and inherent in all individuals, regardless of specific government policies, every human being is a right holder and thus should be legitimated to claim the concrete realization of their rights. This means that even countries that have not ratified international human rights conventions have the political and moral obligation to guarantee the human rights of their people, as well as to set up claim instruments and institutions. Indeed, claiming the protection and realization of human rights does not have an international basis only but also a national one. National constitutions, laws and administrative regulations provide some of the concrete legal basis of mechanisms to claim human rights at national level. As indicated in the following chapters, both national and international political commitments constitute the basis for accountability which can be demanded either by legal or non legal recourses.

Right holders should be afforded the possibility of claiming the realization of their rights **at national level** and reporting violations of the human right to adequate food through:

- Administrative,
- Political,
- Quasi-judicial and
- Judicial claim mechanisms.

The classification of the different types of claim mechanisms proposed above reflects the practical experience of the Brazilian Action for Nutrition and Human Rights (ABRANDH)²¹ and civil society partners. This classification is intended to have a practical meaning for movements, entities and communities in Brazil and overseas,

²¹ The Brazilian Action for Nutrition and Human Rights (ABRANDH) is a civil society organization of public interest (OSCIP in Portuguese) established in June 2002. ABRANDH's mission is to promote the realization and *exigibility* of the human right to adequate food in Brazil and overseas, through national and international cooperation projects. For further information please visit: www.abrandh.org.br

so that they can be aware of the different ways in which their rights can be demanded in different spheres, at national/local level. These different ways of claiming rights have been defined with respect to the agent responsible for the realization of a given human right – either directly or indirectly. Such classification has been improved on different occasions, including in right to food training sessions held with people all over Brazil.

Besides the different types of claim mechanisms mentioned here, it is fundamental to point out that **social mobilization** has been one of the main instruments for claiming rights. The presence of both state institutional mechanisms and direct struggle of those who have had their rights violated is essential for realizing human rights.

1.2 DIFFERENT TYPES OF CLAIM MECHANISMS

1.2.1 ADMINISTRATIVE CLAIM MECHANISMS

Administrative claim mechanisms provide the possibility to claim effective realization of rights from the public institutions directly responsible for providing public services and fulfilling people's rights, meaning those that are in permanent contact with the population.

Examples of such agencies in Brazil include, *inter alia*, the National Institute of Colonization and Agrarian Reform (INCRA), Labour Ministry units, public health units, public schools, and social security units. These public bodies should be adequately equipped to accept claims related to preventing, correcting or repairing human rights threats or violations.

One of the most recognized instruments that can be used by any individual to claim the realization of rights in the administrative sphere in Brazil is *the right to petition*. By means of this instrument, any individual or organization can draw up a petition, giving the name of the author, the right that is being threatened or violated, and an indication of who might be responsible for this alleged violation. The petition should be addressed to whichever public authority is competent to provide or put in practice a decision affecting the human right to adequate food or other human right. Should the petition be sent to an authority that does not have this competence, the receiving authority has the constitutional obligation to refer it to the competent public institution. If the measures required to correct the irregularities are not taken, then the petition serves as evidence for demanding civil, administrative and criminal accountability of the negligent or arbitrary public servant or political agent.

In Brazil, good-quality school feeding is a human right enshrined in the Federal Constitution of 1988. Therefore, among the different dimensions of the human right to adequate food related to the National School Feeding Programme, every student has, for example, the human right to healthy, balanced, diversified and tasty food that respects the eating habits of the region, during his or her school hours, every day of school.

If this dimension of the human right to adequate food is violated, students, their parents or guardian, or a rights advocate, should be able to report the violation to the school itself. In fact, through the right to petition and the elaboration of a simple letter, the competent authorities have the obligation to receive and investigate the claim and solve the problem or repair the violation (if within its area of competence). If the school is not directly competent to remedy the violation, it has the obligation to refer the matter to the competent authority or inform right holders of the steps that need to be taken in this regard. It is important to emphasize the fact that under no circumstance can the school refuse to receive the complaint or refrain from trying to solve it. Public agents who fail to do so will be committing another violation: the violation of the right holder's right to have timely responses and actions by public agents.

The previous example demonstrates that in order for administrative claim mechanisms to become effective it is fundamental that public policies and programmes include routines and procedures that are accessible and known to the public. Such information should explain:

- Who the right holders are;
- What constitutes a violation of human rights within the scope of the programme and when such violations are likely to occur;
- Which institutions are responsible for fulfilling obligations and redressing alleged violations;
- What are the concrete mechanisms available for claiming the human rights foreseen in the public policy or programme, and who can actually claim these rights;
- What are the means by which right holders can claim these obligations in practice from the public institutions directly responsible for guaranteeing the rights;
- What are the steps to be taken in the case of non-response to the violation reported to the public institutions directly responsible for guaranteeing the rights.²²

The need to ensure and improve administrative claim mechanisms, especially with regard to economic, social and cultural rights (ESCR) is fundamental, as this is a *sine qua non* condition for the effectiveness of these rights. Improvement of claim mechanisms implies, initially, the adjustment of administrative norms specific to each programme and the formulation of laws for this purpose. Such adjustment could become less bureaucratic and provide a more immediate alternative to the common legislative procedure, so that existing public policies are able to offer right holders valid mechanisms to claim their rights.

²² VALENTE, F.L.S., BURITY, V., MELLO, H. and NEVES, C., *Exigibilidade e Justiciabilidade dos Direitos Humanos Econômicos, Sociais e Culturais*, National Rapporteurship on Economic, Social and Cultural Human Rights – 2004 Report, Brazilian Platform on Economic, Social, Cultural and Environmental Rights, Rio de Janeiro, Brazil, 2005, p. 164.

1.2.2 POLITICAL CLAIM MECHANISMS²³

Political claim mechanisms offer the possibility of demanding the realization of rights from institutions responsible for managing public programmes and policies (the Executive Branch), shared-management institutions responsible for proposing and supervising public programmes and policies (Public Policy Councils), or representatives of the Legislative Branch.

When one speaks of ‘political claim mechanisms’, one means the capacity to demand of public agents that they make the most effective and diligent choices to guarantee human rights, including social participation and other principles.

Public Policy Councils

The main role of Public Policy Councils is that of proposing and evaluating public policies. When, for example, a Public Policy Council proposes the development of a given programme, or when it recommends that policies and programmes be changed so as not to disrespect [people’s] rights, these councils are actually guaranteeing rights and preventing them from being violated.

In some cases, Councils that deal with public policies are already playing the role of the body that receives and refers complaints about rights violations.

As provided for in the Federal Constitution of 1988, Public Policy Councils in Brazil are noted for ensuring the participation of civil society representatives, in some cases on a parity basis. At the same time, they are distinguished for playing the double role of assisting/negotiating the development of policies and programmes, and monitoring and controlling them. The level of independence of these councils from the Executive Branch varies significantly, depending on the strength of related social movements. Historically, however, they have proven to be very limited in terms of autonomy.

The National Food and Nutritional Security Council (CONSEA) is one example of a political claim mechanism in Brazil, taking into consideration the significant importance of this institution for the concrete realization of the human right to food in the country. As already mentioned, this council has been of great relevance because:

- It institutionalized social participation in the issue of Food and Nutrition Security (FNS);
- Although of an advisory nature, it has shown great persuasion capacity in strategic matters decided on by the Federal government;
- Due to its political strength, it has influenced the creation of important public FNS programmes.

Legislative Branch

Right holders can demand that the Legislative Branch and its members formulate the laws needed for realizing human rights and that they refrain from creating laws that could hinder the realization of such rights.

In Brazil, the Legislative Branch is also responsible, by constitutional prescription, for following up on programmes and actions undertaken by the Executive Branch, as well as for inspecting the federal budget. Therefore, when necessary, it is possible to demand that the Legislature use this competence to investigate possible irregularities or violation of rights on the part of the Federal Public Administration, with a view to preventing, redressing or remedying such violations. The Federal Constitution of Brazil provides for cases in which the Federal Legislative Branch may exercise this control. State constitutions can also make provision for some cases in relation to the state Legislature, provided that they do not surpass the provisions of the Federal Constitution.

BOX 1 **Examples of political claims**

- Upon receipt of information on a given public programme, the leaders of marginalized communities might submit a complaint to the state Public Policy Council about the non-inclusion of the community in the programme;
- Demanding that the Commissions on Human Rights of the Legislature investigate complaints regarding violations of the human right to adequate food;
- Pressure from civil society organizations for the creation, revocation and/or regulation of laws;
- The residents of a settlement might submit a complaint to the state Health Secretariat stating that their children were becoming undernourished due to frequent episodes of diarrhoea caused by contaminated water.

1.2.3 QUASI-JUDICIAL CLAIM MECHANISMS

A quasi-judicial claim mechanism entails the possibility of demanding the realization of rights from entities that are not part of the Judicial Branch (*stricto sensu*), but that can address the Court as a last resort. Quasi-judicial institutions may therefore present processes and administrative (not judicial) procedures that generate evidence, papers and related documents all of which can serve as a basis to promote action from the Judiciary. With these documents in hand, the Judiciary may establish a process to demand that the person responsible for the realization of the right(s) does what is required by law. If the duty bearer fails to comply with the obligations determined by the court order, he or she can be held accountable for his/her omission.

National Human Rights Commissions

The main role of National Human Rights Commissions is that of collecting, investigating, monitoring and providing recommendations for the reparation and prevention of rights violations. Given their mandate and the nature of their activity, the guidelines established by the Paris Principles²⁴ constitute a basis for their institutional setting and for their method of operation. According to these Principles, Human Rights Councils/Institutions should have a pluralist and independent representation – comprising civil society, the Parliament and universities, with government representatives participating in the deliberations in an advisory capacity only. They should act impartially, documenting and investigating violations, identifying those who are responsible, proposing, referring and monitoring reparation for proven human rights violations. Such independence on the part of the government should be expressed in their financial, political and administrative autonomy also. As Brazil has not yet developed a Human Rights Commission according to the Paris Principles (noted by the UN Special Rapporteur on the Right to Food during his visit to Brazil in October 2009), one will focus on the analysis of quasi-judicial actors, such as the Public Ministry.

The Public Ministry

The mandate of receiving and investigating complaints of alleged violations of human rights can be undertaken by other types of institutions as well, such as the national Ombudsman. Usually this institution examines complaints and provides recommendations to the responsible officials in order to put an end to the relevant violation. Depending on the country, this mandate can have different titles and be fulfilled by different types of offices - the Public Ministry (MP), the Public Defender's Office, and District Attorney's office.

Examples of quasi-judicial claim mechanisms

In Brazil, the Public Ministry (MP) is defined as a permanent institution, essential to the jurisdictional function²⁵ of the state. Its main objective is to defend the system of laws, the democratic regime, and social and individual interests. Its mandate, as provided for in the Federal Constitution of 1988, includes monitoring public sector compliance, in all its branches, with the law and with the Constitution, and promoting and protecting human rights.

²⁴ UN Human Rights Commission, Resolution 19921/54 of 03.03.1992, Principles related to the status of national Human Rights institutions. According to the Paris Principles, Human Rights institutions shall, *inter alia*, have the following responsibilities: a) To submit to the government, parliament and any other competent body, on an advisory basis, opinions, recommendations, and proposals for the promotion of Human Rights; b) To promote and ensure harmonization among national and international instruments and their effective implementation; c) To encourage ratification of international instruments and to ensure their implementation; d) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles; e) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs. With regard to the composition of these institutions it is fundamental to guarantee that:

1. They ensure a pluralist and independent representation;
2. They are maintained with suitable resources so as to enable them to have their own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence;
3. Their members have a stable mandate, without which there can be no independence.

²⁵ Jurisdictional function, in its strictly juridical dimension, implies enforcing rules to guarantee the rights they provide for.

Renowned jurists ²⁶ affirm that, in view of its duties and responsibilities, and the instruments available to it, the Public Ministry is currently the institution with the largest structure and the best conditions for controlling and guaranteeing human rights in Brazil. The Public Ministry is autonomous and therefore independent of all government branches, particularly the Executive Branch and the central government, being therefore the Brazilian institution whose work method best reflects the Paris Principles.

In most municipalities in Brazil there is at least one representative of the Public Ministry, either at the MP headquarters or in the city Court.

In the case of an unlawful act or an alleged violation of rights on the part of the public administration or private entities, any individual can go to the local Public Ministry and submit a complaint (file a written petition), even without the assistance of an attorney. For the complaint to be accepted, it is important that the petitioner includes as many pieces of evidence or information as possible. The Public Ministry is responsible for adopting the necessary measures to press charges.

In order to investigate human rights violations, the Public Ministry counts on quasi-judicial instruments provided for by law. Among these instruments is the competence to promote *Civil Inquiries* and *Terms of Conduct Adjustment (TAC)*.

Civil inquiries

A civil inquiry consists of initiating procedures to investigate complaints of rights violations. Such inquiry can lead to the issuing of recommendations to public authorities or to the preparation of a TAC, when necessary. The civil inquiry is an administrative procedure aimed at collecting evidence or other elements that can serve, for example, as a basis for the Public Ministry to promote action by the Judiciary.

Term of Conduct Adjustment (TAC)

The purpose of the Terms of Conduct Adjustment (TAC) is to get public authorities to sign a document in which they commit themselves to adjusting their conduct to meet legal precepts within an established deadline.

The preparation and signing of a TAC generally requires the following steps:

1. The Public Ministry can collect information and documents in support of the violations and promote meetings with stakeholders: such meetings would involve both the persons claiming the violation or potential violation of their rights as a result of a state action or omission, and also those responsible for the alleged violation and consequently potentially obligated to provide redress;

²⁶ “Currently, an institution that plays an important role is the Public Ministry’s Office (...). Although other entities have active legitimacy to propose public civil actions, the independence of the Public Ministry’s Office and the instruments it was afforded by said institutional provision (competence to conduct civil inquiries, issue notifications, request information and documents, request investigations) make it the best equipped and most prepared body to control the public administration.” DI PIETRO, M.S.Z., 2005, *Direito Administrativo*, 18 ed. São Paulo, Atlas, p. 637.

2. On a case-by-case basis, the Public Ministry can draft a TAC proposal to be signed by the parties concerned;
3. The TAC is usually signed during a Public Hearing. On such occasion, the community's demands are presented and discussed with the members of the Public Ministry and public authorities in attendance. The TAC can be signed either during the hearing or later on, as a result of the hearing.

A TAC can be used as a monitoring instrument and, in the case of commitments not being fulfilled, the Public Ministry can request from the Judiciary, administrative, civil and criminal accountability on the part of whichever authority fails to comply.

A TAC can be used as a monitoring instrument and, in the case of commitments not being fulfilled, the Public Ministry can request from the Judiciary, administrative, civil and criminal accountability on the part of whichever authority fails to comply.

BOX 2

Quasi-judicial claim mechanisms in the State of Alagoas

The Public Ministry, together with the Federal Executive Branch, applied Terms of Conduct Adjustment in the State of Alagoas with a view to correcting irregularities in the use of federal money intended for the National School Feeding Programme.

By investigating information and holding hearings with the programme's right holders, the Public Ministry identified the irregularities and established a deadline for these to be rectified. Alternatively, it could file a lawsuit to punish the executives responsible for such irregularities.

The Public Ministry thus plays an important role in the use of the aforementioned quasi-judicial instruments, because it serves as an intermediary between the public and those who have the power to remedy the violation.

1.2.4 JUDICIAL CLAIM MECHANISMS

The term judicial claim mechanism indicates the possibility of claiming the realization of rights before the Judicial Branch. This can be done through different formal instruments.

Some lawsuits have as their object the defence of collective rights. In the case of Brazil, an example of a lawsuit of this type is the *Public Civil Action*. This is the procedural instrument used in cases of alleged damage or threat of damage to consumers, the environment, urbanistic order, economic order or any other diffuse or collective interest - meaning the interest not of an individual but of groups or even the entire society.

The Federal Constitution affords the Public Ministry the use of Public Civil Actions in fulfilling its duties. Law No. 7.347 of 1985 also allows legal entities that are part of direct and indirect public administration to file Public Civil Actions. This includes non-governmental organizations that have been established for at least a year under the terms of civil law and are devoted to protecting the environment, consumers, the artistic, and esthetic and landscape heritage, and also other collective or widespread interests.

How to use judicial claim mechanisms in Brazil

One example of judicial claim mechanisms in Brazil was the Public Civil Action filed in 2007 by the Public Ministry in the State of Alagoas through the Public Ministry for Children and Adolescents together with the Labour Public Ministry, against the Municipality of Maceió. The Public Civil Action was taken for the violation of the many collective rights of children and adolescents living on the Orla Lagunar in Maceió who are living below the poverty line and have difficulty in enjoying their fundamental human rights among which the human right to adequate food.

The Public Civil Action was based on data collected from the investigation by the Brazilian Action for Nutrition and Human Rights (ABRANDH). Their findings were elaborated by circulating a survey questionnaire in the Sururu de Capote community, to assess the state of food and nutrition insecurity in the community. Data from the socioeconomic and nutrition inquiry showed that there were no public policies on food, health, labour or leisure to meet the needs of children and adolescents in the community, especially with regard to their most serious problems: malnutrition, sexual exploitation, verminosis, and drug addiction.

In view of this scenario of human rights violations, the Action aimed at pressuring the Municipality of Maceió to use all necessary means to immediately formulate and implement public policies restoring the rights violated as a result of this omission. However, in order to achieve this end, the Public Civil Action required that the Municipality submit proposals for the implementation of a wide range of public policies as well as short- medium- and long-term solutions for the population. It also required that the funds necessary for implementing such public policies be included in the budget plan for 2008.

The Judicial Branch ruled in favour of this Public Civil Action through an unprecedented decision in Brazil regarding the justiciability of the human right to adequate food and other economic and social rights. Following this initial decision, an appeal was made to the Court of Alagoas. The first instance decision was partially accepted and, as a result of the Court decision, the Municipality of Maceió will still have to undertake the following:

- Set up a multidisciplinary commission of experts to develop a socio-economic profile of the children and adolescents in the Orla Lagunar community;
- Ensure adequate conditions for the operation of the Regional Guardianship Council;
- Submit a short-term schedule for expanding child and adolescent network protection, with shelters for children and adolescents at risk;
- Ensure sufficient fulltime day-care centers and child education to cater for the needs of the 0-6 years old in the community as well as ensure the enrolment of all school-age children and adolescents in primary school.

Despite the legal grounds for the Public Civil Action and the judicial judgment in favour thereof, the court order has met with some constraints to its effectiveness. Firstly, the Public Ministry Office lacks the necessary human resources to effectively monitor all actions under its responsibility. Besides, a decision that forces the Executive Branch to take action in order to guarantee ESCR is something new. Up to now, there have been no clear procedures for demanding the Executive Branch to fulfil its own obligations and judicial decisions have often been conservative in order to avoid interference in public policies with repercussions in budget allocation at the financial level.²⁷

There are also some burning issues, as the judge's decision singles out poverty as a violation of human rights, and the Municipality of Maceió (whose omission aggravates the living conditions of the people in these communities) as being one of the main responsible for these human rights violations. However, due to the absence of a rights culture in Brazil, it is extremely difficult for public authorities to recognize their responsibility for violations that have poverty as one of the main causes.

In this regard, whilst the judiciary has achieved much, it is not sufficient for the Municipality of Maceió to comply with the decisions of the Judicial Branch. It is of paramount importance for agents who are external to the process itself to be in a position to demand that the City Hall of Maceió fulfil its obligations. Political pressure and the involvement of other actors can contribute enormously to the success of Public Civil Action. The role of civil society organizations is essential for that purpose. So far, considerable pressure has been put on the Municipal Executive to guarantee that it will fulfil the judge's order.

This specific example demonstrates the importance of civil society action to push for an effective compliance of the court's judgment. Indeed, claims for the protection of rights would be seriously impaired if civil society were not taking an active role in eliciting, and also following up on, decisions by the Judiciary.

1.2.5 CIVIL SOCIETY INITIATIVES AS A FORM OF CLAIMING HUMAN RIGHTS

One of the key mechanisms for claiming rights is social mobilization and action organized by civil society entities, social movements and right holders. Their action is intended as a mean of accelerating the fulfilment of duty bearer's obligations.

Right holders, social movements and civil society entities can persuade the different bodies responsible for guaranteeing the realization of rights. The role and mandate of the Public Ministry, the Public Policy Councils and the Human Rights Councils, as well the Executive, Legislative and Judicial entities – are undoubtedly strengthened by the active mobilization of civil society. In their fight against exclusion, hunger, poverty, discrimination and rights violation, these actors have also undertaken political strategies to demand rights and prevent or redress violations by organizing

²⁷ BEURLIN, A., *The justiciability of the human right to adequate food in Brazil* in *The Right to Adequate Food and access to Justice*, Marco Borghi, Letizia Postiglione Blommestein (eds.), Bruylant, Bruxelles, 2006, p. 209

marches and campaigns, preparing and disseminating reports of violation, etc. In this process it is fundamental to guarantee the empowerment, and active and informed participation of people who are victims of human rights violations. Indeed, these persons have the main role to play when claiming protection of rights.

In a complementary sense, the initiatives of civil society have been fundamental in developing a human rights culture and respect for human dignity. This has been the case in particular with regard to eliminating the structural causes of violations of the human right to adequate food. As a result of claiming this human right, many actions undertaken by public authorities aim precisely at redressing inequalities and ensuring the realization of this human right (through the delivery of food, access to basic education and health services, among other actions). On the basis of current experience, the importance of such involvement needs to be acknowledged taking into account the important role played by civil society to support and press for structural changes which are of great relevance for the realization of human rights and also in the fight for non-criminalization of social movements.

The recognition of human rights has often been the result of people's fight against oppression, discrimination and abuse of power, either by the states or by private actors. Consequently, the promotion of human rights relies on the setting of *limits and rules for the exercise of power*, whether public, private, economic or even religious.²⁸ In this regard, claim mechanisms at different levels encourage the process of ownership on the part of right holders, as they can ensure that competent institutions will guarantee the realization of the human rights to which they are entitled.

In this context, it is legitimate to claim rights by resisting oppressive action that violates human rights. The 1948 Universal Declaration of Human Rights itself determines that "*it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights be protected by the rule of law*". Therefore, using the Brazilian example, movements such as the Movement of Rural Landless Workers (MST), the Movement of People Affected by Dams (MAB), the Women's Movement, the Indigenous Movement, and urban movements, among others, should not ever be criminalized when they protest or adopt strategies based on the right to resist, in demanding respect for human dignity. By doing so, these men and women are playing the role of rights advocates that should be respected and protected by the State rather than criminalized. It was on the basis of such struggles and efforts, that it became possible to create and strengthen current state instruments to ensure claims mechanisms. Social mobilization is the main guarantee towards securing respect for and promotion of human rights in Brazil as well as in other countries worldwide.

The combination of state institutional mechanisms and the active and meaningful participation of civil society is key to the effective realization of human rights. Social pressure and the engagement of civil society movements inclusive also of those individuals, whose rights have been violated, are fundamental for realizing human rights.

