From Charity to Entitlement
Implementing the right to food in Southern and Eastern Africa

SUMMARY
At a time when the number of hungry around the globe appears to be on the rise, several countries are turning to a rights-based approach, grounded in the human right to food, to address hunger and malnutrition within their borders. While Latin America has been leading this trend, numerous countries in Eastern and Southern Africa have been adopting constitutional provisions as well as national frameworks, strategies, policies and programmes aimed at the progressive realization of the right to food. This report seeks to document these emerging institutional mechanisms for realizing the right to food in nine countries in Eastern and Southern Africa: Kenya, Malawi, Mozambique, Rwanda, South Africa, Uganda, United Republic of Tanzania, Zambia and Zimbabwe. It begins by providing background on the core content of the right to food and the corresponding State obligations to respect, protect and fulfil the right to food of its population. It continues by documenting constitutional provisions enshrining the right to food in Kenya and South Africa, as well as the possibility for other States, particularly Zambia, to adopt constitutional protection of the right to food in the future. It then lays out the challenges faced by Uganda, Malawi and Mozambique in adopting right to food framework laws and draws lessons from the sub-national level in Zanzibar and the Latin American context more generally. Following sections describe national strategies and policies aimed at the progressive realization of the right to food, focusing on South Africa, Kenya, Uganda and Zambia, and how actors have used courts and judicial actions in the region to protect, enforce and enhance the right to food in their national contexts. A final section examines the relationship between the Millennium Development Goals and the right to food.
Table of Contents

Introduction .................................................. 2
Figure 1: Highlights in Implementing the Right to Food in Southern and Eastern Africa ... 3

1. The content of the right to adequate food ...... 4
   1.1. Legal basis for the right to food ............ 4
   1.2. The core content of the right to food .... 5
   1.3. State obligations regarding the right to food ........................................................................ 5
   1.4. Procedural requirements ...................... 6
   1.5. Monitoring the progressive realization of the right to food ............................................. 6

2. Domestic instruments for the realization of the right to food .............................................. 6
   2.1. Constitutional protection of the right to food ............................................ 6
   2.2. Framework laws for the right to food ...... 7
       a. Latin America ..................................... 7
       b. Eastern and Southern Africa ............. 8
   Figure 2: Four Paths Towards Securing a Right to Food Framework Law ........................................... 9
   2.3. National strategies for the realization of the right to food .............................................. 10
   2.4. Other domestic instruments for protecting the right to food ........................................ 12
   2.5. The role of judicial and non-judicial monitoring mechanisms ........................................ 12
       a. Judicial monitoring ............................ 12
   Figure 3: Implementing the Right to Food in South Africa ......................................................... 13
       b. Non-judicial monitoring ..................... 14

3. The relationship to the Millennium Development Goals ......................................................... 15

4. Conclusion .......................................................... 16

References .......................................................... 16

Acknowledgments .................................................. 21

Introduction

While figures differ somewhat, it is currently estimated that 925 million people, approximately one person in eight, around the globe go to bed hungry every night. The recent food price increases of 2010-2011 have accelerated this upward trend. In February 2011, the World Bank Group estimated that since June 2010 an additional 44 million people were driven into poverty as food prices continued to rise. Hunger and malnutrition thus remain key global challenges, with many governments struggling to address the needs of their populations and to meet the Millennium Development Goal target of halving the proportion of people who suffer from hunger by 2015 from the 1990 rate.

However, a number of countries, including Bangladesh, Brazil, Malawi, Mozambique and Peru, have managed to significantly reduce hunger and malnutrition within their borders. What are the contributing factors to these countries’ positive gains when so many others are failing to make significant progress? A recent study examined these five countries to discern trends and good practices, and found six factors that allowed the countries to succeed. First, the countries sought to adopt a multi-sectoral approach to combating hunger and malnutrition, combining an attention to agriculture with the mainstreaming of nutrition in health policies, and coordinated policies in the areas of education, gender, water, sanitation, housing, pro-poor economic development and trade. Second, with the exception of Bangladesh, the political impetus given at the highest level of government was a key factor, with governments defining food and nutritional security as their main priorities, placing them at the top of the political agenda and adopting strategies specifically aimed at combating hunger and poverty. Third, civil society participation and empowerment was essential, by contributing to the sustainability of policies over time and by improving their acceptance and impact among affected populations. Fourth, multi-phased approaches were employed within multi-year national strategies combining both short-term interventions and long-term approaches to nutrition. Fifth, the establishment of institutions to monitor progress has proved essential in ensuring that the political pressure remains present throughout the implementation phase of the strategy, and to ensure that the resources are committed. Sixth, the continuity of financial investment was and continues to be vital: one-off efforts, over short periods, almost by definition are bound to fail to achieve significant success.
Political will, empowerment and participation of civil society, the monitoring of progress in the implementation of multi-year strategies: all of these matter. This should not come as a surprise. As Amartya Sen once remarked, “the law stands between food availability and food entitlement”. What he meant is that unless we take seriously our duties towards the most marginalized and vulnerable, and the essential role of legal entitlements in ensuring that the poor have either the resources required to produce enough food for themselves or a purchasing power sufficient to procure food from the market, our efforts at increasing production will hardly change their situation. For people are hungry not because there is too little food: they are hungry because they are marginalized economically and powerless politically. Protecting the right to food through adequate institutions and monitoring mechanisms should therefore be a key part of any strategy against hunger.