In addition to marches and other public initiatives, civil society also intervenes directly in institutional claim procedures. For example, as it will be indicated in greater detail in the following chapter, the CESCR is responsible for analyzing reports presented by states on compliance with the ICESCR provisions. The CESCR then addresses its recommendations to the State Party in the form of ‘concluding observations’. However, since 1993 civil society has participated in this survey process through what is known as an ‘ad-hoc complaints procedure’. The so-called ‘shadow report’ has enabled several NGOs and independent voices to address concerns and quasi complaints to the CESCR directly.

Social mobilization in Brazil

Between 1999 and 2000, civil society mobilized to draft the first Civil Society Report on the fulfilment of the ICESCR by holding 17 public hearings attended by more than 2 000 organizations in several states in the country. This report led to the presentation of Brazil’s first official report to the CESCR.

In May 2003, following a review of the official report and the alternative/shadow civil society report, the CESCR issued its recommendations for improving the implementation of the ICESCR. Brazil’s civil society keeps on organizing itself to produce reports that can contribute to monitoring the ICESCR.

Several actions promoted by afro descendent, indigenous, and landless people’s movements, among others, indicate the importance of these players in claiming the fulfilment of human rights in accordance with state obligations. Some examples include:

- The National Forum for Agrarian Reform and Rural Justice: This forum was established in 1995 by 45 organizations, networks and movements, with the aim of strengthening and contributing to the fight for agrarian reform in Brazil. It unified the efforts of rural movements, thus contributing to the debate on the social role of property, as provided for in article 186 of the Federal Constitution, in the Agrarian Reform law and in Brazil’s City Statute. In 2003, the National Forum issued the Land Charter and later in the same year organized the ‘March for Agrarian Reform’ which went from Goiânia to Brasília. The result of this march was the inception of the National Agrarian Reform Plan by the Federal Government.

- Celiac Disease: Many people suffering from celiac disease²⁹ die of this pathology due to lack of adequate information, especially when they were born into poor families that have no access to proper health care, which would enable an early diagnosis of the disease. Most of the public food programmes and policies do not acknowledge this disease, thus creating problems for Celiac Disease sufferers. The core role played by ACELBRA³⁰ in the search for partner institutions (universities, councils, etc.) has gradually enabled this pathology to get greater visibility, although it is still insufficient vis-à-vis the seriousness of the problem. The National Health Council and CONSEA have issued resolutions on the matter, as also the Ministry of Health, through ANVISA, demanding that information indicating the presence of gluten be included on the labels of industrialized products.

1.3 INTERRELATION BETWEEN DIFFERENT CLAIM MECHANISMS: BUILDING THE CASE

The following situation is an example for consideration: In a given country, a marginalized urban community experiences daily violation of its human rights. The community consists of approximately 300 families, the vast majority of which live in a state of food and nutrition insecurity, meaning that they suffer from hunger or live with the daily fear of going hungry. The houses (shanties) in which they live are made of canvas, plastic, wood or cardboard and most of them have no bathroom, pipe water or electricity. Access to public health and education services is also deficient. The closest public health unit is in poor condition and the few medicines available to the population are sufficient for the first half of each month only. As for the public education service, there are not enough schools close to the community, and school meals, often of poor quality, are not provided continually throughout the school year.

Most families live on income from odd jobs or occasional work and are without a formal employment link. This situation prevents economic access to food and other fundamental rights. Despite this scenario of poverty and destitution, however, most of these families are not included in income transfer policies.

The scenario of human rights violation in this community is reflected in the living conditions of its people, which stem from failure on the part of the state to fulfil the obligations to respect, protect, promote and provide the human right to adequate food and related rights. It is also the result of public policies that have led to rural exodus, either due to disregard for or non-protection of the right to access land for the production of food, the failure to promote

²⁹ “The Celiac Disease today: Still barely known, its symptoms can be mistaken for those of other ailments. Celiac disease consists in a permanent intolerance to gluten. The disease generally appears during childhood, between the first and third years of life, but can manifest itself at any age, including during adulthood. Treatment consists in maintaining a strict gluten-free diet. Celiac disease carriers cannot ingest foods such as bread, cake, cookies, pasta, pizza, beer, scotch, vodka, etc., if these products contain gluten in their formulation or production process. Due to the total exclusion of some foods that are rich in carbohydrates and fibers, the typical diet of a Celiac patient is made up mostly of fats (margarine, butter, oils, etc.) and proteins (meat in general) and less of carbohydrates (gluten-free pasta, sugars, etc.). Celiac carriers who do not transgress the disease tend to gain weight and therefore should follow a balanced diet. In this sense, they should reduce the ingestion of proteins, moderate their consumption of fats and increase the consumption of fruit, natural fruit juices and vegetables, so as to make their diet more adequate and healthier.” Available at: <http://www.ancelbra.org.br/2004/doencaceliaca.php>

³⁰ Brazilian Celiac Association (ACELBRA). For further information, please visit: <http://www.ancelbra.org.br/2004/porque.php>

public policies that facilitate the realization of these rights, or the failure to provide the human right to adequate food for populations that are incapable of feeding themselves adequately for reasons beyond their control.

In the situation indicated above, how can this community's rights be demanded? What claim mechanisms can be used?

With regard to claims mechanisms for this community and others in a similar situation, there are several possible paths from which to choose. However, from a human rights perspective, regardless of the path chosen to claim such rights, it is always essential to ensure the involvement and active and informed participation of right holders during the implementation of the redress process, namely, after claims have been presented and attended to. In this particular case, the community should be fully involved, not only when claiming rights but also during the other stages of implementation. The whole process permeating the claim mechanisms should be developed according to human rights principles, such as participation, accountability, non-discrimination, transparency, empowerment and the rule of law.

The effective realization of community rights should be developed from the perspective of 'ownership'. This approach implies that people take charge of their rights and feel and act as owners of these rights. Taking ownership also implies the active use of institutional claim mechanisms for translating these procedures into concrete actions. Chapter 3 discusses in detail the importance of empowering right holders as a means of strengthening the relevant claim mechanisms.

When a community feels empowered in relation to its own rights, it is much easier for it to recognize whether or not an action or omission represents a violation of human rights. The community members can indeed react and voice their claims regarding the situation that is threatening or violating their right. A scenario such as the one described above is then seen not as a moral flaw but as a violation of legal obligations which should be judged and redressed.

Based on these principles, the community could, with the support of partners:

- 1) *Document the case of rights violation* by providing reports, collecting data and information identifying the arbitrary actions and/or omissions to which the persons are exposed. This process gives visibility to the situation constituting a violation of human rights; it also enables the entities responsible for protecting such rights to learn more about the facts and request public institutions to redress those violations.
- 2) *Design a participatory rights claim strategy*: a community can define its concrete demands and priorities. In this process, the right that will be claimed will need to be prioritized and demanded, according to the reality of each specific location. Proper identification of the characteristics of the local context will be essential to defining the success of the strategy to be undertaken. Once the priority targets have been set, the community shall define strategic claim mechanisms for each target -monitoring systems, designation of person(s) responsible, possible partners supporting the claim (civil society organizations, social movements, universities, councils, the Public Ministry, etc.), and deadlines for the demands to be met. The latter represents an important component of the accountability process in which the level of mobilization will determine the success of the mechanism itself.

How could the rights of this community be claimed?

As a hypothesis, it can be assumed that among all the rights currently being violated, this community has selected as its main priority the claim of the human right to health within the context of the indivisibility of human rights. This indivisibility is understood from the perspective that all human rights have equal importance and are inseparably linked. As for the realization of the human right to adequate food, no government will make this right a reality unless it pursues with equal determination the realization of other interrelated human rights. Some of these rights relate to freedom of assembly and expression, information, education, work, housing and the highest attainable standard of health. Analyzing the mechanisms for claiming this and other rights which are basic for the realization of the right to food is part of the whole strategy. So, how can this right be demanded? Which institutions and instruments can be used for the purpose?

Claiming rights before administrative institutions – *Administrative claim mechanisms*

- With respect to violations of the human right to health, for example, community leaders could submit complaints directly to the closest public health unit, formalizing grievances regarding the lack of medicines and the precarious condition of the unit. An appropriate administrative mechanism with which to start claiming this right would be a right to petition or a simple letter in which all the negative issues are clearly described, addressed to the authorities responsible for such violations. The health unit would have the obligation to receive and investigate the complaint, and solve the problem. If remedy were to be considered outside its sphere of competence, the unit should at least refer the complaint to the competent authority.
- Similar paths could be taken with respect to other community demands, such as complaints about violations of the human right to housing, education, work, etc. With regard to other violations of human rights, the community could submit complaints to the relevant local public services – health units, schools, INCRA units, etc., based on the details documenting the violation.

Claiming rights before high level institutions and public sector authorities – *Political claim mechanisms*

- In cases where no response is received in relation to an administrative complaint concerning the violation of the human right to health, for example, or if it takes too long for the problem to be solved directly by the health unit, the community could also submit such complaints to the Municipal Health Secretariat (or the Municipal Health Council), demanding an investigation to the irregularities concerning the community's health unit. This type of claim would constitute a political claim mechanism since the sphere of action is high level and the decision taken will probably have a sizeable impact on the public policies concerning this community. In such case, the claim would not be merely an individual issue but would imply a broader commitment from higher public authorities.
- With regard to human rights violations, the community could certainly submit complaints to other sectoral institutions dealing with the protection of other rights. Some of these are, for example, Education Councils, School Feeding Councils (CAE), the National Council on Food and Nutritional Security (CONSEA), and others.

**Claiming rights through monitoring institutions for human rights protection –
*Quasi-judicial claim mechanisms***

- After indicating the above-mentioned steps – or even simultaneously, depending on the seriousness of the case – the community can submit complaints of human rights violations to the Office of the Public Ministry or Ombudsman. The Public Ministry could then initiate quasi-judicial proceedings to investigate the complaints raised. In that sense, the civil inquiry would enable the Public Ministry to collect factual information on the alleged violation and then either issue specific recommendations, or prepare the ground for the elaboration of a TAC, addressed to the competent authorities. In this scenario, both mechanisms involving action by the Public Ministry are closely interrelated, each one leading to the other. The first stage of investigation may or may not unleash a TAC, depending on the reaction of the authorities.

Furthermore, if the country in question has a National Human Rights Commission (or a National, State and/or Municipal Human Rights Council) in place, that institution could also receive the complaint and issue recommendations to public authorities with a view to solving the problem (quasi-judicial claim mechanisms).

Claiming rights before the Judicial Branch – *Judicial claim mechanisms*

- Judicial complaints could also be submitted by the community, with the support of the Public Ministry and other organizations. The claim of rights before the local Judicial Branch implies the use of public civil actions that could be filed by the Public Ministry or by non-governmental human rights defence organizations. The existence of procedural judicial mechanisms and their being accessible are the main conditions for calling a human right ‘justiciable’. The justiciability of a right is an essential component for claiming its effective realization.

Community demands can be submitted to public authorities during meetings or public hearings, or through instruments directly addressing public authorities and the Public Ministry. Demands can also be submitted when concerning irregularities or arbitrary actions that are endangering or violating rights; thus, the necessary measures can be taken. As stated earlier, Brazil recognizes the right to petition, which is an important claim instrument that can be used for demanding rights before administrative, political or quasi-judicial authorities.

After describing the possible steps applicable to any case of violation of human rights, reference is made to the difficulties encountered by civil servants in fulfilling their obligations to respect, protect, promote and provide human rights. These difficulties are often caused by lack of information regarding these obligations, lack of human and financial resources, or lack of clear delegation on the part of hierarchical superiors. In some cases the difficulties are merely the result of political decisions that determine otherwise.

With regard to the theoretical example provided earlier indicating the irregularities of a health unit in a given community, in a country like Brazil, for example, it could happen that the head of the administrative body or service would not address adequate questions from the right perspective. It could also happen that he or she would be unable to identify

the violation of a legal obligation taking place under his/her responsibility. Very often, when public agents hold higher authorities accountable, issues remain unsolved. Chapter 3 presents some fundamental proposals and steps for overcoming these obstacles and building competencies in the human right to adequate food.

1.4 THE KEY ROLE OF NATIONAL INSTITUTIONS IN CONSOLIDATING CLAIM MECHANISMS

Although there are still several challenges to be met in order to achieve the practical realization of human rights, Brazil is one of the countries in which important steps are being taken towards the development and strengthening of claim instruments and institutions. This chapter presents some important institutions that have emerged in Brazil during recent years, whose mandate plays a key role in the consolidation of mechanisms for claiming the right to food.

The experience accumulated by Brazil shows that partnerships between different actors such as the Public Ministry, civil society organizations and different councils and commissions, can contribute to the process of creating and strengthening institutions associated with the human right to adequate food. These partnerships can also be very important in creating claim mechanisms and, above all, in utilizing those already in place.

1.4.1 THE STANDING COMMISSION ON THE HUMAN RIGHT TO ADEQUATE FOOD WITHIN THE NATIONAL COUNCIL ON FOOD AND NUTRITIONAL SECURITY (CONSEA)

The Standing Commission on the Human Right to Adequate Food was created in September 2004 within the scope of the National CONSEA as an outcome of the deliberations of the *Second National Food and Nutritional Security Conference*.³¹

The task of the Standing Commission is to review public policies and programmes from the right to food perspective, as well as to provide recommendations to government bodies and, in particular, monitor compliance with such recommendations.

Between 2005 and 2006, the Standing Commission reviewed three government programmes: the National School Feeding Programme (PNAE/FNDE), the Family Grant Programme (PBF/MDS) and the Family Health Strategy (ESF/MS). The Commission, together with the Brazilian Action for Nutrition and Human Rights (ABRANDH), prepared reports on these programmes which were transmitted to the government agencies responsible for same, making specific recommendations.

³¹ The *II National Food and Nutrition Security Conference* was carried out in March 2004 in Olinda, Pernambuco. The conference counted with the participation of 1.300 people from all Brazilian states, four other countries, the federal government, state governments and hundreds of municipal governments, state and municipal councils on food and nutrition security, social movements, community groups, NGOs. This Conference was considered an important moment for the promotion of the human right to adequate food in Brazil. In July 2007 the *III National Conference on Food and Nutritional Security* was carried out in Fortaleza, Ceará with the participation of 2.000 people. The III Conference demonstrated the maturing of the Brazilian society around the need to promote the human right to adequate food. According to LOSAN, the National Conference on Food and Nutrition Security must be the body responsible to appoint to CONSEA the guidelines and priorities of the National Food and Nutrition Security Policy and Plan. The conferences are also responsible for the evaluation of SISAN.

In order to review public policies and programmes from a right to food perspective, the Commission developed a methodology based on the reports by the South African Human Rights Commission³² and other national and international monitoring and claims documents. The methodology utilized for such a review is detailed in the Annex to this paper. With the relevant adaptation to meet specific local needs, this material can be used by other countries as an important instrument to promote and include exigibility mechanisms in public programmes and policies.

The methodology for reviewing programmes from a right to food perspective seeks to identify the following points:

- The rights foreseen in the programme and their dimensions;
- The right holders in each programme, so that they know they are entitled to claim their rights;
- The public agents (duty bearers) responsible for fulfilling the rights included in the programme and their dimensions; there should also be a clear indication as to which obligations are part of the competence of civil servants, such as, inter alia, the obligation of non-discrimination;
- Whether the principles of equity, universality, dignity, accountability, active and informed participation of right holders, among others, are being promoted within the scope of the public policy;
- Whether there are clearly defined targets, indicators and timelines;
- Whether the language used to disseminate information on the programme is simple and accessible to right holders, particularly the most marginalized segments;
- Whether the programme provides continued capacity-building on human rights for managers and other actors responsible for the programme, with a view to ensuring that their action is based on a human rights perspective;
- Whether accessible administrative claim mechanisms are included within the scope of the public policy, (meaning instruments that enable right holders to claim their rights before public authorities when the rights provided for in the programme or policy are not being realized); and if there is a need to create new instruments or strengthen those already in existence;
- Whether other claim mechanisms are in place to address right to food violations, and if right holders are properly informed on how to use them, such as access to Public Policy Councils, Ombudsman, the Public Ministry's Office, etc.

³² For further information on the work of the South African Human Rights Commission as regards economic, social and cultural rights, please visit: http://www.sahrc.org.za/sahrc_cms/publish/cat_index_28.shtml (English only)

Based on the above, the methodology proposes the definition of protocols, procedures and routines for each public programme and policy, clearly detailing each of the above points, and making the information readily available to both right holders and duty bearers.

Why is it fundamental to analyze public policies and programmes from a human rights perspective?

By signing international treaties on human rights, states undertake to develop public programmes and policies whose final objective is to promote human rights and a dignified quality of life for all persons residing in their territory.

On rare occasions, the public policies of different countries have already incorporated provisions into their formulation, implementation and monitoring systems that ensure the fulfilment of human rights obligations. Duty bearers in many countries still see the realization of public policies as favour, privilege or charity; consequently right holders are thus led to share the same misunderstanding of these policies.

The objective of analyzing public policies and programmes from a human rights perspective is that of replacing the old perception of ‘favour’, ‘privilege’ or ‘charity’ for a new one that understands policies and programmes as concrete actions to promote and provide human rights.

The analysis of public policies in light of the right to food compliance takes into account the following aspects:

- Public policies related to FNS should promote the human right to adequate food. States should develop policies that have as their ultimate objective the promotion of the right to food in the context of the indivisibility of human rights. General Comment 12 makes it clear that the human right to adequate food is inseparable from social justice and requires the adoption of economic, environmental and social policies both at national and international level, oriented towards the eradication of poverty and the realization of human rights for everyone.
- The realization of the right to food requires integrating and articulating sectoral public policies. Economic and international trade policies often cause violations of the right to food. No public programme or policy alone will succeed in promoting food and nutrition security and people’s right to food as long as other sectoral policies violate these rights. Significant changes in economic and social policies are needed to achieve an effective human rights based approach as proposed by General Comment 12 and by the Right to Food Guidelines.
- In promoting the right to food, the process itself is as important as the outcomes, since ‘the ends *do not* justify the means’: it is not merely a question of determining whether a public programme or a policy is achieving its objectives but rather *how* these objectives are being achieved.

Public policies need to be governed by the principles of accountability, the active and informed participation of right holders, equity and non-discrimination *Accountability (or ‘the obligation to render an account’)*. One of the most important contributions to the analysis of public policies from a human rights perspective relates

to the emphasis placed on the accountability of actors whose actions have an impact on people's rights. Legal/administrative arrangements and institutions that aim at ensuring the accountability of competent authorities and public executives should be a part of all programmes and strategies. In addition, the need to identify duty bearers (at the different government levels, when appropriate) and their obligations and duties is indispensable, as it is also the evaluation of these actors' performance in fulfilling their obligations. Assessing the duties of those responsible for implementing public policies and programmes becomes essential, as well as ensuring that they recognize their obligations and are capable of fulfilling them.

Active and informed participation of right holders. The active and informed participation of right holders in the formulation, execution and monitoring of programmes – in all phases of the process – should be considered as a crucial element: it is being increasingly recognized that unilateral strategies imposed on one of the parties rarely works, even when these strategies aim solely at ensuring improvements in right holders' living conditions. Individuals should be considered as active subjects - and not merely recipients- of strategies aimed at "benefiting them". A human rights-based approach should ensure active and informed participation of the most marginalized, through the establishment of a legal and institutional framework in which they can effectively participate in the formulation, implementation and monitoring of policies.

Equity and non-discrimination: All human beings are bearers of human rights, regardless of the individual or group characteristics that might differentiate them. Therefore, any form of discrimination that maintains or promotes inequality constitutes a violation of such rights.

Public policies should be developed and implemented bearing in mind the following requirements with regard to claim routines and procedures

Claim routines and procedures are instruments that enable right holders to complain to public authorities when the rights foreseen in the public programme or policy are not being realized. The implementation of such routines and procedures require training to be delivered to public agents responsible for implementing public policies. The lack of a human rights culture needs therefore to be addressed.

Each public policy, even when it is already based on human rights and therefore provides for internal administrative claim mechanisms, should clearly indicate that all people residing in the country have the right to appeal in case of having their rights undermined.

Appropriate allocation of resources is essential in order to allow for the monitoring and continued evaluation of policies and programmes

The actual effectiveness of public policies requires ensuring the allocation of appropriate resources, as well as their proper execution. The implementation of mechanisms to monitor such expenditures is essential to advance in the realization of the human right to adequate food.

A key requirement for monitoring is the definition of indicators, targets and timelines. A definition of indicators, targets and timeliness shows the state's commitment to ensuring the achievement of the targets provided for in a given public programme or policy. This information is linked to the fact that if progress in executing policies is slow, corrective action can be taken from those who have the obligation to execute the strategies in a proper way. Responsible authorities should be held duly accountable for their actions.

To sum up, the objective of analyzing public policies from a human rights perspective is to ensure that:

- Actions and services provided by the programmes and policies are clearly understood as human rights that can and should be claimed through accessible claim mechanisms;
- Right holders take ownership of such policies and programmes by emphasizing the importance of their active and informed participation;
- Duty bearers understand their obligations and are held duly accountable for their actions or omissions that violate rights.

Managers responsible for public policies and programmes have the *obligation* to develop, implement, monitor and evaluate such programmes and policies from a human rights perspective. In some cases, it might be necessary to reformulate the legal framework of those policies and programmes in order to harmonize them with the provisions contained in international human rights treaties and domestic and local laws related to the right to adequate food.

Civil society bodies have the responsibility to demand that all public policies and programmes be explicitly and effectively developed as a realization of human rights.

Considering the arguments presented here, it is essential to underline the importance of incorporating a human rights-based approach into public policies and programmes. In Brazil, this task is being developed by CONSEA's Standing Commission on the Human Right to Adequate Food. Despite some constraints such as lack of human resources, the work carried out by this group has been important in submitting proposals that actually enable food and nutrition security programmes to incorporate a human rights-based approach.

1.4.2 SPECIAL COMMISSION TO MONITOR VIOLATIONS OF THE HUMAN RIGHT TO ADEQUATE FOOD³³

This Commission was established in May 2005 within the scope of the National Council for the Defence of the Rights of the Human Person (CDDPH). The CDDPH is currently part of the Special Secretariat for Human Rights (SEDH). The special commission is an innovation landmark in the activities of CDDPH as it is

³³ See Resolution No. 12 of 5.24.2005 of the Special Secretariat for Human Rights which, based on articles 4 and 6 of Law 4.319. This resolution creates the Commission, available at: <http://www.abrandh.org.br>

the first commission devoted to monitoring the realization of an economic, social and cultural right (ESCR) within the scope of the Council itself, as well as in Brazil.

The commission was created in response to the urgent need to establish a forum capable of receiving and investigating violations of the human right to adequate food and recommending action to correct and remedy such violations. Its objective is to accelerate institutional responses to the extremely serious situations of food and nutrition insecurity in which millions of Brazilian families are living.