Over the past few years, significant progress has been made in the implementation of the human right to adequate food. This progress has been the result of the co-construction of issues by civil society, social

Figure 1: Highlights in Implementing the Right to Food in Southern and Eastern Africa

**UGANDA**: discussions on the need for a rights-based legislative framework for food and nutrition date back to 1993

**KENYA**: adopted constitutional protections for the right to food in 2010

**RWANDA**: yet to take a rights-based approach to hunger

**UNITED REPUBLIC OF TANZANIA**: the Zanzibar region is addressing hunger and malnutrition through the Food Security & Nutrition Act, which enshrines the right to food in legislation

**MALAWI**: civil society provided the impetus for the right to food bill, which has not yet been presented in Parliament

**MOZAMBIQUE**: provides an excellent example of a government led initiative to adopt a human rights approach with inclusive participation of the most vulnerable

**ZAMBIA**: the Draft Constitution, currently being circulated, protects the right to food
movements and Governments. Governments now increasingly understand that hunger is not simply a problem of supply and demand, but primarily a problem of a lack of access to productive resources such as land and water, of unscrupulous employers and traders, of increasing market concentration in the provision of inputs, of diminished support to small-scale producers and of insufficient safety nets to support the poor. They understand that while attention has been focused on addressing the mismatch between supply and demand on the international markets – as if global hunger were the result of physical scarcity at the aggregate level – they should now pay greater attention both to the imbalances of power in the food systems and to the failure to support the ability of small-scale farmers to feed themselves, their families and their communities. They understand the importance of more equity in the food chains, of empowerment and of accountability. They understand that the right to food can constitute a tool to improve the effectiveness of policies that seek to combat hunger and malnutrition.

This document provides background information on what constitutes the right to food and how the right to food has been implemented in Kenya, Malawi, Mozambique, Rwanda, South Africa, Uganda, United Republic of Tanzania, Zambia and Zimbabwe. It is not a comprehensive study of the implementation of the right to food in these countries, or of domestic programmes in place within these countries aimed at ensuring adequate food for all. Each section only highlights some initiatives and institutional frameworks aimed at introducing right to food mechanisms in each country. Section 1 details the core content of the right to food, as well as the corresponding State obligations and the importance of a multifaceted approach to the progressive realization of the right to food. It examines the role that constitutional protection, framework laws and national strategies, programmes and policies can play in the progressive realization of the right to food as well as the importance of judicial and non-judicial monitoring mechanisms. Section 2 details how the countries featured in this report – Kenya, Malawi, Mozambique, Rwanda, South Africa, Uganda, United Republic of Tanzania, Zambia and Zimbabwe – have succeeded in or are in the process of adopting constitutional protections, framework laws, and national strategies, policies and programmes, as well as how monitoring mechanisms have been used. Section 3 addresses the relationship between the progressive realization of the right to food and the Millennium Development Goals. Finally, Section 4 offers some concluding remarks.

1. The content of the right to adequate food

The right to adequate food is a human right recognized under international law, which protects the right of all human beings to feed themselves in dignity, either by producing their food or by purchasing it. As authoritatively defined by the Committee on Economic, Social and Cultural Rights in its General Comment No. 12: “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.” It has also been defined as: “The right 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 ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.”

1.1. Legal basis for the right to food

The legal basis for the right to food in international law is found in Article 25 of the Universal Declaration of Human Rights, which recognizes the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food.” Furthermore Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulates that States “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”, and requires them to “take appropriate steps to ensure the realization of this right.” Article 11.2 of the ICESCR also stipulates that States recognize “the fundamental right of everyone to be free from hunger” and details what States individually and collectively must do to fulfil this obligation. The right to adequate food is also recognized in the Convention on the Rights of the Child in Articles 24.2(c) and 27.3, as well as a number of other international and regional instruments. Interpretations of the content of the right to food and guidelines for the progressive realization of the right to food, can be found authoritatively in General Comment No. 12 on the right to food (hereinafter General Comment No. 12), adopted by the UN Committee on Economic, Social and Cultural Rights, and as recommendations in the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food
Security (hereinafter Voluntary Guidelines) adopted by the 187 Member States of the General Council of the Food and Agricultural Organization of the United Nations (FAO).\(^\text{16}\)

1.2. The core content of the right to food

Three key elements – availability, accessibility and adequacy – form the foundation of the right to food, describing the core content of the right.

- **Availability** requires on the one hand that food should be available from natural resources either through the production of food, by cultivating land or animal husbandry, or through other means of obtaining food, such as fishing, hunting or gathering. On the other hand, it means that food should be available for sale in markets and shops, and that mechanisms are in place to move food from the site of production to where it is needed in accordance with need.

- **Accessibility** requires that economic and physical access to food be guaranteed. Economic accessibility means that food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as those related to housing, education of healthcare. Physical accessibility means that food should be accessible to all, including to the physically vulnerable, such as children, the sick, persons with disabilities or older persons, for whom direct access to food may be difficult.

- **Adequacy** means that the food must satisfy dietary needs, taking into account the individual’s age, living conditions, health, occupation, sex, etc. For example, if children’s food does not contain the nutrients necessary for their physical and mental development, it is not adequate. Food should also be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. Adequate food should also be culturally acceptable. For example, aid containing food that is a religious or cultural taboo for the recipients or inconsistent with their eating habits would not be culturally acceptable. Finally, adequate diets must be sufficiently diverse, and covering all food groups in a balanced manner, in order to be healthy and not to expose the individual to diet-related non-communicable diseases.

1.3. State obligations regarding the right to food

The right to food, like other economic, social and cultural rights, places three forms of domestic obligations on States.\(^\text{17}\) First, the **obligation to respect** existing access to adequate food requires State parties not to take any measures that result in preventing such access. Second, the **obligation to protect** requires measures by the State to ensure that enterprises or individuals do not deprive other individuals of their access to adequate food. Third, the **obligation to fulfil (facilitate)** means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to **fulfil (provide)** that right directly.

In order to meet its domestic obligations regarding the right to food, States should create legal or institutional frameworks to protect the right to food. States can introduce domestic legal protections for the right to food though guaranteeing the right to food in national constitutions, and/or framework laws. Affording the right to food **constitutional protection** ensures State recognition of the fundamental status of the right to food, and provides direction to a range of State policies. In addition, depending on the specificities of each domestic legal system, the constitutional protection of the right to food may be used to challenge laws or provisions of laws that lead to violations of the right to food, as well as to redress specific violations of the right to food through actions or omissions by the State. Similarly, national **framework laws** guaranteeing the right to food can establish the obligations of the State to **respect**, **protect** and **fulfil** the right to food, **provide** state policy directives on the progressive realization of the right to food and afford avenues of redress to those whose rights have been violated. Both General Comment No. 12\(^\text{18}\) and the Voluntary Guidelines\(^\text{19}\) make strong recommendations to States to adopt national framework laws that enshrine the right to food in the legal fabric of the country, and provide for enforceable rights.

The constitutional and legal protection of the right to food is only one component of a comprehensive approach towards guaranteeing the entitlements of individuals in order to ensure that they have access to adequate food, sufficient to meet their dietary needs. In addition, States should work towards the adoption of a **national strategy** “to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of
policies and corresponding benchmarks.”20 Such a national strategy should comprise the establishment of appropriate institutional mechanisms, particularly in order to: (i) identify, at the earliest stage possible, emerging threats to the right to adequate food, by adequate monitoring systems; (ii) improve coordination between the different relevant ministries and between the national and sub-national levels of government; (iii) improve accountability, through the setting of targets, with measurable indicators, defining the timeframe within which particular objectives should be achieved; and (iv) ensure the adequate participation, particularly, of the most food-insecure segments of the population. National policies, plans and programmes are key proponents of strategies, defining long term objectives, creating support for certain projects and channelling funds into areas of need. Where States do not yet have national framework laws, their creation can become a key element of national strategies on the progressive realization of the right to food.

1.4. Procedural requirements

In the drafting of constitutional provisions, framework laws and national strategies or policies, as well as in the implementation of any these instruments, States should ensure that all processes respect human rights. Adopting a rights-based approach means that decision-making processes should be guided by the human rights principles of Participation, Accountability, Non-discrimination, Transparency, Human dignity, Empowerment and Rule of law, following the “PANTHER” framework developed by FAO that is based on the UN Common Understanding on a Human Rights Based Approach.21 Participation means that every person and all peoples are entitled to active, free and meaningful participation in and contribution to decision-making processes that affect them. Accountability requires that elected representatives, government officials and other duty-bearers be held accountable for their actions through judicial procedures or other mechanisms, ensuring effective remedies where rights are violated. Non-discrimination prohibits arbitrary differences of treatment and requires a focus on the most marginalized segments of the population. Transparency requires that people be able to know processes, decisions and outcomes. Human dignity requires that people be treated in a dignified way and that they are not forced to sacrifice their human rights in order to satisfy basic needs, while empowerment requires that they are in a position to exert control over decisions affecting their lives. Lastly, rule of law requires that every member of society, including decision-makers, must comply with the law.22

1.5. Monitoring the progressive realization of the right to food

States should create monitoring mechanisms, both judicial and non-judicial, to ensure that results are met and that processes are just. Judicial mechanisms, embedded in legislation and constitutions, can provide causes of action for both victims and potential victims of right to food violations, but also possibilities for challenging other legal instruments or policies that lead to violations of the right to food. States should ensure that any individual or group who is victim of a violation of the right to food has access to an effective judicial remedy or other remedies at both the national and international levels. These victims are entitled to “adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition”.23 To enable judicial remedies, courts must remain independent and neutral. Non-judicial monitoring through a variety of methods from participatory review of government policy and programme implementation to the establishment of national human rights commissions is also important for ensuring that instruments intended to protect the right to food do so, and that the progressive realization of the right to food remains on the agenda of governments.

How Kenya, Malawi, Mozambique, Rwanda, South Africa, Uganda, the United Republic of Tanzania, Zambia and Zimbabwe have adopted the right to food in constitutions and framework laws, and planned for the progressive realization of the right to food in national policies and programmes, is discussed below.

2. Domestic instruments for the realization of the right to food

2.1. Constitutional protection of the right to food

A growing number of States, 24 worldwide according to a recent survey, now explicitly protect the right to food in their constitutions.24 South Africa has led this movement, with the inclusion of the right to food in Article 27(1)(b) of its post-apartheid Constitution,25 and other countries are now moving in this direction. The Constitution of South Africa guarantees the right of everyone to have access to sufficient food, and to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. The Constitution further obliges the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive
realization of these rights.36 One of the most recent countries to adopt constitutional protections for the right to food is Kenya.27 The new Constitution of Kenya, approved by a popular referendum in 2010, states that “(1) Every person has the right … (c) to be free from hunger, and to have adequate food of acceptable quality”; and like the South African Constitution, imposes on the State a duty to respect, protect, promote and fulfil that right.28