The first task carried out by the special commission was to assess the impact of the interruption of resource transfers from the National School Feeding Programme (PNAE) to states and municipalities – action which is foreseen by the programme in case of non-fulfilment of the established requirements: failure to render accounts, failure to establish and appropriately operate the School Feeding Councils (CAE), and misappropriation of funds earmarked for the programme.

In order to discuss possible mechanisms to be adopted so as to avoid the interruption of resource transfers, and define measures to tackle irregularities and the impunity of public executives who commit irregularities, the Special Commission to Monitor Violations of the Human Right to Adequate Food established a Working Group (WG) on PNAE. Among the proposals put forward, the WG suggested that the Ministry of Education, together with other institutions responsible for the educational systems – such as the Federal Public Ministry, State Public Ministries and entities charged with controlling government expenditures at federal, state and municipal level – develop mechanisms suitable for executing and inspecting PNAEs, so as to guarantee the human rights of children and adolescents, as established by law. These institutions, organized into a network, would act according to their administrative and functional competencies.

The work of the special commission thus facilitated communication between important government sectors responsible for protecting and promoting rights (the Public Ministry, Public Defender's Office, Federal Controller General's Office, the Special Secretariat for Human Rights, etc.) in the search for alternatives to the PNAE proposal.

One of the main challenges still to be overcome in the short term, so as to ensure the successful functioning of the special commission, relates to the need to ensure a minimum of infrastructure and financial and operational autonomy (personnel, equipment, etc) in line with the Paris Principles. This requires negotiating with public authorities with a view to institutionalizing the commission and ensuring its independence and sustainability for implementing actions related to the protection of the right to food.

BOX 3

How to replicate the experiences of both the Standing Commission on the Human Right to Adequate Food and the Special Commission to Monitor Violations of the Human Right to Adequate Food in other countries

Dealing with institutional aspects, reality varies significantly from country to country.

However, most countries have institutions that are responsible for receiving and investigating complaints of violations and others that are responsible for monitoring the formulation and appropriate execution of public policies.

The first step to be taken in each country should be that of identifying the institutions responsible for these activities and integrating the promotion of the realization of the human right to adequate food into such activities.

Public Policy Councils in different countries could, for example, assess the feasibility of creating and strengthening, within these councils, institutions responsible for analyzing public policy from a human rights perspective - such as CONSEA's Standing Commission on the Human Right to Adequate Food.

Furthermore, it is important to ensure that Human Rights Councils and Commissions act pursuant to the Paris Principles and that specific institutions charged with receiving and investigating complaints concerning right to food violations are created within these councils/commissions.

Strengthening instruments and institutions within the scope of Public Policy and Human Rights Councils is a big challenge that needs to be overcome so as to improve mechanisms for claiming the human right to adequate food worldwide.

1.4.3 THE NATIONAL RAPPOURSHIP PROJECT ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL HUMAN RIGHTS

The National Rapporteurship Project on Economic, Social, Cultural and Environmental Human Rights (ESCEHR)³⁴ was launched in 2002 by the Brazilian Economic, Social,

³⁴ In 2002, the National Rapporteurship Project of the Brazilian ESCEHR Platform established the National Rapporteurships to act in the areas of Human Rights to Housing and Urban Land; Environment; Health; Education; Work and Adequate Food, Water, and Rural Land. For further information on the Rapporteurship Project please visit: <http://www.dhescbrasil.org.br>

Cultural and Environmental Human Rights Platform - a network of civil society entities and organizations devoted to promoting claim mechanisms for these rights. This is an innovative project that has shown the enormous potential of civil society networks, in partnership with public institutions, in advocating public authorities' obligations to guarantee rights claim mechanisms.

The National Rapporteurs are selected from a list of names prepared through public consultation by a tripartite commission composed of representatives of civil society, government institutions and UN agencies. The mandate of these Rapporteurs is similar to that of the UN Special Rapporteurs, with emphasis on the independence and autonomy provided for in the Paris Principles. The mandate of the National Rapporteurs includes collecting and investigating reports of violations, as well as undertaking investigation missions, and the responsibility for identifying administrative, legal and political mechanisms capable of overcoming or remedying these violations. It also includes taking the required measures to issue recommendations to public authorities, based on the investigation carried out. Investigation missions usually culminate in a public hearing, most of which are summoned and conducted in partnership with the Public Ministry.

The recommendations issued by the National Rapporteurs are sent to public authorities and international human rights organizations. These reports are also submitted to the National Human Rights Conference, the Inter-American Human Rights Commission, the UN Human Rights Council and the CESCR.

Civil society organizations that support the communities visited by the National Rapporteurs have the task of monitoring fulfilment of the recommendations issued, generally in partnership with the Public Ministry and, where necessary, through further action by the National Rapporteurs and their UN counterparts. Consequently, the success of this project depends on the effective support of civil society entities, as well as on partnerships with public institutions responsible for protecting human rights.

The positive impact of the National Rapporteurships is the result of a combination of factors:

- The strong social movement that supports each of the Rapporteurships;
- The fact that the Rapporteurs are selected among people who are national references within their respective movements;
- The strong public support and recognition on the part of relevant sectors of the Federal and State Public Ministry;
- The support of the United Nations and recognition of its work by international human rights organizations;
- The support of and partnership with the respective United Nations Special Rapporteurs;
- The Rapporteurs' independence in relation to government and state.

Partnerships

The National Rapporteurships do not have the power to compel public bodies to accept their recommendations, as it is the case in the large majority of public human rights instruments. However, the support of human rights organizations and instruments (United Nations Development Programme/United Nations Volunteers Programme; UN Thematic Rapporteurs; CESCR); of federal entities such as the Public Ministry for the Rights of the Citizen (Public Ministry Office); and in particular the support of civil society networks that bring together entities, organizations and movements from all over Brazil, afford the Rapporteurships sufficient power and political importance to boast actions developed by the Rapporteurs concerning claim mechanisms.

The National Rapporteurship on the Human Rights to Adequate Food and Rural Land

The National Rapporteurship on the Human Rights to Adequate Food and Rural Land (National Rapporteurship) which is independent of both government and state is becoming a major instrument in promoting the realization of the right to food and related claim mechanisms in Brazil. The National Rapporteurship is currently one of the most important claim instruments available to individuals, groups and communities, as well as being an important instrument to boost right to food promotion and claim mechanisms.

BOX 4

The Work of the National Rapporteurship

The National Rapporteurship undertakes the following tasks:

- Promotes the debates on human rights within entities and social movement engaged in Food and Nutrition Security;
- Promotes the debate on economic, social and cultural rights and on the human right to adequate food within the human rights movements that deal exclusively with civil and political rights, by highlighting the need for political pressure with a view to reach effective mainstreaming of the Paris Principles into the mandate of national human rights institutions;
- Maintains direct dialogue with government agencies, for the purpose of mainstreaming the human rights dimension into public policies and programmes;
- Draws public attention to situations of violation and to populations that had long endured invisibility, being completely ignored;
- Facilitates negotiated settlements in conflict situations from a human rights perspective, encouraging the Federal and State Public Ministry to be more active in protecting human rights. Recognition of the National Rapporteur's role in mediating conflicts in situations of violation has led different government institutions and Public Policy Councils to invite it to participate in effort to find solutions and facilitate political negotiation -thus contributing, in some cases, to the amicable settlement of conflicts-;

BOX 4
The Work of the National Rapporteurship (cont.)

- Informs communities, social movements and NGOs about the relevance of human rights claim mechanisms to their advocacy strategy;
- Keeps the UN Special Rapporteur on the Right to Food permanently informed of the most serious violations committed in the national territory, and seeks its support when necessary.

The missions of the National Rapporteur bring visibility to populations and situations that were hitherto ‘invisible’ and ‘forgotten’ by the state, in particular by drawing the attention of the media to the problem. In many cases, these missions set the conditions for establishing new negotiation channels between the community and the public authorities responsible for addressing the violations identified.

Reports containing recommendations to the government at its different levels of action can be described as important outputs of these missions. On occasion, such recommendations can be transformed into Terms of Conduct Adjustment by the Public Ministry, through negotiations with the government and thus further strengthen the process of reinforcing claim mechanisms and the realization of rights that are currently undermined.

Besides carrying out investigation missions, the National Rapporteurship receives and analyzes complaints about right to food violations. Some of these complaints are the object of *in loco* investigation missions, either individually or together with other Rapporteurships of the Brazilian Platform on ESCEHR. Many others are investigated by requesting information from competent public authorities, following contact with the reporting institutions to confirm the information on hand. This is done in close cooperation with the Federal and/or State Public Ministry. Public notices or recommendations are issued by the National Rapporteurship with respect to these complaints of violation.

Together with the technical and operational support of Brazilian Action for Nutrition and Human Rights (ABRANDH), the National Rapporteurship, in its first and second terms of office (2002-2006) played an important role in negotiating the creation of different right to food claim mechanisms within CONSEA (at national and state level), the Council for the Defence of the Human Person (CDDPH) and the Public Ministry’s Office.

The actions of the National Rapporteurship are not intended to bring direct remedies to people's problems, particularly as it could not do so alone. Its objective is to strengthen the demand for a dignified response by the state to people's claims and seek to ensure that these populations are included and recognised in decision making processes.

The impact of the National Rapporteur's initiatives has exceeded all expectations. Despite the physical and financial restrictions that prevent it from exhausting the themes addressed, and the long way ahead, the National Rapporteurship has proven to be an important catalyst in the process of strengthening right to food claim mechanisms in Brazil. This refers not only to political claim mechanisms but also to its decisive action in the process of creating and strengthening other mechanisms as explained above.

The stronger the social organization around the cases reported is, the more effective the work of the Rapporteurships will be.

BOX 5

How to replicate this experience in other countries

Although the institutional reality varies from country to country, it is perfectly feasible to replicate the experience of the Rapporteurs Project or similar initiatives based on the mandate of the UN Special Rapporteurs in any country where there is a significant mobilization of social movements and civil society organizations that are active in the area of human rights, particularly ESCR. UN support can be obtained by contacting the UN Special Rapporteurs and other human rights agencies.

National Rapporteurships can strengthen the capacity to monitor and investigate ESCR violations in each individual country, and can be a powerful instrument for catalyzing all other processes related to human rights promotion and claim mechanisms.

Exigibilidade: Mechanisms to claim the human right to adequate food in Brazil

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INTRODUCTION

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2 Claiming the right to food at international level: global and regional perspectives

As acknowledged earlier in this study, *exigibility* of the human right to adequate food touches on diverse spheres of action, such as administrative, judicial and political grounds. Those different dimensions of exigibility are also reflected at national, regional and global level. This chapter looks at the *exigibility* mechanisms for the right to food at both regional and global levels, with particular emphasis on the Inter-American System of Human Rights of which Brazil is a part since 1948 (date of the foundation of the Organization of American States).³⁵

Taking into account the fact that claiming the right to food demands a multidimensional and comprehensive approach, it is difficult to establish strict divisions between the categories related to the *exigibility* of this right. Concrete results can be achieved only if the administration, the judiciary and the political establishment – are all involved. At the same time, international action makes no sense if it does not have repercussions at national level and, in the case of Brazil, predominantly at local level. In that sense, any effort at providing an organized and classified scheme of international claim mechanisms is subjective and aims merely at facilitating the reader's understanding.

Firstly, this chapter present *global and regional systems of human rights protection* from a broad perspective and focuses on introducing the weaknesses and opportunities in claiming the right to food at both levels. In this first part, global mechanisms, such as the Universal Periodic Review, the Human Rights Council and the Human Rights Treaty Bodies are addressed, drawing attention to the work carried out with the Brazilian State. With regard to the regional system, both the Inter-American Commission and the Inter-American Court of Human Rights are analysed to identify the possibilities they offer for claiming economic, social and cultural rights and the right to adequate food in particular. Some considerations will enable us to anticipate new strategies for litigation in the near future, in order to strengthen the potential of this regional mechanism. Secondly, some specific issues regarding further challenges, such as private investments and transnational violations of human rights, will be highlighted in order to consider new actions for the way forward.

³⁵ Brazil ratified the Convention of American Human Rights in 1992, which means that before this date, the State was not under the Inter-American Court of Human Rights' jurisdiction. Only the Inter-American Commission on Human Rights was recognized as a supranational institution allowed with the mandate to provide recommendations on specific cases of alleged violations of human rights.

The *global system of human rights*, relying on international treaties, universal mechanisms and specific institutions, is mandated to survey and actively advocate for the progressive realization of people's rights throughout the world. States have created this international system to complement and strengthen the national basis for the protection of human rights. It is important to emphasize the complementary and subsidiary dimension of the system, as its role is not to replace state obligations but to guide and, only where necessary, intervene to protect and concretely demand the fulfilment of an individual's human rights. The governments of each state are directly responsible for respecting, protecting and progressively realizing human rights in their country.

Unfortunately, for historical reasons related to the political division during the Cold War period, economic, social and cultural rights - such as the human right to adequate food - have been artificially detached from civil and political rights, thus creating a set of obstacles for national and international protection of the latter during the past decades.

2.1 QUASI-JUDICIAL ADVANCES FROM THE UN TREATY BODIES

Many of the difficulties just mentioned are being progressively overcome: new mechanisms are being created and the natural link between both categories of rights is increasingly recognized. One meaningful example is the adoption by the UN General Assembly of the *Optional Protocol for Economic, Social and Cultural Rights* on 10 December 2008. This new mechanism gives the possibility to claim all ESCR, including the human right to adequate food, at international level. However, it will be effective only after 10 states have ratified the Optional Protocol.

The CESCR, mandated up to now to monitor the national implementation of the ICESCR,³⁶ did not have the competence to receive specific complaints based on concrete cases of alleged violations of the ICESCR. This structural gap has left economic, social and cultural rights apart from tangible case-law interpretation and concrete protection at international level for many decades.

The CESCR defined the contents of economic, social and cultural rights, including the human right to adequate food, in its General Comments: General Comment 12 brought a definition of the human right to adequate food, framing its content from a theoretical perspective. Now, the unanimous adoption of the Optional Protocol is a sign of positive change that requires strong support from both the state and civil society actors. Advocacy and awareness on the part of civil society networks and organizations at both international and national level will be decisive in encouraging Brazil as well as other states to sign the Protocol and adhering to the treaty's further ratification.³⁷

³⁶ Since 1992, Brazil is a State Party to the Covenant. The current number of states Party is 160.

³⁷ The Optional Protocol opened for signature during the 2009 Treaty Event held on 24 September at the United Nations Headquarters in New York. For more information on the states having already signed the Optional Protocol, please visit:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en

Having welcomed the recent adoption of this new procedure, it is important to understand what type of protection this Optional Protocol offers. According to the classification provided in this paper, the new mechanism - which makes it possible to claim the right to food before the CESCR - is *quasi-judicial*. This means that the CESCR will be able to receive either individual or collective claims and that it will have the competence to investigate concrete cases of alleged violations of the right to food. As a result, it will be able to provide the relevant state with specific non-binding recommendations to fulfil this human right.

BOX 6

The Optional Protocol: how does it work?

In addition to the signature, the Optional Protocol is subject to ratification. It only enters into force three months after the date of the deposit of the 10th instrument of ratification or accession with the UN Secretary General.

Victims of violations of ESCR may use the procedure only after their state has ratified the Optional Protocol.

Individual complaints and inquiry procedure

- The Optional Protocol confers on the CESCR the right to receive and consider communications from or on behalf of individuals or groups of individuals concerning alleged violations of any of the rights set forth in the Covenant.
- It also permits the CESCR to conduct investigations in the case of serious and systematic violations of any of the economic, social and cultural rights – including the human right to adequate food – in those states that recognized this particular competence on its part. A state declaration would be required before initiating such investigation.

Who can access the CESCR, and how?

- Who? Any individual or group of individuals (including communities, NGOs, trade unions, etc), provided their government has ratified the Optional Protocol.
- How? The author(s) of the communication (victim(s) or their representative) must first:
 - exhaust all available domestic remedies;
 - present the communication within one year of such efforts;
 - ensure that the case has not been heard before a similar international entity.



BOX 6

The Optional Protocol: how does it work? (cont.)

What happens afterwards?

- The procedure provides for the possibility of a *friendly settlement* and *interim measures* (measures that the state should take in order to avoid irreparable damage to the victims of the alleged violation);
- As a quasi-judicial system, the CESCR will express its views which are recommendations, not judicial decisions.

What is the remedy? Is there any follow up?

- After establishing whether or not there is a violation, the CESCR usually recommends satisfactory remedies but does not specify the details, leaving it to the discretion of the state to define an adequate response. Sometimes it can specify the need to provide compensation or restitution;
- Within six months of receiving the recommendations, the state shall submit a written response to the CESCR, including details of action taken at the national level to redress the violation;
- The CESCR follows up through 'subsequent dialogue': review of the next state report and the Universal Periodic Review.

This quasi-judicial system dedicated exclusively for economic, social and cultural rights was the missing procedural link at international level, given the fact that other human rights have been benefitting from such a mechanism for several decades now: civil and political rights can be claimed before the Human Rights Committee; concrete violations against women can be identified by the Committee on the Elimination of Discrimination against Women (CEDAW), and human rights violations based on racial discrimination can be submitted to the Committee on the Elimination of Racial Discrimination (CERD), through individual complaints.

Despite of the absence of a specific mechanism for ESCR and taking into consideration the close interrelation with civil and political rights, the right to food has been dealt with in the context of other cases treated by some of the various committees mentioned above.³⁸

³⁸ A recent study on the justiciability of the right to food undertaken by Christophe Golay provides more examples on the matter. See, GOLAY, C., *Droit à l'Alimentation et accès à la justice: exemples au niveau national, régional et international*, FAO 2009.

BOX 7

The Human Rights Committee: an example of *quasi-judicial* protection for the human right to adequate food in a case related to detention conditions

The Human Rights Committee has already recognized the importance of the human right to adequate food and protected this right in cases related to detention conditions.³⁹

In *Albert Womah Mukong vs. Cameroon*,⁴⁰ the Committee concluded that the conditions of Albert Mukong's detention amounted to cruel, inhuman and degrading treatment, violating article 7 of the International Covenant on Civil and Political Rights.

Albert Mukong claimed that during the ten and a half months of his detention he was held in a small cell with 25 to 30 other detainees and no sanitary facilities; often *without food*, and either in a cold cell without any clothes or in a cell that reached 40 degrees Celsius. The Committee further observed that a State Party to the Covenant, regardless of its level of development, *must meet certain minimum standards* regarding conditions of detention, including: minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, adequate bedding, adequate clothing and *food of adequate nutritional value for health and strength* (paragraph. 9.3).

In conclusion, the Committee urged the government "to grant Mr Mukong appropriate compensation for the treatment he has been subjected to, to investigate his allegations of ill-treatment in detention, to respect his rights under article 19 of the Covenant, and to ensure that similar violations do not occur in the future."

Despite some spot examples where these *quasi-judicial* mechanisms have been useful in claiming the human right to adequate food at international level, their real potential has not been fully exploited and so few cases might be considered as positive examples. The argument that affirms that the right to food is intrinsic to the right to life has not yet been tested before the Human Rights Committee, and neither the Committee on the Elimination of Racial Discrimination nor the Committee on the Elimination of Discrimination against Women have issued any recommendations in this regard.⁴¹ More action is required on the part of civil society and national and international activists in order to establish innovative ways of claiming the human right to adequate food before those UN treaty bodies.

³⁹ See also Human Rights Committee, *Lantsova v. The Russian Federation*, Communication No. 763/1997.

⁴⁰ Human Rights Committee, *Womah Mukong v. Cameroon*, Communication No. 458/1991.

⁴¹ See GOLAY, p. 32.

2.2 GLOBAL PROCEDURES FOR POLITICAL EXIGIBILITY AT INTERNATIONAL LEVEL

Beyond the *quasi-judicial* mechanisms introduced previously, the UN system gathers other types of institutions and mechanisms through which violations of human rights and, more specifically, violation of the human right to adequate food, can also be addressed. The main institution representing the protection of human rights at the global level is the Human Rights Council, which has replaced the Human Rights Commission since 2006. The Human Rights Council is responsible for “promoting universal respect for the promotion and protection of all human rights and fundamental freedoms for all, without distinction of any kind and in fair and equal manner.”⁴² It is composed of 47 Member States elected by the General Assembly for a period of three years, reflecting the following geographic distribution: 13 African States, 13 Asian States, 8 Latin American and the Caribbean States, 6 Eastern European States and 7 Western European States. Brazil, as one of the currently elected Member States (period expiring in 2011) has the mandate to actively participate in the promotion and protection of all human rights, providing other countries with meaningful recommendations when required. The ‘institution-building package’, approved by the Human Rights Council in 2007, is composed of a set of procedures and methods currently in use to monitor and promote the realization of human rights worldwide.

Some of the mechanisms included in the institution-building package have been and continue to be used for monitoring the implementation of human rights in Brazil and, in particular, the human right to adequate food. Thus, it is worth explaining from a broad perspective which are the procedures adopted by the Human Rights Council and indicating the extent to which they have been used to enhance the protection of the right to food.

2.2.1 THE UNIVERSAL PERIODIC REVIEW: BRAZILIAN REVIEW PROCESS OF 2008

Among the different mechanisms created, the *Universal Periodic Review (UPR)* is the most innovative monitoring mechanism as it ensures universality of coverage—an aspect missing under the former Human Rights Commission—. All Member States are required to present a report, after broad consultation with all relevant national stakeholders including NGOs and the private sector. The UN Office of the High Commissioner for Human Rights provides complementary information for the review coming from inputs of UN treaty bodies such as the CESCR and reports issued by the Special Rapporteurs on specific mandates such as the right to food, as well as information presented by civil society and National Human Rights Institutions. The review process results in the provision of a set of recommendations on specific issues contained in the state report.

In the specific case of Brazil, the state presented its UPR report in 2008. This was an appropriate opportunity for the Brazilian government to provide details of advances made on the realization of the human right to adequate food in key areas such as

safety net programmes and national legislation. In order to show recent achievements on the right to food, the report referred to the *Fome Zero* Programme and also to the National Food and Nutrition Security Framework Law (LOSAN) enacted in 2006. As acknowledged in the report, this new legal framework institutionalizes the duty of public powers to respect, protect, promote, provide, inform, monitor, inspect and evaluate the realization of the right to food, as well as to guarantee the mechanisms for its exigibility. In keeping with UPR requirements mentioned above, on that occasion other UN and civil society institutions provided pertinent information for the review, facilitating the final recommendations by the Human Rights Council. The Office of the High Commissioner for Human Rights recognized the adoption of LOSAN as an achievement and best practice for the realization of the human right to adequate food in Brazil. However, forced evictions affecting land rights and lack of commitment towards the Inter-American Human Rights System were emphasized as being critical challenges for the way forward.

The UPR process provides an excellent opportunity for civil society to play a high-level monitoring role and is one of the many ways to report and claim violations of human rights. Unfortunately, on the occasion of the 2008 Brazilian UPR, the human right to adequate food was not specifically addressed in the *resume* of the information presented by civil society.⁴³ It is particularly important, therefore, to take advantage of this institutional and well-recognized arena to increase international visibility of right to food violations.

Beyond reporting current violations, the UPR process is also useful to build knowledge at national level while preparing the state report. Civil society can provide the government with positive and negative feedback on specific issues, thus creating new mechanisms for dialogue and participation. In the same way, the process of monitoring and gathering information among NGOs, media, national human rights institutions and other actors constitute a valuable platform to raise awareness on the right to adequate food and to advocate its realization in a positive way by suggesting the adoption of concrete measures.

2.2.2 SPECIAL PROCEDURES: EMPHASIS ON THE WORK OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD

Other mechanisms included in the Human Rights Council's Special Procedures require specific attention. The Special Procedures are mechanisms whereby special representatives and independent experts monitor and prepare reports on the human rights situation, either in specific countries or on specific issues. The right to adequate food is one of the human rights for which a special mechanism was created in 2000 by the former Human Rights Commission.⁴⁴ The Special Rapporteur on the Right to Food is in charge of promoting and monitoring the implementation of the human

⁴³ The Summary prepared by the Office of the High Commissioner for Human Rights is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/113/02/PDF/G0811302.pdf?OpenElement>

⁴⁴ Resolution 2000/10 of 17 April 2000. The mandate of the Special Rapporteur was endorsed and extended by the Human Rights Council by the Resolution 6/2 of 27 September 2007.

right to adequate food in close cooperation with all states, intergovernmental and non-governmental organizations, the CESCR, and other relevant actors.⁴⁵ Indeed, he actively participates in the follow up of national implementation of the right to food by undertaking, among other activities, country visits during which he can obtain first-hand information. According to his mandate, after each of the country visits, he reports on his findings and submits recommendations to improve situations identified as matters of concern. In that sense, the monitoring mandate of the Special Rapporteur and its competence to provide recommendations on current situations generating severe violations of the right to food, directly contribute to claiming the human right to adequate food at international level. The Special Rapporteur is expected to report both to the UN General Assembly (Third Committee), and to the Human Rights Council, on the fulfilment of his mandate.

Since the creation of this procedure, Brazil has benefitted twice from the country visits of the Special Rapporteur on the Right to Food. The first visit was made by the former Special Rapporteur, Jean Ziegler, in 2002 and the latest visit was undertaken by the current Special Rapporteur on the Right to Food, Olivier de Schutter, in October 2009.⁴⁶ The official country mission report was submitted to the Human Rights Council in March 2010.⁴⁷ The visit to Brazil provided an excellent opportunity for putting together concrete information on mechanisms for claiming the human right to adequate food in Brazil.⁴⁸

The preliminary conclusions of the visit of the Special Rapporteur provided concrete recommendations in this regard: “*While the Special Rapporteur is impressed by the role played by the Federal Public Ministry (...) He would also encourage the Brazilian government to consider setting up a national human rights institution with a mandate in conformity with the Paris Principles, ensuring the participation of civil society, and [being] allowed to receive individual complaints.*” Regarding the implementation of social programmes, such as the *Bolsa Familia* and the National School Feeding Programme, the Special Rapporteur drew attention to the need to clearly define the right holders of these programmes in such a way as to avoid arbitrariness or discrimination in the realization of the rights foreseen. In the same way, he underlined that accessible, rapid and effective mechanisms should be envisaged⁴⁹ and included in those particular programmes.

⁴⁵ A detailed description of the mandate of the Special Rapporteur on the right to food is available at: <http://www2.ohchr.org/english/issues/food/overview.htm>

⁴⁶ See report at: http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add6_country-mission-brazil_en.pdf

⁴⁷ See, Report ‘Mission to Brazil’ presented to the Human Rights Council [A/HRC/13/33/Add.6], March 2010 available at: http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add6_country-mission-brazil_en.pdf

⁴⁸ The participation at the *Seminar on Claim Mechanisms for the Human Right to Adequate Food and the National System on Food and Nutrition Security*, held on the 13th and 14th of October and convened by the Ministry for Social Development and the Fight Against Hunger, was an accurate moment to receive precise information from government, national human rights institutions, civil society and social movement actors.

⁴⁹ The Preliminary Conclusions are available at: http://www.srfood.org/images/stories/pdf/medias/20091016_press-release_brazil_annex-preliminary-conclusions_en.pdf

Both the UPR and the Special Rapporteur on the Right to Food are among the most effective mechanisms that actually contribute to increase political accountability towards the realization of the right to food at global level.

This chapter will now concentrate on the existing regional mechanisms within the American continent that enable people to claim ESCR including the right to food.

2.2.3 THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS: SIGNIFICANT OPPORTUNITIES FOR CLAIMING THE RIGHT TO ADEQUATE FOOD DESPITE STRUCTURAL CHALLENGES

With regard to the regional level of human rights protection, the Inter-American System offers different ways for claiming the violation of human rights. This system comprises two main institutions: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Brazil ratified the jurisdiction of the latter in 1992 and accepted the competence of the former earlier on, in 1948. The Inter-American Commission is a quasi-judicial institution that receives individual or collective complaints, investigates them, and provides the state with specific recommendations. It is not a judiciary body but it can process petitions from individuals claiming alleged violations of the rights contained in the American Convention. The Inter-American Court, on the contrary, is a judicial mechanism providing binding judgements which are compulsory for states at the national level.⁵⁰ The legal framework of the Inter-American system is composed of various instruments.⁵¹ However, the American Declaration on Human Rights, the American Convention and the Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador) constitute the main platform for claiming violation of economic, social and cultural rights.

This regional system has evolved during the past decades towards providing significant opportunities for claiming economic, social and cultural rights, including the right to food.

There are many positive aspects in its favour. The current normative framework including a specific Protocol for ESCR protection (Protocol of San Salvador) in which the right to food is clearly embedded in article 12, and the openness in the interpretation given by the Inter-American institutions, constitute a half-open door for the protection of ESCR. In this regard, positive experience shows how some of the cases resolved, either by the Commission or by the Court, protected the human right to adequate food because of its direct link with civil and political rights, such as the right to life and the right to property.⁵²

⁵⁰ The cases submitted to the Court are previously received by the Commission and it is only the Commission who can submit the cases before the Court. Since individuals do not have direct access to the Court, they must claim their rights before the Commission who will deal with the case and might decide to present it before the Court.

⁵¹ The American Declaration of the Rights and Duties of Man, the American Convention, The Protocol to the American Convention on the Abolition of the Death Penalty, The Interamerican Convention to Prevent and Punish Torture, the Interamerican Convention on Forced Disappearance of Persons, the Interamerican Convention on the Prevention, Punishment and Eradication of Violence Against Women and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), which recently entered into force.

⁵² See GOLAY's paper for a complementary perspective on some InterAmerican case studies. *Supra* note 1.

BOX 8

Sawhoyamaya Indigenous Community v. Paraguay⁵³

The indigenous community of Sawhoyamaya was forced to settle along the edge of the highway in Paraguay because the state took possession of and privatized the land that had belonged to them and their ancestors for centuries. The Court considered that the state had not taken the necessary measures to enable the community members to leave the roadside, where they were living in inadequate conditions that endangered, and continue endangering, their right to life. The Court found violations of their rights to fair trial and judicial protection, to property and to life.

By an extensive interpretation of the right to life, the Court protected the Sawhoyamaya community's Right to Food. According to the Court, "Life is a fundamental human right, of which full enjoyment is a pre-requisite for the enjoyment of the other human rights. If this right is not respected, all other rights do not have sense. Having such a nature, no restrictive approach of same is admissible."

In this case, the Court obliged the State of Paraguay to return the ancestral lands to the Sawhoyamaya community before 19 May 2009. Until their ancestral land is reassigned, the authorities shall undertake a set of concrete actions, including the provision of basic services essential for the survival of the community while they are living in such precarious conditions.⁵⁴

Protocol of San Salvador

Although the Protocol of San Salvador constitutes a normative milestone, the Inter-American System's weak structure led to obstructive consequences in the practical use of its mechanisms. The system openly excludes individuals from claiming the human right to adequate food as a justiciable right, while individuals have been claiming ESCR almost continually in relation to civil and political rights. In fact, the Protocol of San Salvador, which explicitly endorses the right to food in article 12, restricted its direct justiciability in article 19:⁵⁵ according to this article, only trade union rights and the right to education are justiciable before the Commission and the Court. The Inter-American

⁵³ I/A Court HR, Case of *Sawhoyamaya Indigenous Community v. Paraguay*, Judgement of 29 March 2006.

⁵⁴ According to FIAN, by 2008 the state had not implemented the judgement and the members of the communities continued to show signs of under-nourishment and deteriorating health, some even dying because of the state's inaction. See <http://www.fian.org/cases/letter-campaigns/paraguayan-state-fails-to-observe-judicial-rulings>

⁵⁵ The paragraph 6 of article 19 provides that "Any instance in which the rights established in paragraph a) of Article 8 (*trade union rights*) and in article 13 (*right to education*) are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights."

System has already pronounced itself on this particular issue on previous occasions; however, the interpretation of the limits of its competence to decide on ESCR violations, taking the Protocol of San Salvador as the international legal basis, is not yet clear. This structural weakness constitutes both an obstacle and a challenging opportunity.⁵⁶

2.2.4 OPPORTUNITIES TO GRASP

When looking at the American Convention in detail, article 26 provides a clear basis for the progressive realization of ESCR. It establishes that:

*“(...) The State Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to **achieving progressively**, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.”*

In this regard, article 34 of the Organization of American States (OAS) Charter includes “proper nutrition, especially through the acceleration of national efforts to increase the production and availability of food” as a major goal to be reached by all OAS Member States. In fact, article 26 has been claimed already by the victims of alleged violations of economic, social and cultural rights as a justiciable article itself. This claim looked for recognition of the justiciability of the rights mentioned in the OAS Charter on the basis of article 26. Such justiciability has been successfully recognized by the Inter-American Court of Human Rights, despite the fact that it has not yet been concretized. A recent judgement of the Court (July 2009) provided a comprehensive examination of this issue. In going through an analysis of the preparatory drafts of the Convention itself and by looking at the intentions of Member States regarding article 26, the Court affirms that its content is totally justiciable in the Inter-American System of Human Rights and that its interpretation shall be under the general obligations of states contained in articles 1(1) and 2. By quoting the Court:

“The Tribunal notes that the content of Article 26 of the Convention was the subject-matter of an intense debate in the preparatory works of the Convention, as a result of the States Parties’ interest to assign a ‘direct reference’ to economic, social and cultural ‘rights’; ‘a provision establishing [...] certain legal mandatory nature [...] in its compliance and application’; as well as ‘the [respective] mechanisms [for its] promotion and protection’ [...]

The review of the said preparatory works of the Convention also proves that the main observations, upon which the approval of the Convention was based, placed a special emphasis on ‘granting the economic, social and cultural rights the maximum protection compatible with the peculiar conditions to most of the American States.’ In this way, as part of the debate in the preparatory works, it was also proposed ‘to materialize the exercise of [said rights] by means of the activity of the courts.’

⁵⁶ For further information on this particular debate, see KRSTICEVIC, V., in *La tutela de los derechos sociales en el sistema interamericano* available at: http://www.idrc.ca/ft/ev-107410-201-1-DO_TOPIC.html

*In this regard, the Court deems it is appropriate to recall the interdependence that exists between civil and political rights and economic, social and cultural rights 'since they should be fully understood as human rights, without any rank and enforceable in all the cases before competent authorities.'*⁵⁷

The 2009 position of the Court is very important as it shows a positive shift with regard to claims in relation to economic, social and cultural rights. Civil society and transnational legal activism in Latin America should maintain their efforts to claim violations of the human right to adequate food in the regional system, when such violations occur. There is an urgent need to better shape the contents and the interpretation of economic, social and cultural rights within the Inter-American System. Different strategies may be used for realizing such achievement. One possibility is that of trying to reach a more precise definition of the extent of article 26. Bearing in mind that the OAS Charter includes 'proper nutrition' as an economic and social goal, the human right to adequate food would greatly benefit from consolidating this new dimension of justiciability.

However, ambiguity regarding the extent of the justiciability of article 26 of the Convention is similar to the uncertainties of using the American Declaration as a justiciable instrument for economic, social and cultural rights.

This instrument contains a wide array of economic, social and cultural rights - including the right to food - and has been recognized as a source of obligations for all OAS states.⁵⁸ A Brazilian case constituted one of the first opportunities in which this instrument was used for claiming indigenous and ESCR rights. In the *Yanomani* case, the Commission concluded that the Brazilian government was responsible for failing to take timely and effective measures to protect Yanomani's human rights which were being affected by the construction of a road and the granting of mining licenses for indigenous land. Such failure led to alterations in the community's well-being and violations of the right to life, liberty, security, residence and movement, and to the preservation of health and well-being.

The Yanomani community's right to food is being affected as the agricultural development projects undertaken by the National Institute for Settlement and Agrarian Reform and set up for the benefit of the indigenous communities displaced from their land, were not producing the desired effects. On the contrary, the result has been the loss of their land and their compulsory transfer to agricultural communities inappropriate to their customs and traditions. By protecting the Yanomani community's access to land, the Commission's recommendations were also valuable for the protection of the community's right to adequate food. The recommendations focused on demarcating the boundaries of the Yanomani Park and insisted that the planned education, medical protection, and social integration programmes be implemented in close consultation with the community. Yet, despite the positive outcome of using the Declaration for this particular case, neither the Commission nor the Court has taken a position in this regard.

⁵⁷ I/A Court HR, *Case Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru, Judgement of July 1, 2009*, paras. 99 and 101.

⁵⁸ See I/A Court H.R., *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89 of 14 July 1989*.

2.3 CURRENT AND FUTURE CHALLENGES

Considering the circumstances presented above, some challenges need to be met in order to achieve better results. Two strategies require further development by civil society representatives: the first is the attempt to achieve direct justiciability of the right to adequate food by utilising the mechanisms mentioned earlier to their full potential. Thus, more cases claiming violation of the right to food shall be brought before the Inter-American institutions. Social pressure on the regional system by legal activists in Latin American countries may well open up the road for shaping and claiming the human right to adequate food in the near future. The second strategy is to build on what already exists: claims in which the human right to adequate food is directly linked to civil and political rights must be consolidated. The same consideration held earlier regarding the mechanisms available with the UN treaty bodies is pertinent for the regional system also. The connection between the right to food and civil and political rights must keep strengthening the exigibility of this human right in order to increase the possibilities of justice for the victims of violations of the right to food at national level.

Regional claim mechanisms result in case-law and legal precedents that states should follow and respect at national level. Among different NGOs in Brazil, the GAJOP⁵⁹ refers to the claim mechanisms offered by the Inter-American system by affirming that *“the case must be exemplary to make the country adopt a different position. We are not simply interested in a solution to the individual case. We are also interested in changing the police, the laws and the State, to prevent the continuation of human rights violations.”*⁶⁰

This last point draws attention to a big challenge in the Inter-American System: the ineffectiveness of regional decisions at national level. Although they are obligatory, their implementation at country level takes considerable time and frequently meets with strong resistance from local authorities. According to Cecilia McDowell Santos, *“in most cases, (...) the victims have had to carry out new struggles to guarantee that the recommendations of the Inter-American Court of Human Rights (IACourtHR) be implemented by the Brazilian State. Even in cases where the Brazilian State has agreed to comply with its obligation to compensate the victims, one of the major problems facing the federal government is the resistance by local governments and local courts to enforcing international human rights norms, despite the fact that these norms have been ratified by the Brazilian State.”*⁶¹

Lack of implementation of international decisions at national level may be caused by lack of knowledge and lack of awareness regarding the obligations endorsed by states at international level. Two main considerations need to be taken into account in order to redress this practical gap. First, complementary actions, based on national monitoring and social awareness, are essential to bring about concrete change. Judicial

⁵⁹ Gabinete de Assistência Jurídica Popular.

⁶⁰ Words of Jayme Benvenuto, director of the International Human Rights Program of GAJOP. See McDowell Santos, Cecilia in *Transnational legal activism and the State: reflections on cases against Brazil in the Interamerican Commission on Human Rights*, SUR International Journal on Human Rights No. 7, 2007, p. 42.

⁶¹ Idem. p. 51.

and quasi-judicial mechanisms are only one component of a broader exigibility strategy. Awareness raising and education of civil servants, in particular the judiciary system at local level, constitute a first step for coherent implementation of international decisions. Consequently, information channels such as academia and the media should facilitate this holistic approach. Second, beyond the importance of providing capacity building for the system itself, it is crucial to adapt the regional and international standards to concrete local contexts. The formulation of the Commission's recommendations or the decisions of the Court is usually very broad and might therefore be meaningless for local populations. In this regard, already existing institutions, such as the National Council for the Defence of the Rights of the Human Person (CDDPH) and, in particular, the Special Commission to Monitor Violations of the Human Right to Adequate Food, should follow up and propose, whenever feasible, realistic and accurate methods for the implementation of these international decisions. Certainly, a large responsibility lies with the judiciary branch, but it cannot succeed alone. The above institutions should be strengthened - as recently suggested by the Special Rapporteur on the Right to Food after his country visit to Brazil⁶² - and their work should be linked - when possible - to cases claimed in international scenarios in order to acquire better coherence and the necessary effectiveness.

2.4 THE WAY FORWARD: NEW ISSUES, NEW PERSPECTIVES

The *Seminar on Claim Mechanisms for the Human Right to Adequate Food and the National System on Food and Nutrition Security* held in October 2009 in Brazil, raised specific issues regarding human rights violations and the responsibility of the private sector in this regard.

By pointing out the sensitive topic of agrofuels and access to land in Brazil, a call was launched for coherence among current policies protecting the human right to adequate food and other policies that may be hindering its immediate realization. Taking into consideration the fact that the right to food relies on having adequate access to food or to the means for its procurement, important issues such as natural resources management or tenure policies have critical impacts on the realization of this human right. Competition for natural resources is seriously affecting small farmers' right to adequate food, not only in Brazil, but also in many other countries.⁶³ Although not a new phenomenon, the expanded trend of large-scale land acquisitions is one of the multiple examples of secondary situations affecting the rights of those who are already vulnerable to radical changes in public policies related to (economic or physical) access to food. Violations of economic, social and cultural rights including the human right to adequate food activated the alarm at national and international level. The Special Rapporteur on the

⁶² See Preliminary Conclusions of the Special Rapporteur on his mission to Brazil, available at: http://www.srfood.org/images/stories/pdf/medias/20091016_press-release_brazil_annex-preliminary-conclusions_en.pdf

⁶³ According to Habitat International Coalition's Housing and Land Rights Campaign 2009 and Housing and Land Rights Network's Violation Database, 27.400 thousand people would be affected in Brazil due to forced eviction, dispossession, destruction and privatization. Available at: <http://www.hlrn.org/english/map.asp>

Right to Food recently provided a set of recommendations to ensure the protection of the right to food, the right to development and the right to self-determination of local populations. While recognizing that investments constitute an opportunity for economic development, it emphasizes that the risks for local populations need to be addressed within a human rights framework: “*while these measures may give the impression of representing additional constraints, they should be seen as true success factors in the short and long term*”.⁶⁴

Civil society plays a decisive role in moving institutional mechanisms, as was recognized in the International Strategy Meeting on Economic, Social and Cultural Rights, held in Nairobi, from 1 to 4 December 2008. This global meeting, attended by more than 250 key human rights organizations, social justice and grassroots activists from 53 countries around the world, was a great opportunity for civil society members worldwide to exchange experiences and discuss current challenges regarding the realization of ESCR. Accountability and claim mechanisms were some of the subjects addressed in the debates. Alternative globalization and litigation strategies were pointed out, showing consolidated developments in the area of extraterritorial issues such as trade, investment and finance. This should continue to be explored as it is important to open new opportunities for participating in international scenarios where human rights violations are being discussed.

Taking into account the multidimensional and cross-sectoral nature of the human right to adequate food, international claim mechanisms for violation of this human right raise challenging issues for the way forward. Globalization is setting the pace for subsequent changes in the approaches to human rights violations at national level. Claim mechanisms should then gradually evolve in new directions that require further analysis, evaluation and lessons learned. Civil society empowerment and innovative approaches for dealing with human rights violations should be the basis for building this future path.



Exigibilidade: Mechanisms to claim the human right to adequate food in Brazil

LIST OF BOXES AND ABBREVIATIONS

FOREWORD AND INTRODUCTION

INTRODUCTION

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ANNEXES

3 Strengthening human right to adequate food claim mechanisms: challenges and steps

3.1 CONSIDERATIONS ON THE EFFECTIVENESS OF CLAIM MECHANISMS: THE BRAZILIAN EXPERIENCE

In many countries, both challenges and constraints to the effective realization of human rights are due to the absence of laws establishing a solid basis for the promotion of these rights. However, what can be observed in practice is that even in countries such as Brazil, where considerable institutional and normative advances have been made towards the promotion of human rights, there are still sizeable constraints to achieving the effective realization of these rights.

This is mainly due to the fact that the realization of human rights in practice goes beyond their recognition in discussions or even in the texts of laws and policies. Realizing human rights implies that states, through concrete actions, fulfil their obligations by formulating, implementing and monitoring their public laws, programmes and policies from a human right to adequate food perspective. All this [shall be done] in the context of the indivisibility of human rights.

Depending on the reality of each country, the complexity of the different constraints and challenges to the effective realization of human rights varies considerably. Each nation needs to define their favourable circumstances, as well as the challenges and obstacles to be overcome in order for human rights to be promoted effectively. Some challenges related to the absence and/or ineffectiveness of human rights claim mechanisms and institutions are discussed below, based on the Brazilian experience.

Despite the important progress made in Brazil at both institutional and legal levels, the country faces significant constraints to guaranteeing human rights. One relates to unbalanced power (economic, political, and communication power among others) which severely affects the most vulnerable groups. Consequently, direct action by civil society is fundamental: this is the way in which very important structural changes have been achieved so far, with regard to the promotion of human rights. The struggle for the non-criminalization of social movements and of the many men and women who fight for rights is fundamental in ensuring the human right to adequate food and other rights.

In order to be successful, right claiming has to be a two-way initiative: i) through the use of state instruments (laws, rights defence organizations, etc.) and ii) through the mobilization

and active participation of civil society. If either of these requisites is missing, the struggle for rights will be considerably weaker.

With regard to the different levels of right-claiming mechanisms presented in this document, it is vital to bear in mind that the lack and/or ineffectiveness of existing recourse instruments in the administrative, quasi-judicial and judicial spheres in general could be a sizeable constraint to the country's realization of the human right to adequate food.

3.1.1 ADMINISTRATIVE INSTRUMENTS

At administrative level, the rules that create and regulate public policies and programmes fail to establish simple and accessible recourse mechanisms in the case of violation of rights. There is a fundamental need to improve the quality of administrative claim mechanisms for human rights issues, especially for ESCR, as it is an indispensable condition for their effective realization. Improving this level of claim mechanisms implies the adjustment of internal administrative rules so that already-existing public policies can ensure a suitable environment for right holders to claim their rights.⁶⁵ While administrative procedures do not exclude the formulation of laws for this purpose, they are certainly less bureaucratic and more immediate than activating a more complex and time spending process of law decision making.