Zambia may join Kenya and South Africa by inserting the right to food in a new constitution currently under review. Zambia has undertaken a number of constitutional review processes since 1972. The current Constitution of Zambia does not contain protections for economic, social, children’s and women’s rights.29 Prior to the 2011 presidential election, then candidate and now President, Michael Sata pledged to re-visit the Mung’ombo Draft Constitution of 200530 and since 1 December 2011 a technical committee has been reviewing the Mung’ombo Draft Constitution in order to use it as a basis to develop a new national Constitution.31 On 30 April 2012, the Secretariat of the Technical Committee on Drafting the Zambian Constitution released a first draft to the public for commentary.32 The new Draft Constitution provides for the inclusion of economic, social and cultural rights in the Bill of Rights. The right to food is specifically laid out in Article 62(1)(c) which provides that a person has the right to “be free from hunger, and to have access to adequate food of acceptable quality”.33 The Draft Constitution also requires that Parliament enact legislation “to achieve the progressive realization” of economic, social and cultural rights34; it requires the State to act to respect, protect and fulfil rights35; and it recognizes the important role that civil society plays in the promotion and protection of human rights.36 Concerns have already been raised about Article 61(3), which provides restrictions on the decision making scope of the Constitutional Court in cases that concern allocation of resources towards economic, social and cultural rights. The Technical Committee will now seek comments and inputs from stakeholders and people across the country as well as constitutional experts, in order to produce a final Draft Constitution for September 2012.37 Many hope that the Constitution will enshrine the protection of the right to food for all in Zambia, as well as provide constitutional protection for other economic and social rights.

A number of other countries recognize the right to food or provide state objectives regarding food and nutrition security in their constitutions as directive principles for state policy or as aspects of other constitutionally protected rights. The preamble of Uganda’s constitution requires the State to “endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development” and in particular to ensure that “all Ugandans enjoy … access to … food security.”38 While this does not enshrine the right to food as a fundamental right, it does formulate access to food as a socio-political end and a state objective.39 The Constitution of Malawi40 does not uphold the right to food as a standalone provision; however access to food is mentioned under the right to development.41 Furthermore, Article 13(b) of the Constitution of Malawi identifies state obligations related to food and nutrition security as a directive principle of state policy.42 While these provisions in both constitutions are not the same as guaranteeing the right to food, declaring the right to food as a state objective is an important step in ensuring its progressive realization.

2.2. Framework laws for the right to food

States should adopt framework legislation ensuring the right to food in order to provide a precise definition of the normative content of the right, to address food insecurity in a holistic approach, to ensure coordination within government and to guarantee legal protection of the right, providing avenues of judicial enforcement and protection before national courts and ensuring that other forms of redress are available. Additionally, creating legal frameworks on the right to food can provide assurance that in situations where food prices suddenly increase, as has been the case at numerous points since 2007, the State will not be allowed to remain passive. In recent years, there has been significant progress in the adoption of national framework laws protecting the right to food particularly in Latin America, but efforts have also been initiated and processes commenced in Southern and Eastern Africa. These examples from Latin America can be instructive to the Southern and Eastern African context. They are discussed briefly below, followed by examples from Southern and Eastern Africa.

a. Latin America

In Latin America, framework laws grounded in the right to food were adopted in Argentina, Guatemala, Ecuador, Brazil, Venezuela and Nicaragua in rapid succession.43 In eleven other countries in the Latin American and Caribbean region, similar laws are currently proposed for adoption by the respective parliaments.44 This remarkable growth of framework laws on the right to food in this region has been supported by the dedication and commitment of parliamentarians, many of whom are connected through the Frente Parlementario contra
el Hambre, a network in which good practices are exchanged between national parliaments to encourage the drafting and adoption of legislation that improves the protection of the right to food. It has also been encouraged by the América Latina y el Caribe Sin Hambre initiative on the right to food, launched with the support of Spain, that seeks to promote the right to food across the continent, and the FAO, which has been working since 2007 with parliamentarians in the region, supporting them in drafting legislation, providing technical advice and engaging in high level awareness building.

Among many important elements, the majority of these framework laws contain two important principles, which both speak to the legitimacy of the laws as well as the likelihood of their success. First, many of the framework laws set targets for Governments to achieve while also allocating responsibilities and coordinating action across different branches of government. This encourages inter-ministerial coordination; it provides a means to measure progress against clear benchmarks; and it improves accountability. Second, the framework laws typically allow for a permanent dialogue between government and civil society organizations, by establishing national food security councils often linked to the highest level of government and whose members are ministers or their delegates, and civil society representatives. The mechanisms through which the participation of civil society is ensured vary across States, but they include the overseeing of Poverty Reduction Strategies by civil society, and representation by civil society in national institutions. Many States have also created food policy councils to ensure continued engagement and participation between civil society and government.

b. Eastern and Southern Africa

Although progress towards framework laws on the right to food has been slower in Eastern and Southern Africa, a number of countries, including Malawi, Mozambique and Uganda, currently have draft framework laws awaiting adoption by parliament. Mozambique, though not a signatory to the International Covenant on Economic, Social and Cultural Rights, has been approaching issues of hunger and food access from a human rights perspective for a number of years and for the past few years has been pursuing a right to food framework law. The government tasked the Food and Nutritional Security Technical Secretariat (SETSAN), an inter-ministerial coordination body, with the drafting of the legislation in 2006. Starting in 2009, representatives from the Ministries of Agriculture, Justice, Women and Social Affairs and Health, as well as civil society, academia and the FAO developed a draft law through a participatory process. The draft law was submitted in 2009 to the Minister of Agriculture for approval. Once approval is granted, validation of the draft will be sought through regional and national seminars. The case of Mozambique provides an excellent example of both a government-led initiative to adopt a human rights approach and of a participatory process, with inclusive participation of the most vulnerable from across the country at most phases of the drafting.