3.1.2 POLITICAL CLAIM MECHANISMS

With regard to *political claim mechanisms*, it is important to bear in mind that state and municipal Public Policy Councils in Brazil have difficult structural problems. As a result of the procedures employed in setting up these councils, they can often be democratically deficient and not always fully representative since, in many cases, they are composed by counselors that have not been properly trained to perform their duties or by people with no representative legitimacy. In other cases, these problems are reflected in the absence of an adequate physical structure for the efficient discharge of their duties.

Human Rights Commissions within the Legislature (Chamber of Deputies, Federal Senate, State Legislatures, Houses of Representatives, and City Councils) play an important role in giving visibility to reports of alleged rights violations. However, despite the visibility given to such cases, the work of these commissions still have little prospects of achieving better results.

3.1.3 QUASHJUDICIAL MECHANISMS

Regarding quasi-judicial mechanisms, it must be emphasized that none of the Human Rights Councils in Brazil enjoy the autonomy and independence advocated by the Paris Principles. This reveals an urgent need for the Brazilian state to take on the concrete commitment of developing national human rights institutions that are in line with the Paris Principles, having their own budget, a public and independent mandate and, above all, full autonomy from governments. As mentioned earlier when referring to international claim mechanisms, this concrete recommendation regarding the design of a Human Rights Institution in keeping

⁶⁵ VALENTE, F.L.S., BURITY, V., MELLO, H., NEVES, C., *Exigibilidade e Justiciabilidade dos Direitos Humanos Econômicos, Sociais e Culturais*. National Rapporteurships on Economic, Social and Cultural Human Rights – 2004 Report 2004, ESCHR Platform Brazil, Rio de Janeiro, 2005. p. 164.

with the Paris Principles was one of the recommendations of the UN Special Rapporteur on the Right to Food during his last visit to Brazil, in October 2009.

From another perspective, both the Federal Public Ministry's Office and the State Public Ministry's Office in some states and municipalities have developed an important role in protecting human rights. However, both institutions are still operating with limited human and financial resources – aspects which seriously compromise the effectiveness of their actions. Furthermore, only a few members of the Prosecution Service actually and effectively mainstream the human rights dimension into their actions. Civil society has occasionally identified public prosecutors and district attorneys as being opposed to the struggle for the realization of human rights and, in Brazil, some of them take an active part in the criminalization of social movements.

3.1.4 JUDICIAL MECHANISMS

With respect to judicial mechanisms to which recourse should be made only as a very last instance to ensure human rights, some studies and reports have pointed to serious problems currently affecting the Judiciary. These structural gaps represent an obstacle for the protection of social rights when monitoring the effective application of laws. Following a mission to Brazil, the UN Special Rapporteur on the Independence of Judges and Lawyers prepared a report pointing out some current gaps in the Brazilian judicial system:⁶⁶

- lack of access to the judicial system (a problem that affects society's marginalized groups in particular);
- slowness;
- few judges of indigenous or African descent in the Judiciary including in high courts of justice.

Furthermore, as a general practice, the Brazilian Judiciary does not look to international human rights instruments when taking decisions, particularly with regard to economic, social and cultural human rights.

3.1.5 THE AGRARIAN REFORM

The interpretation of laws concerning the protection of vulnerable groups is frequently limited. Many court decisions indicate that defence of the right to property prevails over defence of fundamental collective rights, such as land and territory. An example of this is the role played by the Judiciary in the agrarian reform. An INCRA survey “shows that 445 properties undergoing expropriation were subject to judicial impediment at the end of 2007. These properties are concentrated in the South, Southeast and Northeast regions, and represent a total of 903 000 hectares, an area large enough to settle 30 000 families. (...) There is an understanding that privileges the right to property over other constitutional rights such as the social function of property and human dignity. Those living

⁶⁶ See *Civil and political rights, including the questions of independence of the judiciary, administration of justice, impunity*. Report of the UN Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy, Addendum mission to Brazil E/CN.4/2005/60/Add.3., 22 February 2005. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/111/67/PDF/G0511167.pdf?OpenElement>

in a tent have their constitutional rights denied.”⁶⁷ In this regard, Fábio Konder Comparato’s arguments show how the Judiciary could act more effectively in guaranteeing human rights by making fundamental rights prevail over other ordinary rights:

*“In the agrarian reform policy scene, with respect to agricultural property it is indispensable to distinguish the fundamental right from the ordinary right. When land ownership is not indispensable for the survival of the land owner and his family, the fundamental right stated in Article 5, paragraph 22 of the Constitution ceases to exist. The owner, in this case, has the obligation to give the agricultural land its social destination (paragraph 23 of the same article).”*⁶⁸

3.1.6 CRIMINALIZATION OF SOCIAL MOVEMENTS

With regard to the Judiciary, it is also important to point out that there are complaints from civil society, indicating that judicial decisions are strengthening the tendency to criminalize social movements. With regard to such a position taken by the Judiciary, in Comparato’s view it is unacceptable that “the collective action of landless workers in defence of their fundamental right to work” should be qualified as “the committing of a crime by a gang or a criminal organization. Do we need to recall that this was precisely how some nineteenth century courts qualified the organization of textile workers into unions?”⁶⁹

Complex challenges and constraints to the effective realization of human rights in the different local realities require concrete action. A true cultural revolution needs to take place in society and in the state apparatus in order for the human rights perspective to be considered and for effective and meaningful changes to take place.

3.2 THREE FUNDAMENTAL STEPS FOR STRENGTHENING RIGHTS CLAIM MECHANISMS

Strengthening claim instruments in each country requires a detailed analysis of the following issues:

- What are the currently available mechanisms for claiming rights?
- How do these instruments and institutions work (do they have human and financial resources, autonomy and independence to effectively carry out their actions, etc.)?
- To what extent are these institutions and instruments effective? Do they respond in an adequate and timely manner to reports of alleged rights violations, especially with respect to ESCR?
- What needs to be done to strengthen these instances and instruments?
- Which institutions for claiming human rights and which instruments still need to be created and implemented in the country?
- Are there partnerships between different rights claiming institutions? How do these partnerships work?

⁶⁷ Information available at: <http://www.cptpe.org.br/modules.php?name=News&file=print&sid=938>

⁶⁸ COMPARATO, F. K., *Impropriedades*, available at: <http://www.consciencia.net/2003/08/09/comparato1.html>

⁶⁹ *Ibid.*

Based on this initial analysis, civil society entities and public agents in each country should design claim strategies, defining the paths to be followed as well as targets and time-frames for achieving certain objectives. When designing these strategies, there should be a clear indication of the authorities to be responsible for developing and implementing rights claiming mechanisms and for strengthening those mechanisms already in existence. Key to this effort will be the identification of favourable circumstances, challenges to be overcome, and partnerships that need to be established, among other relevant data.

The following requirements are considered fundamental for developing and strengthening claim mechanisms for the human right to adequate food:

1. People need to know they have rights;
2. Duty bearers need to know of and fulfil their obligations;
3. Routines and procedures to claim human rights widely disseminated and easily accessed need to be established.

3.2.1 PEOPLE NEED TO KNOW THEY HAVE RIGHTS - TAKING OWNERSHIP

For the realization of the human right to adequate food and other human rights, right holders need to have access to information concerning their rights, including details of the rights-claiming mechanisms available to them. In this way, they can take ownership of these instruments and demand the realization of these rights.

At the start of the new millennium, both international and non-governmental organizations began using the word “*empowerment*” in the context of human rights, which constitutes one of the human rights principles applied in the promotion of the human right to adequate food.⁷⁰

The verb ‘to empower’ is used to define *the outcome of the process of passing on information, tools and other resources to society*, so people can have access to power, whether political, economic, social or cultural.

The traditional concept of empowerment goes beyond simple social participation. Empowerment implies critical, informed and active participation that cannot be mistaken for mere ‘presence’ throughout the decision-making process. It includes the possibility of understanding the reality of one’s social, political, economic, ecological and cultural environment by reflecting on the factors that give shape to one’s environment and initiatives, so that each individual or group can actually improve their own situation.

⁷⁰ The other principles include also participation, accountability, non discrimination, transparency, human dignity, and rule of law. See the PANTHER principles framework developed by FAO Right to Food Unit in *The right to food in practice, implementation at national level*, FAO, 2006. p. 7.

⁷¹ EICOS Network – Interdisciplinary Studies of Communities and Social Ecology. See website: <http://www.eicos.psych.ufrj.br>

According to the above, the concept of empowerment is a systemic concept which recognizes that if there is greater power in decision making and control on the part of those who didn't have any power earlier, a change will necessarily occur throughout the system. An efficient empowerment process should include both individual and collective components.

Based on the use of a human rights based approach that understands the issue of power as part of a process of social struggle, the expression 'to take ownership' complements the earlier mentioned principle of 'empowerment' since the concept of 'taking ownership' also reveals the sense of 'appropriating' or 'conquering' rights. Power as a right is neither given nor transferred: it is conquered.

In this sense, the need of right holders to take ownership of people's achievements that are institutionalized in international treaties and national constitutions, should be borne in mind throughout the process of using rights claiming mechanisms, since these instruments impose obligations on the countries to guarantee the rights for which they provide.

Taking ownership of human rights rules, treaties and language is fundamental for strengthening the struggle for rights. It also contributes to the emergence of knowledgeable social actors who are capable of intervening more decisively in the political life of their country and are the subject of rights, owners of their own history.

Whereas some members of the groups and populations who have their human rights violated manage to mobilize a certain degree of organization to demand their rights, others face enormous difficulties even in securing minimum livelihood conditions. This hinders their concrete possibilities of being involved in an organization process that is sufficiently strong to change their reality. Some groups, mainly impoverished communities that do not have access to the minimum rights needed to ensure their livelihoods - such as food, housing, health and education, among others - are not easy to mobilize and in many cases the poverty situation in which they live becomes an established and accepted fact.

In practice, however, it is not easy to mobilize communities that are living in poverty and encourage them to take ownership, obtain information and use claim mechanisms to defend their rights. While in some cases they consider themselves victims of injustice, many do not see extreme poverty as a conflict that needs to be faced - and that can be overcome - through the guarantee of rights and fulfilment of obligations on the part of public authorities. This feeling is often strengthened by the process of exclusion to which these populations are subjected and also by previous unsuccessful experiences with the public sector which, in some cases, have gone as far as criminalizing poverty.

The 'naturalization of poverty' and the attempt to hold impoverished communities responsible for the violation of rights from which they suffer are mechanisms for maintaining exclusion and exploitation. Blaming the poor for their situation is a way

of acquitting public authorities and social and economic elites from their responsibilities in causing this situation of exclusion. This mentality represents an enormous obstacle that has to be overcome as a main condition for taking ownership when using claim mechanisms. In a way, the 'naturalization of poverty' besides creating space for public authorities to 'justify' the public sector's failure to fulfil its obligations, paralyzes these communities, limiting their capacity to demand commitment from public authorities. It also leads to the phenomenon of reducing social pressure from society at large, so that they may no longer feel responsible for changing this situation.

For the reasons explained above, instructing right holders regarding their rights and claim mechanisms might not be sufficient to ensure that communities understand and feel that they are subjects of rights - especially if claim mechanisms are not available and/or working effectively. Civil society partners are therefore fundamental for catalyzing this force and cooperating to ensure the sustainability of the process of taking ownership of rights. It is fundamental that those who have their rights violated be effectively supported by partner entities or institutions of different types when claiming these rights: social movements, NGOs, public agencies, universities, the Public Ministry's Office, and the Public Defender's Office are some of the most important actors offering such support. In practice, those partnerships have been a key element for communities, individuals or groups who have their ESCR violated, including the human right to adequate food.

How to facilitate ownership when using rights-claiming mechanisms: examples of pilot projects in Maceió and Teresina

A successful example of right holders' appropriation of claim mechanisms to strengthen their ability to demand rights from local authorities is the work undertaken by ABRANDH with marginalized and vulnerable urban communities who experienced serious violations of the human right to adequate food. This initiative was developed between October 2004 and December 2006 through the implementation of pilot projects. The pilot projects were executed in two communities, selected after public consultation with social movements. One of the pilot projects was implemented in Maceió, capital of the state of Alagoas, in Sururu de Capote, which is a community of approximately 450 families. The other pilot project was undertaken in Teresina, Piauí, in Vila Santo Afonso, involving a community of just over 250 families.

The methodology used in these projects improved as implementation evolved and benefited considerably from the active participation of the communities themselves and other partners. Although the struggle for human rights cannot succeed by following a logical, pre-defined path, experience with the pilot projects showed that some steps are fundamental for enabling right holders to take ownership and claim their rights. These steps include:

1. A preliminary assessment of the violations;
2. Establishment of a plan of action, in keeping with the priorities of the particular community;
3. Action involving negotiation for or claiming of rights; and
4. Constant monitoring of rights claiming actions.

a) Preliminary assessment of violations

Violations were assessed in both communities through two-pronged surveys comprising a food and nutrition inquiry⁷² and research on the communities' economic and social status.⁷³

This socio-economic and nutrition diagnosis carried out in consultation with different partners in each location (universities, social movements, the municipal public sector, etc.) made it possible to document the communities' problems, thus providing a basis for the progressive analysis of the results obtained through the project. Community ownership of the results of the diagnosis was fundamental in order for them to gain a new perception of their lives and for the development of future strategies towards the realization of rights.

b) Priorities – Plan of action and indicators

With the support of ABRANDH, communities developed a plan of action to claim their rights, setting priority demands and targets for such rights to be fulfilled. This procedure marked a valuable stage in the rights-claiming process.

Once the demands and targets had been defined, time-frames, strategies and intermediate targets were set for meeting them. The communities' expectations were also identified. An action plan of this type, which was developed on the basis of the communities' priority demands, is fundamental for determining the paths to be followed, in particular for evaluating whether or not the public strategies and actions actually work and in order to define right-claiming actions.

c) Action involving negotiation for or claiming of rights

All the demands agreed upon by the communities were submitted to public institutions through three main mechanisms: the right to petition, meetings, and public hearings.

d) Constant monitoring of rights-claiming actions

Once the communities' demands had been submitted to public institutions, with the support of ABRANDH, the actions taken by these institutions were monitored so as to guarantee that the demands would be met. The efficacy and adequacy of public actions were evaluated in meetings with the communities, and in cases where action or lack of same failed to meet community targets and demands, new negotiations and demands were submitted to the public authorities.

It should be emphasized that although the different steps are described in a given sequence, on many occasions they were taken concomitantly. At an earlier stage in the project, for example, action was demanded to ensure housing for those families whose houses were at the risk of collapse due to the heavy rains. This demand was presented, without a survey or plan of action.

⁷² The food and nutrition inquiry includes anthropometric and blood tests for the diagnosis of iron deficiency anemia and a questionnaire to assess the state of food and nutritional (in)security of a given number of families. The survey was carried out by population sampling, using the register of the Family Health Program to select the sample.

⁷³ The study of the social and economic status and of the situation of human rights violation was carried out through a questionnaire applied to a given number of families. This questionnaire, in addition to containing questions about the profile and living conditions of the families, also included questions about the communities' knowledge of rights and its recourse and claim capacity.

The organization of workshops for on-going training on the human right to adequate food was identified as a permanent and fundamental strategy for all project stages. These workshops served as a forum in which to discuss concepts such as human dignity, human rights and their indivisibility, how to take ownership of rights, accountability of public executives and civil servants, monitoring, and right-claiming mechanisms. Beyond the active and informed participation of the communities involved, all steps in the project counted on the support of different partners and had as a basis and vector actions aimed at assisting communities in taking ownership of both human rights language and claim mechanisms. Therefore, the survey, the plan of action and the claiming and monitoring activities were all carried out with the participation of the communities and other partners. In this process, both the exchange of information and the fact that all parties concerned succeeded in taking ownership of their rights, were fundamental in reaching the major results achieved.

Major achievements of the pilot projects

The pilot projects have shown that the realization of human rights by the public sector requires, among other factors, that public authorities be constrained to act according to national and international standards.

Through this struggle, the two communities ensured some achievements by:

1. *Strengthening the process of assisting community leadership in taking ownership of their rights*

The leaders recognize that this work led them to a shift in their vision of the world. They are now aware of being entitled to the human right to adequate food, housing and health, among others. They also know that public policies and actions are *not* favours. They recognize that public agents are treating them differently and this recognition is proof that the struggle for human rights can change patronizing or nepotistic cultures.

2. *Giving visibility to actions and omissions that violate people's rights*

Documenting violations, articulating community leaders with other social actors, holding meetings and public hearings were all fundamental to giving visibility to the violation of rights. Such visibility contributed to ensuring that public actions were targeted at both communities.

3. *Using public instruments to demand rights*

As explained in chapter 1, the Public Ministry's Office in Alagoas filed a Public Civil Action to demand the Economic, Social and Cultural Rights of the Sururu de Capote community. The Federal Public Ministry's Office in Piauí also filed administrative actions to follow up on the reports of violation submitted by Vila Santo Alfonso. In Piauí and Alagoas, the use of the right to petition and public hearings were fundamental in enabling the communities to demand that their targets be met.

4. *Inclusion in public policies and programmes*

In Piauí, for example, brick and mortar houses were built through an Urban Development Secretariat project and the whole community was included in a Food Purchase Programme. In Sururu de Capote, Alagoas, the initiative succeeded in enrolling out-of-school children in public schools.

5. Building competencies.

The pilot actions contributed to launching a competence-building process that involved public executives, civil servants and members of Public Policy Councils. This was also an essential component for the realization of rights in both states.

How to replicate this experience in other countries

There is nothing in this experience that could not be applied in other countries. The partners and institutions to be involved will vary from country to country or even from community to community, but the steps followed in the two communities in Brazil can be suited to different political, social and cultural contexts.

The struggle to promote ESCR is generally greater in countries where the public sector is not well structured or where there is resistance by the established power to the direct participation of society in public issues.

But even in these situations, the task of assisting a community in taking ownership of its rights as a result of recognizing that the state has the mandate and obligation to realize human rights, can be an important instrument to improve people's living conditions, the way in which the public sector operates, the use of public resources and the functioning of society at large.

For further information on the work performed within the scope of the two pilot projects, see also *Peraí, é nosso direito! Promovendo a realização do Direito Humano à Alimentação Adequada em comunidades urbanas vulnerabilizadas*.⁷⁴

3.2.2 DUTY BEARERS NEED TO BE AWARE OF AND TO FULFIL THEIR OBLIGATIONS

Building competencies for the effective realization of the human right to adequate food

In many countries the responsibility for rights violations is a constant and enormous challenge. The lack of terms of reference with clear and well-defined obligations to respect and accomplish the realization of human rights as well as cases of corruption in the Legislative, Executive and Judicial branches and a climate of impunity are still a strong reality. Undoubtedly, this constitutes a major obstacle to the realization of the human right to adequate food in many locations.

Therefore, respecting and fulfilling legal obligations requires building competencies, i.e. overcoming the lack of basic conditions for public agents to realize rights. The competence-building process involves:

1. being committed to the realization of human rights;
2. developing and disseminating terms of reference;
3. disseminating information among right holders and public agents;
4. creating conditions for public agents to fulfil their obligations;
5. holding those who fail to fulfil their obligations responsible for their omissions, when existing conditions would have allowed them to act otherwise.

These steps are described below:

a) States should, in practice, undertake their obligations to respect, protect, promote and provide the human right to adequate food

For states to effectively carry out their obligations, several practical changes need to be implemented. Some general examples that can show if a given state is actually fulfilling its obligations with respect to human rights are as follows:

It is necessary to:

- Always adopt, *inter alia*, economic, fiscal or environmental policies that are consistent with human rights, and refrain from adopting any action that might violate these rights;
- Ensure that the state apparatus works for everyone but focus on prioritizing the most marginalized segments of civil society. In this regard, it is fundamental that the public budget be allocated so as to reverse inequalities and strengthen public programmes in an equitable manner;
- Consider the specificities of each context and listen to the victims of human right to adequate food violations through legitimate, active and effective channels for social participation. Establishing partnerships with civil society is a valuable component of this dialogue since the state will then be able to define priorities more clearly and work together with non-governmental initiatives, thus optimizing the allocation of resources;
- Ensure the allocation and proper use of appropriate resources for policies aimed at guaranteeing the promotion, respect, and protection of the human right to adequate food;
- Ensure that rights-claiming mechanisms are in place in all government spheres, as well as ways to redress public policies and actions. In this context, each state needs to make an assessment of its public policies and incorporate therein clear and simple routines and procedures for claiming human rights;
- Ensure that the activities of Human Rights Councils and other institutions responsible for receiving and investigating reports of human rights violations are independent of the government, even when financed by the public sector.

In order to enforce state obligations to respect, protect, and facilitate the human right to adequate food, the above-mentioned changes need to be fully understood and acknowledged as a priority.

b) Establishing and disseminating terms of reference that clearly define duties and obligations

One of the fundamental steps for building competencies regarding the Right to Food relates to the establishment and dissemination of terms of reference, routines and procedures in which the duties and obligations of public servants are clearly indicated and easily understood.

The duties and obligations of government institutions and civil servants should be well defined and accessible to the public at large. Public institutions should define the obligations of their executives and employees clearly and precisely. These obligations and

duties should be available for everyone to see and posted in the institutions and places where public agents work or operate. Such information requires transparency and broad dissemination as a main condition for holding public officers accountable for their work.

c) Disseminating information to right holders on their rights and to public agents on their human rights obligations

Educational and information campaigns and strategies can draw public attention to the problem of inadequate food as a violation of the human right to adequate food. Such endeavours can also reinforce the need for effective state action in relation to fulfilling its obligations to respect, protect, promote and provide the human right to adequate food.

However, education, information and training strategies on the human right to adequate food targeting right holders cannot be separated from other activities to promote mechanisms for claiming human rights. Supporting right holders to be fully aware of their rights will be meaningless if they lack the ability to claim their rights before public authorities, if the instruments required to do so are not in place, or if the violations are not appropriately redressed through adequate remedies. Consequently, the process of educating, informing and training should be associated with actions that have an impact on the public sector so as to create conditions which facilitate the claiming of human rights.

Guaranteeing the realization of the human right to adequate food and human rights in general entails changing paradigms that influence the public action process. This change in pattern is complex and involves strengthening social processes and struggles, and building new power relations. However, these changes need to be consolidated by access to information and the sharing of experiences. In this context, the provision of training initiatives on the human right to adequate food is fundamental.

- ***Education and training in the human right to adequate food***

With respect to the human right to adequate food, the need for training, in the context of the indivisibility of human rights, is an essential strategy not only to enable right holders to take ownership of their rights, but also to enable public actors to improve the process of building competencies.

Public executives: Their training/education in the human right to adequate food should aim at strengthening awareness of their obligations as public agents. By implementing public policies and improving the living conditions of excluded communities, they are fulfilling their obligations to respect, protect, promote and provide human rights. Training should also address possible sanctions to which public agents would be subjected as a result of failing to fulfil their obligations.

- ***Members of Public Policy Councils***

Benefit from training on the human right to adequate food is fundamental in order for them to:

- * demand the incorporation of the public duty dimension into the council's routines and procedures;

- * use existing claim mechanisms and advocate for the creation of new recourse instruments at the administrative, quasi-judicial and judicial levels;
 - * propose the creation, change and extinction of public policies, if and where appropriate, so that public interventions will be more compatible with the promotion of rights.
- *Members of Human Rights Councils/Institutions*

Benefit from training on the right to food is fundamental in order for them to:

- * Improve their knowledge of the fundamental dimensions and principles of human rights for the process of receiving and processing reports of alleged violations;
- * Understand their role in the process of documenting; investigating violations; identify those responsible for such violations; propose process; and address proven violations of human rights. Furthermore, education in human rights also plays the fundamental role of highlighting the need for dialogue between Human Rights Councils and Public Policy Councils in proposing public actions, policies and programmes that prevent the human right to adequate food from being violated;
- * Fight for Councils/Institutions to operate pursuant to human rights rules and standards and, in particular, according to the Paris Principles.

Agents of the law, including Public Ministry' Office representatives should be included in education and training programmes on human rights, so that they can perform and strengthen their role in the protection and promotion of these rights.

d) Conditions should be created for public agents to fulfil their obligations

The accountability and protagonism of public agents are promoted through the involvement of civil servants (duty bearers) in the decision-making process, including the definition of how their duties should be undertaken and fulfilled. In cases where duty bearers fail to fulfil their obligations, it is important to investigate the reasons for such failure – this can be due to inability to do so rather than unwillingness or lack of motivation.

The evaluation of civil servants' capacity to fulfil their obligations with respect to human rights should include the following elements:

- duty bearers' motivation to implement measures and the extent to which they accept the obligation to do so;
- autonomy in decision making;
- access to and control of economic (equipment, materials, etc.), human (trained and qualified personnel) and organizational (continuous training programmes, etc.) resources;
- ability to negotiate the establishment of partnerships, where necessary; and
- ability to make rational decisions and learn from experience (monitoring and evaluating practices, policies and programmes);

e) Mechanisms for public agents to fulfil their obligations and be held responsible for violations of the human right to adequate food should be created

A human rights-based approach requires that all those *responsible* for proposing strategies and guaranteeing rights be held responsible for actions and omissions that characterize human rights violations.

Unless specific mechanisms are created to hold the competent authorities and civil servants responsible, it is unlikely that any action will be taken regarding the irregularities and violations that still occur in most countries. All civil servants should be informed that should they fail to fulfil their obligations, their action or lack of same could be reported to human rights protection institutions, such as the Public Ministry's Office and National Human Rights Councils and Commissions, as a violation of the human right to adequate food.

It is important to create specific mechanisms and structures within public institutions for receiving reports of human rights violations and holding the respective actors responsible for such violations. It is also important that structures such as these are especially equipped to receive claims from traditional communities, vulnerable people and individuals with special nutritional needs (pregnant women, the elderly, adolescents, people suffering from HIV/Aids or from Celiac disease and diabetes, among others), with a view to assisting them in claiming their rights.

3.2.3 THE NEED TO ESTABLISH CLAIMING ROUTINES AND PROCEDURES

In addition to ensuring that right holders take ownership of their rights and building competencies among duty bearers, states also need to guarantee the setting up of public practices and instruments for claiming rights and ensure that they are known by all. These procedures should be designed in such a way as to be easily understood and followed by all, particularly marginalized communities.

When right holders have ownership of claim mechanisms and when these mechanisms are properly used, they can be powerful tools for individuals, communities and social groups affected by hunger and poverty to prevent or redress violation of the human right to adequate food. These instruments can:

- Strengthen people's claim, mobilization and advocacy actions;
- Assist society or Public Policy and Human Rights Councils in monitoring the obligations of public agents in different instances and levels (Judicial, Executive and Legislative branches in the local, state and federal spheres) and hold them accountable for actions and/or omissions that result in the violation of rights.

An example of how to develop routines and procedures to claim human rights within the scope of public policies and programmes

In 2005 ABRANDH worked jointly with the technical staff of PNAE (National School Feeding Program) to develop, within the scope of the programme, claiming instruments that incorporate [promotion of] the human right to adequate food, for inclusion in all phases of its implementation.

The joint work involved the following:

- Analysis of the legislation regulating the execution of the programme, from constitutional provisions to rules providing for programme implementation, including an evaluation of the human rights international legal framework, especially focusing on the provisions for the human right to adequate food;
- Analysis of the PNAE implementation process, identifying the different dimensions of the human right to adequate food within the scope of the programme, which led to the establishment of 15 dimensions of this right in the context of the National School Feeding Programme;
- Identification of the public institutions and actors responsible for the obligations linked to ensuring these different dimensions of the human right to adequate food (*Rights, Obligations and Responsibilities within the scope of PNAE*);
- Establishment of practices and procedures for receiving, analyzing and responding to complaints submitted by students, parents or others, identifying possible violations of any of the right to food dimensions (*Routines and procedures to receive, analyze and respond to complaints*).

These claiming instruments can be found in the Annex to this paper. It is important to mention that the instruments for claiming the right to food are currently being revised and updated by the programme's coordinating and technical staff, together with CONSEA's Standing Commission on the Human Right to Adequate Food (SC 4).

BOX 9

Implementation of instruments for claiming human rights

As a result of the implementation of these instruments for claiming human rights, right holders will become acquainted with methods for demanding the human right to adequate food within the scope of PNAE. This will enable them to be aware of the following action to be taken, when required:

- 1) Present a complaint to the school board, which should propose solutions for cases of violation within a reasonable deadline (*administrative claim*);
- 2) If the school board is unable or fail to solve the problem, right holders can submit their complaint to the School Feeding Council (CAE), the State FNS Council and/or the Municipal Education Secretariat (*political claim*); and
- 3) Finally, if the CAE, the State FNS Council and the Education Secretariat all fail to respond, a complaint can be submitted to the State Public Ministry's Office (which can use *judicial* or *quasi-judicial* mechanisms to claim people's rights) and the FNDE (*political claim*). It is important to mention that there is no mandatory order in which the different steps should be taken to demand the different rights. Depending on each case, right holders can go directly to the Public Ministry's Office or to Human Rights Councils to submit their complaints.

The above-mentioned three concrete instruments for claiming the human right to adequate food within the scope of PNAE are expected to be implemented in 2011, in a language that is both simple and accessible to all right holders, including children. The actual implementation of this material will show the deep commitment of PNAE to promote the human right to adequate food within the scope of the programme. The result of this work was also incorporated into the recommendations to PNAE issued by the SC 4, when PNAE was analyzed from a human rights perspective. The SC 4 has also pointed out to PNAE that the implementation of these instruments through primers and posters should take place together with 'front-desk' actions so as to ensure their effectiveness. These actions should include training activities for public agents responsible for implementing the programme, as well as strategies to assist right holders in taking ownership of these instruments.

From a human rights perspective, it is fundamental that all public programmes and policies related to FNS and the human right to adequate food achieve a similar level of detail, meaning that practices and procedures for implementing claim instruments for the human right to adequate food are developed. The objective of this type of analysis is to create accessible claim mechanisms so that actions and services provided by programmes and policies can be understood as human rights that can and should be claimed.

We should bear in mind that once human rights claim procedures and routines are established within the scope of public policies and programmes, the state will need to:

- Disseminate information to right holders on their rights and train public agents in their obligations;
- Provide the necessary conditions to enable public agents to fulfil their obligations;
- Indicate the tasks and routine practices that are part of the public work of these officials, and hold such agents responsible for possible violations.

Finally, it is of primary importance for the state to guarantee the independent and autonomous functioning of the institutions responsible for receiving and investigating reports of human rights violations.



Exigibilidade: Mechanisms to claim the human right to adequate food in Brazil

LIST OF BOXES AND ABBREVIATIONS

FOREWORD AND INTRODUCTION

INTRODUCTION

1. CLAIMING THE RIGHT TO FOOD AT NATIONAL LEVEL
2. CLAIMING THE RIGHT TO FOOD AT INTERNATIONAL LEVEL: GLOBAL AND REGIONAL PERSPECTIVES
3. STRENGTHENING HUMAN RIGHT TO ADEQUATE FOOD CLAIM MECHANISMS: CHALLENGES AND STEPS
4. **GENERAL CONCLUSIONS:**

ANNEXES

4. General conclusions

There is no standard recipe for promoting claim mechanisms. This study has endeavoured to highlight recent developments regarding national and international mechanisms for claiming human rights - in particular, the human right to adequate food. Through an analysis of the Brazilian context, a classification of human rights claim mechanisms has been drawn up which includes administrative, judicial, political and quasi-judicial procedures. However, what is particularly emphasized in this document is the notion that each country, region or community should seek to develop the most efficient method of implementing mechanisms for claiming human rights, in keeping with their specific reality and potential. The local context of the different communities and countries should be respected when seeking the realization of rights. When drawing up local strategies to achieve the realization of human rights, adaptation to each reality will be key in ensuring actions that are both participatory and inclusive.

A thorough understanding and familiarity with the local reality is key in order to guarantee the human right to adequate food. In cases where this right is already being realized, it is important to guarantee that it will continue to be respected. In countries or situations where there is no guarantee of the human right to adequate food and, in particular, where there are serious violations of this right, there is a need to guarantee actions to protect, promote and provide for its implementation at national level.

It is fundamental, therefore, to identify the groups that are most vulnerable to human rights violations and those that are less able to overcome these situations. Ensuring the human right to adequate food for such groups should always be a priority. It is also important to identify the agents responsible for guaranteeing progressive and concrete measures to redress violations, and to identify the demands of each situation, group, and individual in order to assure the fulfilment of their rights. Specific contexts require specific actions.

In addition, as mentioned earlier, strengthening rights-claiming instruments in each country requires a detailed analysis of the mechanisms already in existence, how these instruments and institutions work, the extent to which they are effective, what needs to be done to strengthen them, which rights-claiming institutions and instruments still need to be created and implemented, and whether there are partnerships between different rights-claiming institutions. Based on such analysis, civil society entities

and public agents in each country should formulate rights-claiming strategies and specify the paths to be followed, as well as the timeframes for achieving objectives. They should clearly identify the authorities responsible for developing these rights-claiming mechanisms, and for strengthening those already in existence, fostering favourable existing circumstances, foreseeing the challenges to be overcome and establishing the appropriate partnerships.

Although many paths are both possible and complementary, some common strategies are needed. It is of paramount importance to ensure that:

- States fulfil their obligations to respect, protect, promote and provide the human right to adequate food;
- Continued competences are built within the public sector for the effective promotion of the human right to adequate food;
- Right holders, excluded communities, social movements and civil society entities take ownership of their rights. It is fundamental to dialogue with the people most affected by violations, so that they can define how their rights should be realized;
- Publicly agreed, transparent targets, timelines, indicators and allocation of sufficient resources are established;
- Dialogue and strategies are established within local public institutions;
- Councils and other claim mechanisms and forums are strengthened;
- National Human Rights Commissions are created in countries where these are not yet in place; if already in existence, they should be strengthened and should operate independently from the government, as provided for in the Paris Principles;
- Claim routines and procedures are established within public programmes and policies;
- Accountability is demanded.

Social mobilization is another indispensable mechanism in the fight for rights. The commitment of social movements is critical because when legal and state claim mechanisms fail, civil society needs to get mobilized to demand the realization of its rights. The demand for rights should take place in two ways: (a) through the use of legal procedures and state mechanisms (laws, rights defence entities, etc.) and (b) through civil society mobilization and direct action. If either of these procedures is missing, the fight for rights is a very slow-moving endeavour.

The practice of claiming and respecting human rights needs to become a habit deeply rooted in our society. Rights will only be promoted through a cultural change, and political pressure from organized grassroots movements and civil society entities.

As Maria Victoria Benevides⁷⁵ points out: “Expanding social citizenship implies, in addition to effective action by public authorities and popular pressure, a type of cultural change, in the sense of touching what is more deeply rooted in minds marked by

prejudice, discrimination, the non-acceptance of the rights of all, and the non-acceptance of difference. It is therefore a matter of cultural change [that is] especially important in Brazil as it implies destroying values and customs that are deeply rooted among us, which stem from historically defined factors: our long period of slavery, which meant violating all the principles of respect for and dignity of the human person, starting from the right to life; our oligarchic and patrimonial politics; our authoritarian and elitist educational system, which is much more oriented towards private morals than public ethics; our complacency in the face of corruption, rulers and the elite, as well as towards privileges given to the so-called first class citizens or citizens above suspicion; our indifference towards violence when it is committed exclusively against the poor and the socially discriminated; our religious practices which are essentially linked to the value of charity, to the detriment of the value of justice; our patriarchal familial system; our racist and prejudiced society against all those who are considered different; our lack of interest in citizen participation and solidarity-based associationism; our consumption-centred individualism, the result of a false idea of ‘modernity’.”

The required cultural change should lead to overcoming this difficult historical heritage which greatly influences the daily lives of so many people in different countries around the world. Only then will it be possible to actually guarantee a fair future for the millions of people worldwide who are still suffering daily from brutal violations of their rights and their human dignity.

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Exigibilidade: Mechanisms to claim the human right to adequate food in Brazil

LIST OF BOXES AND ABBREVIATIONS

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ANNEX 1: Guide for analyzing public policies and programmes from a human rights perspective

CONSEA'S STANDING COMMISSION ON THE HUMAN RIGHT TO ADEQUATE FOOD

PRESENTATION

The Organic Law on Food and Nutritional Security (LOSAN) was approved in 2006 as a guiding principle towards the realization of the human right to adequate food. The law specifies that Brazil should develop *exigibility* instruments and make them available to all, so that any citizen, individually or as part of an organized group, can claim the fulfilment of this right. In fact, the experience gained by the National Council for Food and Nutrition Security (CONSEA) through the activities of its Standing Commission on the Human Right to Adequate Food, and the analysis of public policies and programmes on food and nutrition security from a human rights perspective, is a practical exercise in exigibility. Public policies and programmes are examined through collaboration between civil society and government, and recommendations are then made to those responsible in order to ensure that the programmes are in line with human rights principles. Disclosure of the methodology at this point in time has the broader objective of providing regional and municipal entities/CONSEAs, organizations, civil society movements and public managers with this tool so that, in the near future, all policies and programmes with the ultimate goal of ensuring food and nutrition security and sovereignty will be consistent in their efforts to achieve the realization of the right to food. Its expanded use will also promote an exchange of dialogue regarding accumulated experiences in other areas, with the aim of contributing to a consistent focus on public policies from a human rights perspective.

With regard to the fact that there is no fixed model for actions undertaken by the commissions dealing with the right to adequate food under local CONSEAs, it should be noted that this methodology for analysing public policies is not yet a final instrument: however, it is believed that its expanded use by relevant social entities will generate suggestions and reported experiences which will improve it and make it easier to use.¹ Therefore, its application is encouraged, as are all suggestions, criticisms and/or reports of relevant practical experiences. Finally, the Standing Commission on the Human Right to Adequate Food supports the use of this methodology by local CONSEAs and other organizations and movements involved in public policy and programme review.

¹ All suggestions, criticisms, experiences and/or general communications should be sent to the CONSEA Secretariat (secret.consea@planalto.gov.br), indicating CP4 as the subject matter.

Guide to Analyzing Public Policies and Programmes from a Human Rights Perspective²

Article 1 of LOSAN states that the law ‘... establishes the definitions, principles, guidelines, objectives and the composition of the National Food and Nutrition Security System (SISAN) through which public powers, with the participation of organized civil society, formulate and implement policies, plans, programmes and actions aiming to ensure the human right to food’. Article 2, 2nd para, states that ‘It is the duty of public powers to respect, protect, promote, provide, inform, monitor, and evaluate the achievement of the human right to adequate food, as well as mechanisms to ensure its exigibility’. These definitions and responsibilities were subsequently confirmed and specified in several resolutions contained in the final document of the Third National Conference on Food and Nutrition Security held in 2007. The Methodological Guide that follows is a concrete proposal for the elaboration of administrative exigibility instruments within public programmes on food and nutrition security. Moreover, it aims to contribute to the present moment in which the operating parameters of the national system on food and nutrition security are being drawn up, as well as guidelines and principles relating to national policy on food and nutrition security. The inclusion of human rights principles in the entire process of designing, implementing and monitoring public programmes, is a valuable contribution to the necessary paradigm shift in social public policy making in general, and in food and security policies in particular.

Recognition of human rights is the result of struggles by different peoples throughout history, who were angered at the lack of respect for the human person and the consequent violation of human rights. However, despite numerous laws and treaties, not all human rights are recognized and respected, even today.

Each human right carries corresponding duties on the part of the State and responsibilities on the part of different social actors (individuals, families, local communities, NGOs, civil society organizations as well as the business sector) towards their realization.

Each state has the obligation to protect, promote, and provide human rights, and also to create mechanisms through which people, both individually and in groups, can demand the realization of their rights – which is exigibility. The exigibility mechanisms are intended to enable individuals and families whose rights are being violated to appeal to public power and justice in order to have their rights guaranteed.

The analysis of a programme from a human rights perspective takes into consideration the principles, guidelines and dimensions of human rights – in particular that all people must be free and treated with dignity, justice and equality, and that their differences must be respected.

Such analysis and review is in keeping with the necessary cultural change in the making of public policies whereby State action must be in line with the fulfilment of its obligations and not the meritorious action of some group or person.

² In 2005 at the request of CONSEA's Standing Commission on the human right to adequate food, ABRANDH prepared a Methodological Proposal for Analyzing Programmes from a Human Rights Perspective. In 2009 CONSEA's Standing Commission revised that methodology in order to elaborate the present Guide.

INTRODUCTION: The analysis of public policies and programmes from a human rights perspective – general aspects

By signing international treaties on human rights, Brazil is committed to developing public policies and programmes that have, as their primary goal, the promotion of human rights: to ensure a dignified quality of life for all its inhabitants.

In this context, governments, public agents and those in charge of public policies and programmes have the duty to plan and implement such actions in keeping with human rights-based principles and guidelines.

The undertaking of programme analysis from a human rights perspective includes, in addition to the usual performance indicators (effective execution of planned resources, and the achievement of planned physical targets), *an assessment of the impact of the action* to promote, guarantee and protect human rights. In many cases where public policies are still perceived by duty bearers (the State and State agents) as compensatory actions, favours, privileges or charity, they are also interpreted as such by right holders (who are described as the ‘beneficiaries’ and/or ‘target audience’ of these policies).

The realization of human rights goes beyond recognizing such rights verbally, or even in the texts of laws and policies. It requires that the State, through concrete actions, complies with its legal obligations and that, when acting as the representative or trustee of the nation, it promotes, implements and monitors public policies, in keeping with this perspective.

When public actions are seen by managers, public officials and right holders alike as the fulfilment of obligations and a guarantee of rights, it becomes easier for civil society to demand that programmes be well managed and executed.

Consequently, the methodology presented below aims to contribute towards giving a new meaning to public policies and programmes, so that they ensure food and nutrition security, and food sovereignty.

The analysis of public programmes and policies by CONSEA’s Standing Commission on the Human Right to Adequate Food³ is intended to provide public managers with a standard definition of protocols, procedures and routines for all public policies and programmes, so as to ensure the empowerment of right holders, and the implementation of accessible resource mechanisms for the claiming of rights. In addition, it has the objective of ensuring that duty-bearers are aware of their obligations and that corrective measures and/or remedial action be rapidly implemented when any omission or violation occurs.

3 Within the scope of the national CONSEA, since September 2004 CP4 has the mandate to analyze public policies and programmes regarding food and nutrition security from a human rights perspective, providing recommendations to governmental bodies and monitoring its incorporation in the policies and programmes.

This guide is divided into three parts:

Part I – The human right to adequate food - obligations and violations

Part II – The human right to adequate food and its implications in public policies

Part III – Guide to analyzing public programmes and policies

PART I: The human right to adequate food – obligations and violations

The Organic Law on Food and Nutritional Security⁴ states, in paragraph 2, that ‘adequate food is a fundamental right of the human being, inherent to human dignity and essential to the realization of the rights enshrined in the Federal Constitution. Public authorities shall adopt the necessary policies and actions to promote and ensure food and nutrition security for the population. The adoption of these policies and actions shall take into account the environmental, cultural, economic, regional and social dimensions. Public authorities have a duty to respect, protect, promote, provide, inform, monitor, and evaluate the realization of the human right to adequate food, as well as mechanisms to ensure its exigibility’.

According to the Voluntary Guidelines⁵ for the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines), and based on General Comment 12⁶ adopted by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in 1999, the human 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’.

Realization of the right to food should not be interpreted in a narrow or restrictive sense, equating it to a minimum package of calories, proteins and other specific nutrients. For the human being, food is the expression of its culture, its relationship with the world and its own nature throughout history. Therefore, healthy and adequate food⁷ - expression of the full realization of the human right to adequate food - is the realization of a basic human right, ensuring permanent access, in a socially just manner, to a food practice adequate to the biological and social aspects of individuals, according to the cycle of life and special food needs, and based on the traditional framework. It must meet the principles of variety, balance, moderation, pleasure (taste), the dimensions of gender and ethnicity, and environmentally sustainable forms of production, free of physical, chemical and biological contaminants, and of genetically modified organisms as well.

The right to food is indivisibly linked to the dignity inherent in the human person and is indispensable for the fulfilment of other human rights (such as the human right to land, to a healthy and balanced environment, to health, education, culture, employment

⁴ Lei 11.346 de 15 de Setembro de 2006, available at <http://www.planalto.gov.br/consea>

⁵ The Voluntary Guidelines were approved by the FAO Council in November 2004. Available at: <http://www.abrandh.org.br/downloads/Diretrizes.pdf>

⁶ For CESCR General Comment 12 in Portuguese see <http://www.abrandh.org.br>

⁷ Adequate and Healthy Food – Final Report, March 2007. Available at <http://www.planalto.gov.br/consea - documentos>

and income, to participation and to freedom, among others). It is also inseparable from social justice, requiring the adoption of economic, environmental and social policies at both national and international level, oriented towards the eradication of poverty and the fulfilment of all human rights for all people.

The right to food has two indivisible dimensions: the right to be free from hunger and malnutrition, and the right to adequate food. The concept of adequacy is particularly significant in relation to the right to food as it serves to underline a number of factors which must be taken into account in determining whether certain accessible foods or diets can be considered the most appropriate.

The human 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, as well the economic and physical accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights, and without compromising future generations. All these aspects were considered in the definition of healthy and adequate food as indicated above by CONSEA.

Every human right entails obligations by the State and responsibilities by different social actors (individuals, families, local communities, non-governmental organizations, civil society organizations, and the private business sector) in the realization of the right to adequate food.