Discussions on the need for a legislative framework for food and nutrition in Uganda date back to 1993, when following an international conference on nutrition, held by the FAO, the Government undertook the drafting of a food and nutrition policy as well as a framework law, both grounded in human rights principles. After roughly ten years of development, the Uganda Food and Nutrition Policy (UFNP) was finalized in 2003. The UFNP was adopted with a strong rights-based focus and explicit reference to the right to food in the guiding principles of the strategy. A draft of the Food and Nutrition Bill was also made available in 2003 by the Ministry of Health and the Ministry of Agriculture. After a number of delays, the Government conducted extensive consultations with local governments and district-based stakeholders across the country, leading to a final draft Food and Nutrition Bill in 2008. As stated in the draft, the objective of the Bill is “to recognize, promote and protect the right to food as a fundamental human right” and “to use a rights-based approach in planning, budgeting and implementing of Uganda Food and Nutrition Policy and to ensure the participation of rights holders and the accountability of duty bearers”.

The Draft Bill achieves this by stating in law: “(e)very person has a right to food and to be free from hunger and undernutrition.” After further delays in 2009 and 2010, the Ministry of Finance cleared the Bill in 2011. The Bill is now with the Ministry of Agriculture, awaiting approval in the Cabinet and Parliament. The Bill, if passed, will support legally-binding obligations to realize the right to food and will enhance the establishment of the Ugandan Food and Nutrition Council.

Malawi has also been in the process of adopting a framework law based on right to food principles for almost a decade. Malawi’s right to food bill was first drafted in 2002, but has undergone numerous revisions since. Unlike in Mozambique, where the initiative came from the Government, the initial push for the right to food bill in Malawi was launched by civil society, who sought a framework law to give effect to the existing Food Security Policy. The Government quickly engaged in the
The challenges and obstacles faced by all three countries in adopting framework laws provide important lessons on right to food framework laws in the region. First, the challenges show the importance of inter-ministerial coordination in the drafting and processing of legislative initiatives on the right to food. In Uganda, it would appear that a lack of effective coordination between different authorities (e.g. the Ministry of Health, the Ministry of Agriculture, the National Planning Authority and the Human Rights Commission) has contributed to the delays in the process and in the passing of legislation. Second, the examples from these three countries highlight that public participation and engagement in the drafting of legal frameworks is not only entirely feasible but leads to stronger legislation. In Malawi a joint drafting committee, comprising civil society and government, prepares a draft bill. A joint drafting committee, comprising civil society and government, prepares a draft bill. A joint drafting committee, comprising civil society and government, prepares a draft bill. Finally, the experiences of all three countries show the importance and necessity of political will and the need for the prioritization of the human right to food by lead government officials in advancing right to food project to create a draft bill. A joint drafting committee comprising three key civil society organizations, the Ministry of Agriculture, the Malawi Human Rights Commission and the Department of Nutrition, was formed to produce the Draft Bill. The Draft Bill was scheduled to be presented to Parliament in 2009 as a government bill, rather than an independent proposal, though in the end it was not presented. Although government efforts have largely been halted since 2010 due to a lack of political will, parliamentarians had been working in close cooperation with civil society and international organizations in the drafting of the legislation. The Special Rapporteur on the right to food, Olivier De Schutter, praised the participatory process stating that: “This wide engagement with all stakeholders is crucial as it promotes ownership of the Bill at each level of society, takes into account all interests, and therefore facilitates its ownership and implementation.”

Civil society organizations and NGOs in Malawi, including the National Right to Food Network and ActionAid, are still hoping for a change in the political climate and are pushing for adoption of the Food Security Bill.

All three of these countries have been successful at drafting legislation but various challenges have arisen, delaying or blocking the adoption by parliament of the right to food framework laws. The challenges and obstacles faced by all three countries in adopting framework laws provide important lessons on right to food framework laws in the region. First, the challenges show the importance of inter-ministerial coordination in the drafting and processing of legislative initiatives on the right to food. In Uganda, it would appear that a lack of effective coordination between different authorities (e.g. the Ministry of Health, the Ministry of Agriculture, the National Planning Authority and the Human Rights Commission) has contributed to the delays in the process and in the passing of legislation. Second, the examples from these three countries highlight that public participation and engagement in the drafting of legal frameworks is not only entirely feasible but leads to stronger legislation. In Malawi a joint drafting committee was established, which included civil society stakeholders. These stakeholders were able to ensure that provisions in the draft addressed the most vulnerable. In Uganda, participation of the Human Rights Commission and other stakeholders led to the inclusion of a rights-based framework in the Draft Bill. Finally, the experiences of all three countries show the importance and necessity of political will and the need for the prioritization of the human right to food by lead government officials in advancing right to food.
claims. While the delays seen in these countries are certainly not attributable to civil society, they show that a sustained civil society presence is ultimately essential to ensuring that political will does not wane, and that rights-based legislation is passed.

At the sub-national level, Zanzibar, a semi-autonomous region in the United Republic of Tanzania, addresses food security from a rights-based perspective through the Zanzibar Food Security and Nutrition Act, passed in 2011. The catalyst for the legislation came through the drafting of the second Poverty Reduction Strategy Paper for Zanzibar, MKUZA, in 2005. Through the design of MKUZA, and supported by the FAO, Zanzibar initiated a food security and nutrition analysis for the country, looking at the policy and legal framework as well as the causes of food insecurity and malnutrition in Zanzibar. When the MKUZA was approved in 2007 by the House of Representatives, food security and nutrition were cross-cutting themes through the strategy, and a mandate to formulate a national food security and nutrition policy was laid down. An inter-ministerial steering committee, with representatives from civil society and the commercial sector, drafted the Zanzibar Food Security and Nutrition Policy and Programme, which was endorsed by the Cabinet of Ministers and then approved by the House of Representatives in April 2008. The Policy mandated the establishment of a framework law, which would implement the policy and governance provisions contained in it as well as the right to food.

The Zanzibar Food Security and Nutrition Act was passed by Parliament in April 2011. The Act inter alia defines the content of the right to food and the corresponding state obligations to respect, protect and fulfil the right to food; mandates equity in the provision of services and resources, with priority assigned to vulnerable groups; establishes a monitoring mechanism (the National Food Security and Nutrition Council) for the realization of the right to food; and instructs sector ministers to account for food security and nutrition concerns in their policies and programmes and to include adequate resources in their budgets. The Act also ends with an assignment of responsibilities to fifteen different ministries, from the Ministry responsible for Good Governance, to the Ministries responsible for Finance, Land, Water and Health. The Act and Policy are now being implemented at the grassroots level through the various ministries and the National Food Security and Nutrition Council, established under the Act to oversee its implementation and monitor the progressive realization of the right to food.

Progress on the implementation of the right to food in Eastern and Southern Africa was discussed at the Expert Consultation on the Implementation of the Right to Food at the National Level in Southern and Eastern Africa, held from 4-5 April 2012 in Nairobi, Kenya. The Expert Consultation was attended by over 45 food experts, parliamentarians, policy-makers and representatives from food producer organizations, NGOs and national human rights institutions from Kenya, Malawi, Mozambique, Rwanda, South Africa, Tanzania, Uganda, Zambia and Zimbabwe, as well as from regional bodies, NGOs and international organizations including the FAO, WFP, OHCHR and UNDP. The Expert Consultation was convened by the United Nations Special Rapporteur on Human Rights (OHCHR) and the United Nations Food and Agriculture Organization (FAO).

There is hope and opportunity for other countries in the region to adopt framework laws embedding the right to food in domestic legal fabrics. South Africa, for example, may be headed in this direction. The South African Human Rights Commission has expressed intentions to deepen the work launched through the Southern African Food Security Change Lab, linking various actors of the food chain in the search for innovative solutions that can improve the sustainability of the food chains. A new framework law on the right to food in South Africa could institutionalize this dialogue, and improve its linkage to policy-making. The South African Human Rights Commission already contributes major reports on issues such as access to land and the situation of agricultural workers; by facilitating a dialogue about the inclusiveness and sustainability of the food system, it would be making another major contribution to the implementation of the right to food in South Africa.

2.3. National strategies for the realization of the right to food

National strategies are key elements of a right to food policy and can provide the impetus for national frameworks laws, such as in Mozambique and Uganda, as well as the basis for long-term sustained visions and plans for combating hunger and ensuring
the right to food. In a number of regions from Latin America to Eastern and Southern Africa, States are designing national strategies for the realization of the right to food. These strategies, which often take the form of policies or plans adopted by parliamentarians, are usually and most effectively developed through a dialogue with civil society, including but not limited to farmers’ organizations, and set targets to be achieved within specific timeframes, based on a shared diagnosis of which priority actions should be taken.

Advances have been promising in Eastern and Southern Africa. In 2002, South Africa adopted the Integrated Food Security Strategy (2002) and a Zero Hunger Strategy was further adopted in 2009. The Government has also defined 12 Outcomes that address the priority areas for the implementation of their Medium Term Strategic Framework 2009-2014. Among these Outcomes is Outcome 7, defined as “vibrant, equitable and sustainable rural communities and food security for all.” The Outcome 7 Delivery Agreement frames food security policy by addressing food availability, accessibility, utilization and affordability. It sets out the key work to be completed before 2014 as well as long-term targets for improving food security by identifying the specific activities particular departments must undertake to reach the identified goals. Although the Outcomes are not legally binding, the Government has committed to ensuring the achievement of the Outcomes through the establishment of the Department for Performance Monitoring and Evaluation (DPME) within the Presidency.

On 18 August 2011, the Kenyan Cabinet, meeting under the Chairmanship of President Mwai Kibaki, approved a National Food Security and Nutrition Policy developed through dialogue with civil society since 2007. Targets are set in the four areas covered by the new strategy: (1) food availability and access; (2) improved nutrition and basic health; (3) stability of food and access through relief and safety nets; and (4) improved food and nutrition information. A draft of the policy refers specifically to human rights including the right to food, outlines financial measures to enable implementation and provides a monitoring framework, as well as anticipating the enactment of a national framework law.