Brazil, like most countries that have signed and ratified international covenants on human rights, has the obligation to respect, protect, promote and provide the human right to adequate food.⁸

Respect – The obligation to respect the existing access to adequate food requires States not to take any measures that result in preventing any person from having adequate access to food. The State must respect the human right of all individuals to secure adequate food for themselves and their families by their own means. The State should guarantee that its laws, public policies or actions do not violate this right and when such violation occurs, remedial mechanisms should be activated and maintained. Some examples of remedial mechanisms are as follows: (i) Public policies leading to unemployment should be associated with mechanisms that ensure the creation of new jobs and unemployment benefits until the situation has stabilized; and (ii) Land expropriation for the construction of dams or other public works must ensure the rehabilitation of displaced persons to an equal or higher quality of life, in situations where their human rights were under threat.

⁸ The obligation of the Brazilian State to respect, protect and provide the human right to adequate food, together with other human rights, was incorporated into domestic legislation by a legislative decree, following ratification of the ICESCR in 1992. Decreto 591/92 de 6 de Julho de 1992 (Legislative decree 591/92 of July 6, 1992) available at http://notes.ufsc.br/aplic/edulei.nsf/viewLegislacao_PorTipo/04CEA3C1086F620203256CD7004449DC?OpenDocument

Protect – The State has the obligation to protect all people residing in its territory against the actions of enterprises or individuals that violate their right to food. Existing control mechanisms include (i) Quality Control of Foods (ANVISA); (ii) Code for trading human milk substitutes (Health Ministry - HM); and (iii) Protection against environmental contamination (IBAMA and HM).

Promote – The obligation to promote means that the State must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food and nutrition security. The State should promote public policies that improve the ability of families to feed themselves, such as: (i) agrarian reform; (ii) employment and income generation; (iii) support for family agriculture; (iv) basic income policies; policies to promote health, nutrition, education, etc.; and (v) training in human rights.

Provide – The State has the obligation to provide food directly, and in a manner that fully respects human dignity, to families that suffer from hunger or are malnourished for reasons beyond their control (Examples: distribution of food baskets to victims of poverty and natural catastrophes), and should seek to ensure that these families/individuals regain the ability to feed themselves, if they are capable of doing so.

Some measures at the different levels of states' obligations (to respect, protect, promote and provide) are of an immediate nature, while others are more long-term in character. However, despite this prerogative, States have the chief obligation to take the necessary steps to mitigate and alleviate hunger and malnutrition, and to act as effectively as possible in fulfilling all human rights. Furthermore, it is important to distinguish between the inability of a State to promote/facilitate the realization of this fundamental human right and its unwillingness to do so. When previously-assumed obligations are not fulfilled or respected, States have to demonstrate their willingness to fulfill such obligations.⁹ The State has the obligation to progressively implement public policies that realize the right to adequate food and thus pre-empt different types of conflicts and violations.

Human rights violations occur when a right is not respected, protected, promoted or fulfilled. Both actions and omissions can amount to a violation of the right to food. The State should establish recourse and reparation mechanisms that enable individuals and families whose rights are being violated to appeal to public authorities as well as to the courts, with a view to having their rights guaranteed.

⁹ According to General Comment 12, a state claiming that it is unable to carry out its obligation for reasons beyond its control therefore has the duty to prove that this is, in fact, the case, and that every effort has been made to use all the resources at its disposal in an attempt to satisfy, as a matter of priority, those minimum obligations. *United Nations Committee on Economic, Social and Cultural Rights, general Comment 12, Geneva, UN, 1999, paragraph 17.*

PART II: Methodological guide for analyzing public policies and programmes

An analysis of public programmes and policies should take into account the following:

Public policies should respect, protect, promote and provide the right to food - States should develop policies that have the ultimate aim of promoting the right to food within the context of the indivisibility of human rights.

Guaranteeing the realization of the right to food implies a change in the paradigms that influence the planning, execution, implementation and harmonization of public policies for achieving these objectives. The process of realizing the right to food does not signify achieving goals and objectives alone. Realizing the human right to adequate food requires changes in processes and, most of all, in the institutional culture of the State and its actors, and in the culture of the population in general.

Paradigm and culture shifts should be accompanied by a language that clearly expresses new public policy making, indicating 'right holders' instead of programme beneficiaries or target public/audience, and the State as the duty bearer. This language needs to be used in all technical documents, information and training/advocacy materials, among others.

In promoting the right to food, the process is as important as the outcome – 'The end *does not* justify the means'. From a human rights perspective, it is necessary to examine not only whether a particular programme is fulfilling its objectives and goals but also the way in which these are being fulfilled.

Information about the programme and about human rights must be made available in clear and non-discriminatory language, and must be easily comprehensible by the different right holder groups.

Public policies should be developed and implemented in a participatory manner, with a clear definition of process and outcome indicators, targets, time-frames and responsibilities, as well as the allocation of resources to secure continued monitoring and evaluation. Such policies should be governed by the principles of efficiency, transparency, accountability (or the obligation to render account), participation, equity, social inclusion,¹⁰ non-discrimination¹¹ and empowerment of right holders.

Empowerment and participation of right holders - The active and informed participation of right holders in formulating, executing and

¹⁰ Any discrimination in access to food, as well as to means and entitlements for its procurement, on the grounds of race, color, sex, language, age, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights, constitutes a violation of these rights.

¹¹ See Brazilian Federal Constitution, Art 37.

monitoring programmes (at all stages of the process) should be seen as a vital element: it is being increasingly recognized that unilateral strategies imposed on one of the parties rarely work, even in cases where these strategies aim solely at guaranteeing improvements in the life quality of that particular party. In this sense, in addition to ensuring that local people participate in decision making, one must also ensure that those who are directly or indirectly in charge of policies relating to food and nutrition security inform right holders of the date, time, place and agenda of the relevant meetings, and distribute in advance the documents that are to be assessed in public and open discussion. ‘Those groups that are totally excluded from the decision-making processes affecting them are unlikely to maintain access to adequate food for very long’¹² It must be understood, therefore, that individuals are the active subjects - and not merely the recipients – of the strategies intended to “benefit” them.

Traditionally, the vulnerable groups and individuals have been excluded from decision making because they lack sufficient political power to ensure that their interests are met. A human rights based approach should secure the necessary steps for changing this situation by establishing a legal/institutional framework within which such groups and individuals can actually participate in policy formulation.

Accountability. One of the major contributions of an analysis carried out from a human rights perspective is the emphasis it places on the accountability of actors whose actions have an impact on people’s rights. Rights imply duties, and duties demand accountability. Institutional and legal/administrative arrangements aimed at ensuring accountability should be built into all strategies and programmes.

- The need to identify duty bearers (at the three levels of government, where appropriate) and their obligations and roles is indispensable. Once duty bearers have been identified, it is necessary to determine their duties and roles and to evaluate their performance in carrying out same. It is also essential to undertake an assessment of their roles and duties so that these actors are aware of their responsibilities and are capable of fulfilling them. This also implies the creation of reward mechanisms, such as special public acknowledgement for defending the right to food.
- It should be emphasized that accountability and protagonism are promoted through involving duty bearers in the decision- making process. In some cases, failure to fulfil one’s duties may occur – not as the result of unwillingness to perform but rather due to the individual’s lack of ability to do so. It is essential, therefore, to investigate the reasons why duty bearers may be failing to fulfill their duties (identification of gaps). Moreover, a deadline should be set for the completion of such duties.

Five ability-related elements should be taken into consideration:

- Motivation to implement measures and acceptance of the obligation to do so;
- Authority to make decisions (even the actions of capable actors have little impact when such persons lack the necessary authority);
- Access to and control over economic and human resources (trained and qualified staff) as well as organizational resources (such as ongoing training programmes);
- Ability to communicate; and
- Ability to make rational decisions and learn from experience (monitoring and evaluating practices, policies and programmes).

Monitoring mechanisms - Mechanisms for monitoring progress in the realization of the right to food are essential in order to identify difficulties affecting the level of implementation of obligations. Such mechanisms are also necessary in order to facilitate the adoption of corrective legislation and administrative measures. Efficient monitoring is the key for translating the rights outlined in policies and strategies into reality.

Indicators – The need to identify indicators and frameworks is linked to the awareness that when progress in implementing policies has been minimal, corrective action can be taken and those responsible for implementing the policies or strategies can be held accountable. The drawing up of indicators and frameworks by the State indicates its commitment to ensuring that targets are achievable.

Mechanisms for claiming rights - Every programme and public policy should provide tools by which right holders can complain when they consider that their rights are being violated. Such mechanisms should be available to all right holders, including the most vulnerable, and detailed in simple and accessible language. The implementation of these rights-claiming instruments demonstrates a commitment on the part of managers regarding the promotion and provision of human rights under the programme.

It is also necessary to verify whether the programmes and policies are reasonable in terms of design and implementation. For a policy to be reasonable it must take into account the extent and degree of violation of the right it seeks to fulfill; furthermore, it should not ignore the most vulnerable people, but rather give them priority. A programme or policy that aims at realizing economic, social and cultural rights (right to food, education, health, work, housing, etc.) should establish clear responsibilities for the three levels of government.

Two types of analysis need to be carried out: a macro/general analysis and also a micro analysis to examine how the programme is working from the right holder's point of view. Emphasis should be placed on assessing the concrete possibility to introduce instruments for the realization of the right to food and the questions should be focused on the right holders. When a specific analysis of programmes is undertaken, certain elements should be selected for in-depth examination, while also indicating others which, although important, cannot be elaborated due to constraints such as lack of time or insufficient budgetary resources.

PART III: Methodology/guide for analysis

This methodology for analysing programmes and policies was prepared taking into account the different human rights concepts and principles. The goal is to identify the extent to which public actions are in keeping with such concepts and principles. The experience of CONSEA's Standing Commission on the Human Right to Adequate Food would suggest that this work should be carried out in collaboration with the public managers directly responsible for the programme (including the different branches of government), policy councils, organizations, entities and social movements, and representatives of right holders. Such a process will ensure that the recommendations are an expression of different experiences, perspectives and needs.

In order to facilitate the process, the task of studying and assessing documents, collecting information and preparing reports, may be assigned to a small, representative group whereas the subsequent discussions and decision making can involve a larger group.

The methodology indicated below is not final, and may need adjustment, or the review of certain items so as to adapt it to a specific reality. Likewise, the degree of detail given in information collecting and analysis will depend on the specific objectives and conditions of each situation. What is key is to preserve the principles and dimensions of human rights and, in particular, of the human right to adequate food.

As information is being collected and discussed, an analysis on the extent to which a specific programme/action respects and promotes human rights principles, is gradually built up. The outcome of this process should provide a basis for the drafting of recommendations to managers and different individuals involved in the implementation of the programme, to ensure that rights are, in fact, being respected and realized.

Finally, the list of issues presented in the following pages is merely indicative. Not all of the indicators can be present in relation to a particular need. Similarly, the details requested might well be excessive in another situation, depending on the issue under discussion.

Thus, it is of paramount importance to revise the list of issues on the basis of the set objectives and the different sectors and actors involved. Furthermore, many of the issues may require a change in approach and/or language. Topics such as social control mechanisms, programme operations, and access to rights complaint mechanisms can be dealt with more satisfactorily if discussed directly in a meeting with right holders. Decisions of this type are the responsibility of the particular working group conducting the review.

PROGRAMME DATA

Identifying and operationalizing the programme	
Programme	
Institution in charge	
Starting date and expected duration (when applicable)	
Objectives	
Description of legally defined duties (*)	
Do the official documents explicitly mention the implementation of the right to adequate food?	
Identification of potential right holders of the programme and/or vulnerable groups	
Have analyses been undertaken within the scope of the programme to identify and characterize vulnerable groups? Who are they and how can they be identified? Where are they and why are they vulnerable?	
Are specific strategies in place to target vulnerable groups and specific populations (indigenous peoples and descendants of runaway slaves, among others)? What are these targets?	
Criteria for inclusion in the programme	
Criteria for exclusion from the programme: what is the process, what are the steps taken to reach such a decision, and who is responsible for this? Are there any recourse mechanisms available?	
Have timeframes and targets been set for implementing the programme objectives?	
Targets (geographic and demographic)	
Percentage of the population covered by the programme	
Current coverage level of the targets (**)	
Strategic planning relating to the targets	
Institutional network (governmental and non-governmental) in charge of implementing the programme; responsibilities of each partner	
Team in charge of the programme across all government ministries (number, formation, suitability)	
Articulation, coordination and linkage to other programmes and actions (civil society, government, the private sector) contributing to the realization of the right to food (***)	
In the case of lack of articulation, coordination or linkage, what concrete measures are being taken to obviate these problems?	
Programme strengths	
Programme weaknesses and constraints	
Strategies defined to overcome programme constraints/weaknesses	
Is there any other policy/programme in place that hinders the effective execution of the programme? If so, what concrete measures are being taken to overcome this problem?	
Identification of necessary changes required in other policies or legislative measures to improve the implementation of the programme and its contribution towards a more effective realization of the right to food	
(*) The following should be included in your description: participatory processes, legal framework (laws, rules, regulations, guidelines or plans guiding the implementation of the program, with the respective adoption dates) (**) Please indicate the date (***) Please state if there is a mechanism in place for integrating sectors and programmes, and also a coordinating mechanism.	

INFORMATION, ACCOUNTABILITY AND MONITORING

Information/Communication Strategies:	
Describe the communication strategies for disseminating information to right holders, especially the different dimensions of human rights related to programme implementation and the means for accessing these rights (for instance public educational initiatives, and the language in which this information was disseminated):	
<ul style="list-style-type: none"> - are people/families informed about their rights? - are civil servants informed about their duties? - is access to information ensured to those who cannot read and those with visual disabilities? - is the information on the programme and on right to food available in a non-discriminatory manner and can it be easily understood by different groups of right holders? - is the language used for disseminating information easily understandable at the local level? - is “libras” (Brazilian sign language) used? 	
Provide an evaluation of the effectiveness of the communication strategy:	
Is it generally recognized that promoting right to food within the programme requires overcoming discriminatory and patronizing practices that are traditionally part of public initiatives at all levels of implementation?	
Are indicators in place for detecting discriminatory practices? What concrete measures are being taken to overcome these obstacles?	
Is there active and informed participation on the part of right holders in the development, execution and monitoring of the programme? How is this done?	
Does the information collected at local level afford right holders the opportunity to indicate their priorities and aspirations?	
What is the relevance of their participation in decision making? Are the resulting suggestions/recommendations incorporated in the programme?	
Is there a clear definition of the duties and obligations of the actors involved in implementing the programme at the different levels?	
Are the actors informed of their duties? When these duties are communicated, are they adequately discussed and clarified?	
Do right-holders have access to information regarding actors’ duties? How is such information revealed to them?	
What are the duties of: <ul style="list-style-type: none"> - the management body responsible for the Programme - the State - the Municipality - local entities - Social Control Councils - legislative bodies - judicial bodies - the Public Ministry Office 	
What are the responsibilities of: <ul style="list-style-type: none"> - families - all sectors of civil society 	

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Training of duty bearers	
Are there mechanisms in place for motivating public agents to fulfill their duties as well as making them aware of the need to do so? How do these mechanisms work?	
Do public agents receive a delegation of authority to carry out their roles?	
Are different public agents provided with financial and administrative resources, including training and technical support, to enable them to fulfill their duties? Are there on-going training and capacity building programmes in place?	
Are different actors encouraged to seek forms of partnership with other entities so as to ensure the effective realization of the right to food in the programme? In what way?	
Are public agents in general capable of making decisions when necessary? If so, what are the ways to monitor and evaluate the actions of these agents?	

Monitoring and evaluation systems (*)	
Describe the monitoring mechanisms/systems (and the personal and financial resources allocated to this function) used by your institution to monitor and evaluate: - the implementation of the programme - the target range - fulfillment of the objectives - the progressive realization of the human rights intended within the scope of the programme	
Does the monitoring strategy allow for the participation of the different actors committed to the programme?	
Are there indicators for measuring changes over time, as well as the achievement of targets and objectives?	
Are these indicators monitored on a regular basis? How often is the information updated?	
Identify the source of monitoring and assessment data, its range and its target groups	
Indicate both qualitative and quantitative impact of the programme on the lives of right holders and vulnerable groups (such as substantial changes resulting from implementation measures)	
(*) Please indicate if there is a mechanism in place to monitor and evaluate the programme as well as the latest outcomes, if any.	

Social control mechanisms	
What are the social control mechanisms? How do they work? What are their functions?	
How is programme implementation controlled at the local level?	
Are popular participation mechanisms in place to ensure effective implementation of the programme in the municipalities? Are the meetings public and if so, are the local population informed in advance? Following deliberations, are the outcomes made known to all?	
In the case of right holders not included in the programme, what are the reasons for this? What are the measures being taken to address those that are not included under the programme?	
Are there mechanisms in place for right holders to complain (at all levels) when they understand that their rights are being violated? Are these mechanisms accessible to the most vulnerable? In what way? How is the efficiency of these mechanisms evaluated?	
Who is the public authority responsible for examining complaints and claims related to the programme? Does this body act independently or is it in a position of subordination to the programme manager?	

EVALUATION

Evaluation of results regarding the obligations to respect, protect, promote and provide	
Provide an evaluation of how the measures adopted within the programme fulfill the obligations to respect, protect, promote, and provide the right to food: 1 – Respect 2 – Protect 3 – Promote 4 – Provide	
Is there an assessment on how the impact of the programme could be improved for a more effective realization of the right to food and the other human rights?	
Are there any aspect of programme implementation that constrains the realization of any other rights?	

BUDGET

Budget Allocation	
Annual budget and source of funds	
Current budget allocation	
Was the overall budget for that period adequate? If not, please explain why, provide justifications and indicate what measures have been taken to deal with the inadequacy	
Curtailment or excess of expenditure in current budget? If so, what was the impact on programme implementation?	
If applicable, what measures were taken to deal with the curtailment or excess of expenditure in the current budget?	
Are the financial resources allocated for programme implementation being used?	
Are there any specific budget strategies in place to target vulnerable groups and specific populations (indigenous peoples and descendants or runaway slaves, among others)?	
Are there any complementary actions (developed in partnership with public or private entities), to provide food and nutritional security to those vulnerable groups?	
Is there a budgetary allocation envisaged for dealing with emergencies (such as natural catastrophes, etc)?	

LESSONS LEARNED

Main difficulties encountered	
Describe the main difficulties encountered when implementing the programme	
Describe the proposed and/or implemented solutions to deal with the difficulties	
Describe lessons learned	

MANAGEMENT AND ADMINISTRATIVE ISSUES

Administrative actions	
Was there any administrative act related to programme implementation that resulted in the violation of rights?	
If so, in what way did the administrative act result in a violation of rights?	
Identify and describe measures taken to address violations and prevent them from re-occurring	
Were these measures effective?	

Mismanagement and corruption	
Was there any official complaint of mismanagement and/or corruption with respect to the realization of the programme?	
If so, identify and describe the measures taken to address and/or prevent mismanagement or corruption	
Were these measures effective?	

GENERAL COMMENTS AND OBSERVATIONS

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ANNEX 2: PNAE's Rights Claiming Instruments¹

THE 15 DIMENSIONS OF THE HUMAN RIGHT TO ADEQUATE FOOD WITHIN THE SCOPE OF PNAE

THE ACCESS TO QUALITY SCHOOL MEALS IS A HUMAN RIGHT GUARANTEED BY THE FEDERAL CONSTITUTION² AND BY THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS³

All students have the human right to:

1. Adequate food during school hours and every day of the school year;
2. Healthy, balanced, diversified and tasty food, which respects the regional eating habits, under professional supervision;
3. Safe food, free from microorganisms, agrochemicals and other health hazardous substances;
4. Receive adequate treatment from the people responsible for the preparation and distribution of the food, without any type of discrimination;
5. Receive food that respects the rights of students with specific food needs (diabetic, hypertensive, Celiac disease, among others), without discrimination;
6. Receive food that respects the cultural practices and food habits of indigenous peoples and runaway slave descendant communities;
7. Access to clean drinking water, for personal hygiene and food preparation;
8. Food prepared in its natural state, semi processed (those which receive minor industrial processing) and processed giving priority to the first two;
9. Clean, ventilated and comfortable eating facilities, that allows for adequate socializations during the meals;
10. Adequate and in good using condition eating utensils (knives, forks, spoons, plates and cups);
11. Food that is stored and prepared in adequate hygiene conditions and environment, protected against insects, rodents and other contaminants, preserving the quality of the food;
12. Sanitary installations that allow for student and food manipulator personal hygiene;
13. Information on healthy food and eating, and on the quality and composition of the food received at the school;
14. Be informed that they have the right do adequate food at school, and the right to present suggestions to improved the food provided at the school;
15. Present claims to the school and/or to the family if one or more of the above rights are not respected.

IN CASE YOUR RIGHTS ARE NOT BEEN RESPECTED; PLEASE GET IN TOUCH WITH:

Contact person at the school:

IN CASE YOUR CLAIMS ARE NOT ANSWERED PLEASE GET IN TOUCH WITH

School Feeding Council. Contact person:

Address and telephone:

¹ It is important to mention that these three instruments are currently being revised and updated by PNAE's coordinating and technical staff together with CONSEA's Standing Commission on the Human Right to Adequate Food (SC 4).

² Article 208, VII "The duty of the State with the education will be fulfilled through guaranteeing the assistance to the student of the fundamental education level, through didactic material, transportation, food and health assistance supplementary public programs."

³ The ICESCR was ratified by Brazil in 1992, and incorporated into the national legislation through Decree 591/92.

Rights, Obligations and Responsibilities within the scope of PNAE

STUDENTS

RIGHTS

- All children and adolescents have the human right to adequate school feeding.
- Children who are still being nursed have the right to continue to be fed by their mothers during nursery hours.
- Children and adolescents in primary education or enrolled in institutions maintained by the Union have the right to be assisted in their nutritional needs during their classroom hours, as a way of contributing to the students' growth and development, learning, and school performance, as well the development of healthy eating habits.

Every student attending school has the human right to:

- Receive adequate treatment from the people responsible for the preparation and distribution of the food, without any type of discrimination;
- Receive food that respects the rights of students with specific food needs (diet-related pathologies such as diabetics, hypertension, Celiac disease, falciform anaemia, among others), without discrimination;
- Clean, ventilated and comfortable eating facilities, that allow for adequate socializations during the meals;
- Food that is prepared in adequate hygiene conditions and environment, protected against insects, rodents and other contaminants, preserving the quality of the food;
- Sanitary installations that allow for students and food manipulators personal hygiene;
- Information on healthy food as well as on the quality and composition of the food received at the school;
- Be informed that they have the right do adequate food at school, and the right to present suggestions to improve the food provided at the school;
- Present claims to the school and/or to the family if one or more of the above rights is not respected.

FNDE⁴/FEDERAL GOVERNMENT

*Responsible for providing financial assistance in a complementary character.*⁵

OBLIGATIONS

1. To ensure the transfer of financial resources aimed at the purchase of food stuff;
2. To regulate, coordinate, follow-up, monitor and inspect execution of the programme;
3. To manage and inspect the programme at national level;
4. To train human resources;
5. To produce information/guidance at national level;
6. To promote and evaluate the effectiveness and efficacy of the programme.