National food policies are also in place in several other countries, including Uganda, United Republic of Tanzania, Mozambique and Zambia. The Uganda Food and Nutrition Policy (UFNP) is an excellent example of a rights-based policy on food and nutrition. For example, of the nine guiding principles of the UFNP, three mention explicitly the right to food. Guiding principle nine reads, “that in the planning, budgeting and implementation of the policy, a Rights-Based Approach will be adopted to promote and protect the right to adequate food and nutrition and ensure participation of the rights’ holders and accountability of duty bearers”. The policy further commits the Government to a number of food and nutrition related goals and objectives in the areas of, \textit{inter alia}, “food supply and accessibility,” “food aid” and “food, nutrition and surveillance,” and provides concrete strategies to achieve them. It also provides plans for the creation of a framework law. Zambia’s National Food and Nutrition Policy (2006) aims to achieve sustainable food and nutrition security in the county. According to news coverage of the launch of the policy, Health Minister Brian Chituwo stated that the Government would create an enabling socio-economic environment to ensure that the right to adequate food and to be free from hunger are realized. The National Food and Nutrition Policy is the only food and nutrition strategy of Zambia and is used as a basis for the monitoring and implementing of food and nutrition related activities. A National Food and Nutrition Commission also promotes food and nutrition related activities and advises the Government accordingly. These national policies can, as is evident in both the case of Mozambique and Uganda, incorporate a rights-based framework and provide the basis for the future codification of rights in national legislation, sometimes creating the committees and setting deadlines for the development and drafting of said legislation. In providing a rights-based framework, they are able to ensure that policies support the most vulnerable and incorporate their voices in both policy drafting and implementation. However, national strategies that are not solidly grounded in the human right to adequate food run a high risk of not meeting their objectives of reducing food insecurity. Ensuring a human rights framework in national strategies means that the setting of targets and the identification of the concrete measures to be adopted should be the result of meaningful public participation; that the authorities responsible for implementation should be held accountable for results; and that the indicators for measuring progress should be based on the normative components of the right to food, including equality and non-discrimination. Most importantly, to ensure accountability, independent monitoring is required of the policy documents adopted by the Government, a task that could be entrusted to national human rights institutions, to public prosecutors, or to ombudspersons. Additionally, ring-fencing of resources is required to ensure sustainable funding of these plans. Until these different conditions are met, the various strategies...
adopted by the government could remain ineffective, since they may not reflect the needs of the intended beneficiaries and there will be no sanction associated with a failure to deliver.80

2.4. Other domestic instruments for protecting the right to food

As securing the right to food touches on many areas including agriculture, health and nutrition, social protection, animal and fisheries management, land, environment, disaster management, gender, rural development, finance, investment and trade, a coordinated effort is needed between corresponding ministries in each country for the development of policies and legislation promoting the right to food. While national framework laws based on right to food principles, overarching national strategies with long-term solutions, and coordination between multiple stakeholders and government agencies and ministries are ideal ways to support the right to food, individual ministries can and should engage in programmes that, at a minimum, protect the right to food and, wherever possible, help to facilitate its progressive realization. While many countries do not have right to food framework laws, most have other laws, policies or programmes that have components which support the right to food. These initiatives are far too numerous to cover here, but the following examples show that laws, programmes and policies in a range of sectors may contribute to realizing the right to food, in addition to or as a part of coordinated efforts.

As for additional or complementary legal frameworks, some countries have addressed the right to food through laws that focus on access to food for particularly vulnerable or marginalized populations. For example, the right to adequate food of all children in Uganda is specifically protected under the law, and denying a child his/her right to food is punishable under the Penal Code Act (PCA) of Uganda – the legal instrument for interpreting criminal law.81 Other laws focus on important aspects of the right to food, such as access to rural land particularly for small-holders, food reserves, health and nutrition, and so on.

Policies aimed at ends other than improving access to food, such as national land policies, can also deal with important aspects of the right to food. Kenya has a new and noteworthy land policy. After years of negotiations and delays, Kenya adopted a new national land policy in December 2009.82 The policy, among other things, aims to correct injustices against women, children and minority groups.83 The policy also aims to stop the hoarding of land for speculation through the introduction of taxes to discourage ownership of idle land,84 and includes accountability and monitoring mechanisms.85

Finally, specific government programmes can help support the right to food depending on their provisions and modes of implementation and if they are put forward in a human rights-based framework. For example, the right to food could be supported by programmes that provide targeted aid to the most vulnerable through agricultural support by way of extension programmes or environmentally sensitive agricultural reinvestment, feeding programmes in primary and elementary schools, public procurement schemes aimed at supporting small-scale farmers or other initiatives aimed at increasing the access of small-scale farmers to local food markets.

Like national policies, these area specific laws, programmes and policies are worth noting if they support rights based approaches that seek to empower and support the most vulnerable in society, provide for participation and ensure adequate accountability mechanisms.

2.5. The role of judicial and non-judicial monitoring mechanisms

a. Judicial monitoring

The recognition of the right to food in domestic legal orders is not only of symbolic value. It can have a significant impact in protecting, promoting and ensuring the right to food. Courts can serve as key monitoring agents of domestic laws, providing a venue for the review of government action (or inaction) by individuals or groups within the State. Courts can act as monitoring agents in a number of ways. First, as independent interpreting agents, courts are charged with defining the scope and content of domestic obligations and legislation, particularly in common-law jurisdictions. For example in a constitutional petition in 2011, the High Court at Embu in Kenya reaffirmed the status of economic, social and cultural rights in Kenya. The case concerned the unlawful and violent eviction of 1,122 persons, including children, women and the elderly, from their homes by the District Commissioner.86 In its ruling the Court found that as Kenya had ratified the International Covenant on Economic, Social and Cultural rights, it was duty bound to “respect, protect and enforce the rights therein.”87 The Court employed language from the General Comments of the UN Committee on Economic, Social and Cultural Rights to provide the definition of the rights violated.88 The Court
relied on international law in finding the evictions to be unlawful and in awarding damages to the victims. In so doing, the Court reaffirmed the status of international human rights law in Kenya and provided the basis for future generations of Kenyans to seek the enforcement of their economic, social and cultural rights.