RIGHTS

1. To receive sufficient resources from the Federal Government to assist PNAE – National School Feeding Programme.

Executing Agency

STATE – STATE SECRETARIAT OF EDUCATION

MUNICIPALITY – MUNICIPAL SECRETARIAT OF EDUCATION

*Responsible for receiving and complementing the financial resources transferred by FNDE and for executing the PNAE*⁶

OBLIGATIONS

1. To ensure the regular and continuous supply of adequate food during nursery as well as classroom hours;
2. To publicize receipt of funds;
3. To ensure fund complementation, where these are insufficient;
4. To inspect and manage the programme in the schools under its responsibility;
5. To supervise execution “in loco”;
6. “To feed” the school census;
7. To publicize and/or produce information within its area of action;
8. To encourage joint action between the School and FNDE;
9. To supply equipment/infrastructure for:
 - kitchen
 - storage
 - transportation
 - utensils
 - eating facilities
10. To ensure human resources:
 - Meal preparers
 - General services
11. To train all persons involved in the programme execution;
12. To establish the School Feeding Council - CAE;
13. To ensure infrastructure for the functioning of the School Feeding Council;
14. To make public the operation and composition of the School Feeding Council;
15. To provide information and ensure access to information by the School Feeding Council;
16. To render accounts to the School Feeding Council;
17. To define strategies for encouraging food and nutritional education within the school environment;
18. To promote healthy eating habits;
19. To use at least 70 per cent of the financial resources in the acquisition of basic food stuff⁷
20. To ensure diversified food;
21. To respect the agricultural vocation /incentive of local production and purchase;
22. To respect regional eating habits;
23. To apply acceptability tests;

⁶ Art. 4 item II of Resolution /FNDE/CD/ N. 38 of 23 August 2004.

⁷ Art. 10 paragraph 1 of Resolution /FNDE/CD/ N. 38 of 23 August 2004.

24. To guarantee differentiated food that respects the rights of students with specific food needs (diet-related pathologies such as diabetics, hypertension, Celiac disease, falciform anaemia, among others), without discrimination;
25. To integrate with the health sector;
26. To run quality-control tests of the products purchased;
27. To establish cooperation mechanisms with VISA for controlling the quality of school food;
28. To monitor food quality according to ANVISA guidelines;
29. To adopt measures that guarantee adequate hygienic conditions and quality of the products during transportation, storage, preparation / handling, distribution and consumption of food;
30. To store and control stocks.

RIGHTS

1. To receive financial resources in the per capita amount provided by the Federal Government according to the census carried out in the previous year;
2. To receive guidance from the agencies responsible for managing the resources;
3. The municipality has the right to receive funds from federal programmes such as the national school transportation programme, the money direct to the school programme (PDDE)⁸ and FUNDEF;⁹
4. To choose the best management practice;¹⁰
5. To receive funds on a regular basis.

SCHOOL FEEDING COUNCIL (CAE)

OBLIGATIONS/RESPONSIBILITIES

1. To inspect and control the funds transferred by FNDE;
2. To publicize the funds allocated on school and church murals, among others;
3. To supervise meal planning and the elaboration of menus;
4. To supervise the preparation and distribution of school food as a way of ensuring the children good-quality, nutritious and tasty food, according to the eating habits of the region, with an emphasis on “in-natura” products;
5. To inform the Municipal/State Secretariat of Education of irregularities related to food such as: expiration of the validity period, deterioration, losses and thefts, etc., so that the necessary steps can be taken;
6. To investigate and monitor the quality of the programme at all levels;
7. To inform schools, families, students and managers of their rights, obligations and responsibilities;
8. To investigate claims about irregularities;

⁸ The purpose of PDDE is to meet the daily physical needs of the school, e.g., fixing a broken pipe, replacing utensils, etc.

⁹ Fund for Maintenance and Development of Primary Education and the Valorisation of Teaching Personnel – used to pay for the salaries of teachers and education and health professionals.

¹⁰ Form of Management, according to resolution 38: Centralized – the City Hall supplies the food to the school; semi-centralized – the City Hall supplies part of the food and the school is responsible for supplying the other part; decentralized – the school meal service is decentralized and the City Hall transfers all the funds to the school, which is responsible for acquiring the food.).

9. To communicate such claims to City Halls, Secretariats of Education and forward them to control agencies;¹¹
10. To follow-up the physical-financial execution of the Programme, with a view to ensuring better applicability thereof;
11. To monitor the situation of the programme at all levels.

RIGHTS¹²

1. To receive from the Executing Agency the infrastructure necessary for full execution of the activities under its responsibility;
2. To have access to appropriate location, under adequate conditions for holding ordinary and extraordinary meetings of the Council;
3. To have IT equipment available as well as transportation and per diem for members commuting to their places of assignment;
4. To have access to documents and information related to the execution of PNAE in all stages thereof;
5. Whenever it is unable to fulfil its duties because of failure on the part of the executing unit, the Council may require that such duties are fulfilled de facto.
6. CAE has the right to issue an opinion as to the best management practise to be adopted, with a view to protecting the interest of the school in providing adequate food according to its budget and eating habits;
7. To support inspection agencies as well as the Federal Programme of Assistance to Victims and Threatened Witnesses;¹³
8. To report irregularities to competent agencies.
9. CAE chapters in States and Municipalities with Indigenous schools should have among their members at least one representative of indigenous peoples and one representative of runaway slaves descendant communities.¹⁴

SCHOOL/SCHOOL BOARD

OBLIGATIONS

1. To ensure the supply of school meals with the quality and in the quantity foreseen on a regular basis and during nursery/classroom hours;
2. To ensure the appropriate infrastructure;
3. To ensure good hygienic conditions;
4. To ensure quality control of:
 - Water
 - Hygiene
 - Infrastructure
 - Storage

¹¹ Federal Control Secretariat, Public Ministry's Office and Federal Court of Audit.

¹² Art. 9 of Resolution/FNDE/CD/ N. 38 of 23 August 2004.

¹³ The General Coordination Board for the Protection of Witnesses, which is linked to the Undersecretariat for the Promotion and Defence of Human Rights, is responsible for implementing, maintaining and improving the Federal Programme of Assistance to Victims and Threatened Witnesses established by Law N. 9,807/99, seeking, whenever possible, articulation with other related government actions and programmes.

¹⁴ Art. 12, paragraph 4 of Resolution/FNDE/CD/ N. 38 of 23 August 2004.

- Production (handling)
- Distribution

5. To provide physical space and humanized services without discrimination;
6. To ensure that the programme is operationalised according to the rules and regulations;
7. To facilitate CAE action within the school;
8. To articulate with the health sector in order to identify and communicate problems related to food, nutrition and health;
9. To monitor the health conditions of meal preparers;
10. To ensure access to the school by ANVISA and/or VISA.

RIGHTS

1. To receive food stuff or funds on a regular basis;
2. To have the necessary resources to ensure adequate infrastructure for preparing school meals;
3. To receive guidance from FNDE or the secretariat;
4. To seek from the City Hall/State adequate operating conditions for preparing school meals;
5. To receive training in resources management from the Executing Entity;
6. To seek from the City Hall school transportation, human resources and adequate infrastructure.

MEAL PREPARERS

OBLIGATIONS

1. To comply with rules and regulations:
 - Menu (to prepare good quality meals based on the balanced menu previously proposed by a nutritionist);
 - portioning (to use per capita portions as previously established);
 - hygiene (both personal and in handling and distributing food, including utensils);
 - adequate food storage;
 - to use the uniforms supplied by the institution.
2. To maintain the working environment clean and organized;
3. To verify acceptance of school meals and inform the board of the institution (nursery and/or school);
4. To adequately prepare/handle the food (good practises).
5. To refrain from committing discriminatory acts against students when distributing meals.

RIGHTS

1. To receive training (guidance) on the menu, preparation and portioning of food as well as on handling utensils;
2. Adequate uniforms;
3. Basic education;
4. Adequate working conditions (infrastructure, eating facilities, kitchen, utensils, security at the work place);
5. Access to good quality and sufficient raw materials;
6. Right to health care.

FAMILY

RESPONSIBILITIES

1. To supervise the quality of the school meals served to their children;
2. To participate in CAE forums;
3. To report cases of irregularities;
4. To inform the school about the specific food needs of their children;
5. To enrol their children and ensure school attendance;
6. The mother is responsible for nursing her child.

RIGHTS

1. Information;
2. Participation;
3. Access to the school;
4. Non-discrimination;
5. To be treated with dignity;
6. Right to nursery facilities during the nursing period;¹⁵
7. The mother shall have the right, during the work day, to two special breaks of one half hour each, to nurse their babies up to the sixth month of life.
8. To receive information on the importance and relevance of nursing, on an exclusive basis up to the sixth month of life and on a mixed basis up to two years of age, for the benefit of her own health and that of her child.

PUBLIC MINISTRY'S OFFICE

The Public Ministry's Office is responsible for defending social rights and public assets. In this regard, it will take the necessary steps when receiving any claims.

OBLIGATIONS

1. To receive and investigate claims;
2. To inspect development of the programme:
 - Federal Public Ministry's Office – financial resources
 - State Public Ministry's Office – children's rights

¹⁵ According to the Brazilian Labour Code (CLT), every establishment employing more than 30 women over 16 years of age must have appropriate facilities where employees can keep their children under surveillance and assist them during the nursing period.

3. To ensure the Human Right to Adequate Food;
4. To promote civil inquiries and civil public actions with a view to protecting public and federal assets as well as other collective interests;¹⁶
5. To issue notifications as regards administrative proceedings under its responsibility by requesting information and documents to inform them.

Routines and procedures to receive, analyze and respond to complaints

FLOWCHART OF CLAIMS

If any of the right to food dimensions is being violated it is possible to present claims. Do you want to know how?

WHO PRESENTS CLAIMS: Student, Parents, Teachers, Duty Bearers Responsible for school feeding, Meal Preparers, Nutritionists and CAE (right holders).

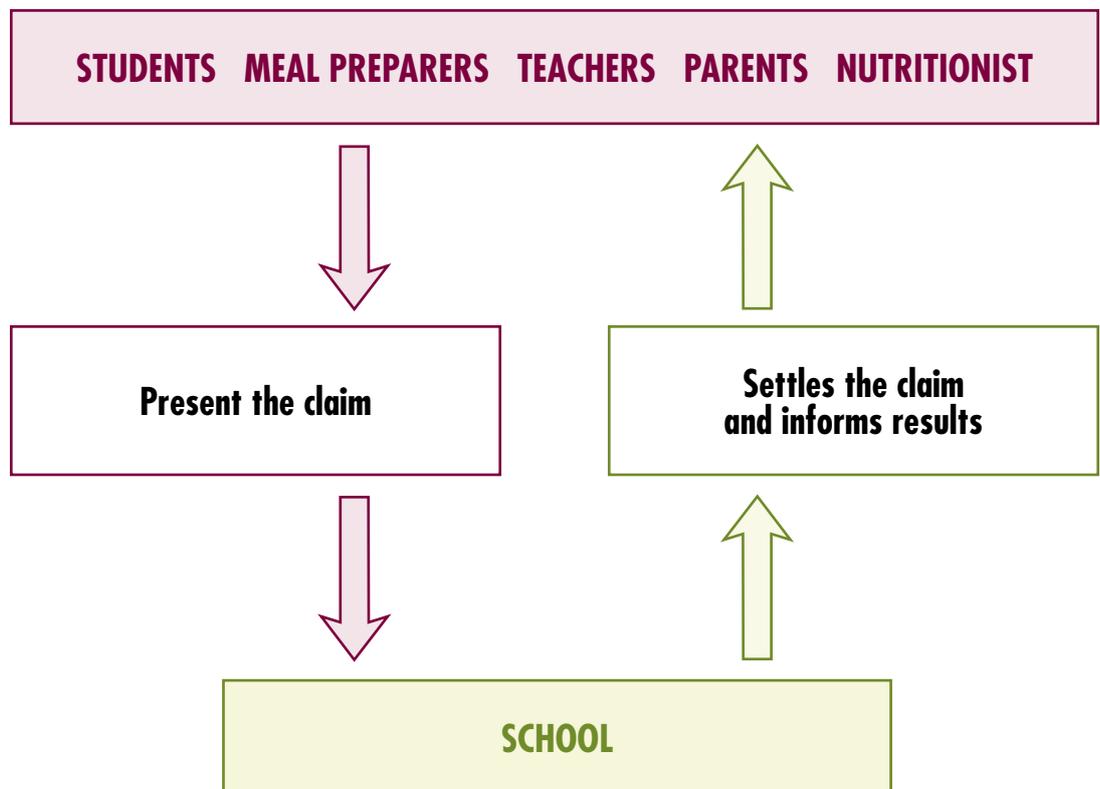
WHO IS RESPONSIBLE: school (secretary and board), Executing Entity, CAE, Local Health Surveillance Agency, FNDE and Public Ministry's Office (duty bearers).

Whenever possible, it is important that the complaints be presented through a simple document, such as a letter, identifying where and how the right to food is being violated.

Complaints may be submitted individually or in group. Moreover, if the right holders feel any difficulty to formalize the complaint, they can search for people or entities responsible for protecting rights, such as CAE or Public Prosecutors.

In addition to the right to claim, the right holders also have the right to have a timely response and action on the part of public authorities with a view to providing a remedy to the given violation.

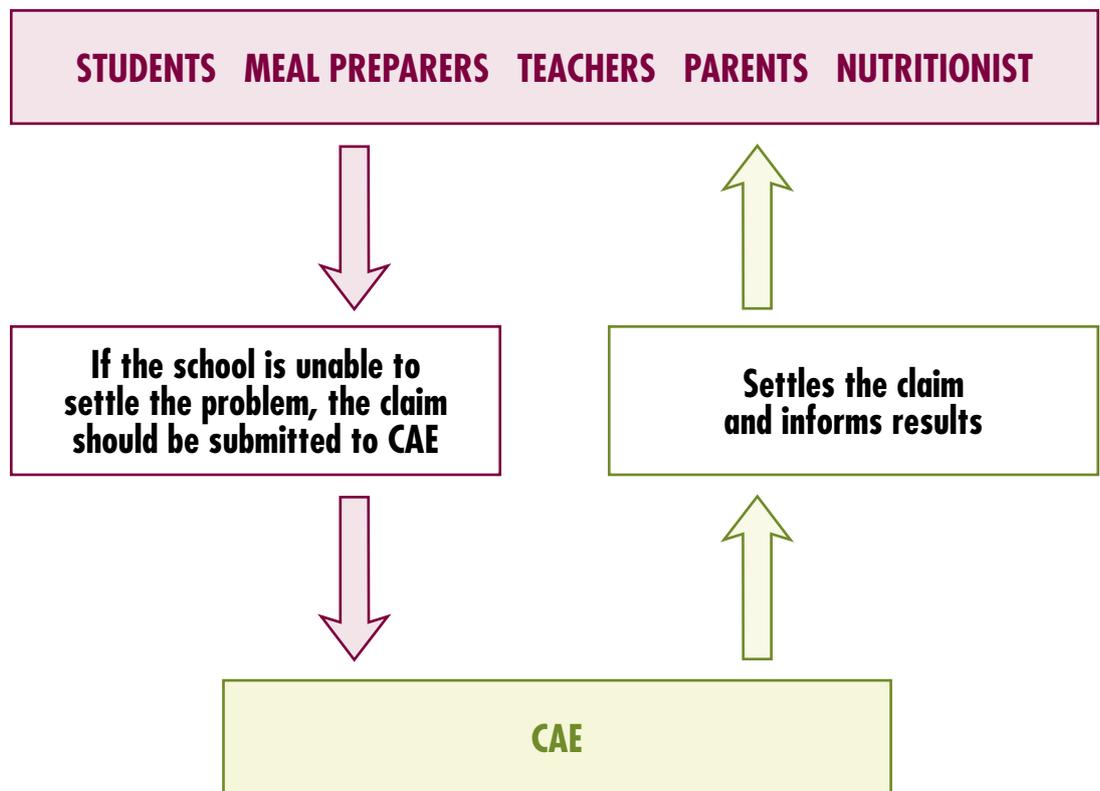
It is also important to know that this flowchart of claims does not present a mandatory order in which the different steps should be taken to claim rights violated. Depending on each case, right holders can go directly to the Public Ministry's Office or to Human Rights Councils to submit their complaints.



The **school** should, through its **secretary**, receive the claim and adopt the following PROCEDURE: fill out and/or receive a simple form, with enough space for answering and monitoring by the school, and record the claim in a blotter to be reviewed by **CAE** on a monthly basis.

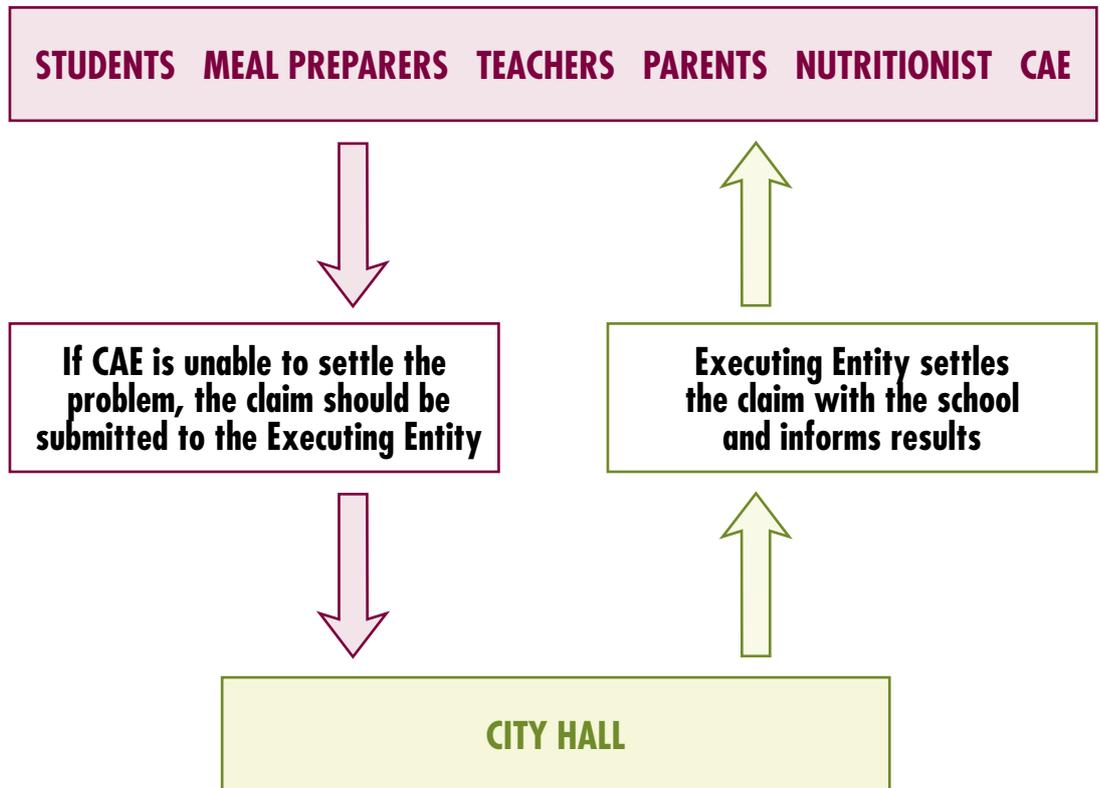
The next step to be taken by the school secretary within the scope of its **OBLIGATION** will be to submit the claim, through a form, to the **BOARD** which, in turn, should investigate and solve the problem or repair the violations.

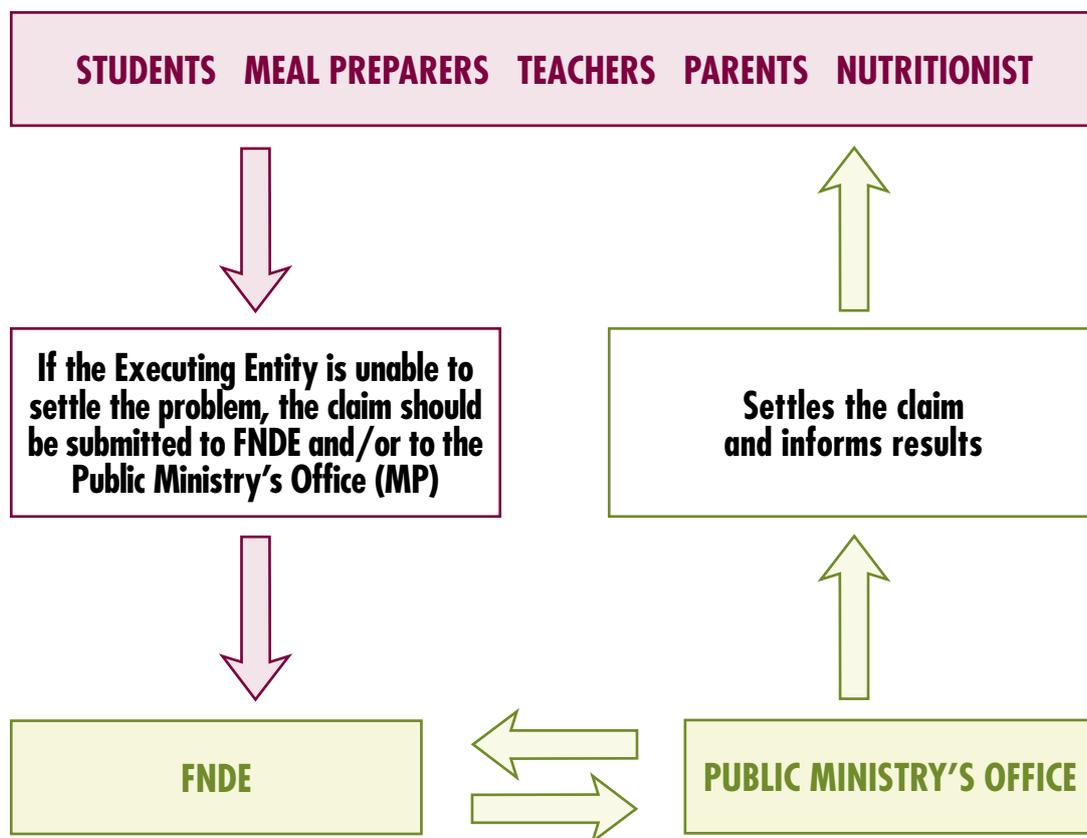
Where the **school secretary** is unable to adopt the appropriate and/or expected procedure, regardless of the reason, **RIGHT HOLDERS** may go directly to the **school board** and report the violation of their right as well as the attitude of the **secretary**.



RIGHT HOLDERS may also present their claims to **CAE**, should the **school board** be unable to act within its area of competence to repair the violation. **CAE**, in turn, should investigate the claim.

*Exigibilidade: Mechanisms to claim
the human right to adequate food in Brazil*





Where the violation cannot be repaired, **RIGHT HOLDERS** and/or **CAE** may submit the claim to the **Executing Entity** and/or to the Public Ministry.