Second, recognition of the right to food in domestic legal orders, particularly constitutions, also allows constitutional courts to ensure that domestic laws and regulations are interpreted in accordance with the requirements of the right to food. Courts can strike down laws that lead to violations of the right to food, as in Colombia and Guatemala, or sanction such violations that may result from administrative practice, as we have seen in India in the famous People’s Union for Civil Liberties v. Union of India and Others case launched in 2001. In both Kenya and South Africa the constitutional protection of the right to food has been invoked to challenge legislation and to address government non-action.

In Kenneth George and others v. Minister of Environmental Affairs and Tourism, a group of South African fishermen challenged a domestic law, The Marine Living Resources Act, which favoured commercial fishing over small-scale traditional fisheries. These fishing communities had lost access to the sea following the enactment of the law and alleged that the government had failed to respect, protect and promote their right to food by preventing access to food, by allowing for the deterioration of the right of access to food and by failing to improve the communities’ access to food. In a 2007 ruling, the High Court not only found violations of the right to food and provided remedies to the fishing communities, but also required that the Government create a task force made up of members of the community as well as the government to “prepare a process that will develop a new legislative and policy framework to accommodate traditional fisheries more effectively.” The Court further required that the framework developed “should take into account international and national legal obligation and policy directives to accommodate the socio-economic rights of these fishers and to ensure equitable access to marine resources for those fishers.”

Following the court order, a committee was formed to work on the drafting of the new legislative and policy framework. A new draft small-scale fishery policy was published in the government Gazette in October 2010. In 2011 a final draft was handed to the Minister of Agriculture, Forestry and Fisheries and approved in December 2011 by all legislative mechanisms. On 4 May 2012, following a public consultation process, the Small Scale Fisheries Policy was approved through the South Africa Cabinet and entered into force.

The Policy recognizes the importance of small-scale fisheries in contributing to food security in South Africa, understanding them as a “critical safety net” that prevents households from falling deeper into poverty. It is framed around human rights and food security, with an emphasis on women and sustainable practices. It has also adopted a participatory human rights approach to take into consideration the socio-economic rights of fishers: for example, the bill allocates rights to

Figure 3: Implementing the Right to Food in South Africa

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<tr>
<td>Constitutional protection of the Right to Food is afforded through Article 27(1)(b) of the post-apartheid Constitution</td>
<td>The Integrated Food Security Strategy is adopted and aims to ensure “universal physical, social and economic access to sufficient, safe and nutritious food” for all</td>
<td>The Medium Term Strategic Framework (2009-2014) sets food security policy, as well as short-term and long-term goals</td>
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<td>The High Court rules the Marine Living Resource Act violates the right to food of fisherfolk and requires the participatory development of a new legislative and policy framework</td>
<td>Following public consultations, the human rights-based Small Scale Fisheries Policy is approved through the South African Cabinet</td>
<td>The Department of Performance Monitoring and Evaluation is established to monitor implementation and assist the Government to focus and perform better</td>
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| Setting Priorities 2010 | |
|-------------------------| |
| The Government sets “vibrant, equitable and sustainable rural communities and food security for all” as a national priority | |
community-based legal entities made up of individuals who meet the set criteria, which includes South African citizenship and a proven historical dependence and involvement with the resource in question. The Policy gives recognition of customary rights as legal rights, and in doing so provides protection for customary rights of fishing communities, making them difficult to extinguish. The Policy also allows for progressive understandings of custom, which enables communities to grow and develop their practice, while still being protected under the law. Finally, under the policy, fishing rights near the shore are given exclusively to small-scale fisheries. Concerns have been raised regarding the implementation of the policy, which will need to be monitored in the coming months and years.

The newly adopted provision of the Kenyan Constitution has already been invoked by the Consumer Federation of Kenya in a suit it brought against the Kenyan Government on 30 May 2011 for not adopting measures that would allow the population to cope with the high prices of basic commodities, including unga (maize flour), the staple diet of Kenyans. The Constitution of Kenya makes rights explicitly justiciable, by prescribing the “fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights” (Article 21) and outlining claim mechanisms in cases of a right being denied (Article 22). The case was heard on 28 February 2012. Depending on its outcome, the case could not only provide relief to residents of Kenya today, but also lay the framework for future generations to challenge government actions or inactions that lead to violations of the right to food.

Finally, courts are able to address specific violations of the right to food and offer remedies to victims. For example, a group of 2,041 peasants from Mubende, Uganda, have been seeking redress from the courts following what they claim has been a violation of their right to food. From 17 to 21 August 2001 the Ugandan Army (Uganda People’s Defense Force) reportedly expelled violently 2,041 inhabitants of the four villages of Kitemba, Luwunga, Kijunga and Kiryamakobe in the Mubende District from their land in order to lease it to Kaweri Coffee Plantation Ltd. These individuals were primarily small-scale farmers, producing for self-consumption or for sale on the market. Even those with other professions cultivated plots in the area to produce food for their own consumption. Today, over ten years later, many members of the affected community do not have proper access to food, either because they no longer have land on which to grow food for their own subsistence or because there are few sources of employment in the area that pay sufficient wages to provide for a family. In 2002 the 2,041 evictees brought their case to the Ugandan High Court. While the case relies primarily on eviction and land tenure laws in Uganda, the petitioners will also likely rely on Uganda’s obligations to respect, protect, and fulfil the right to food derived from Uganda’s accession to the ICESCR in presenting their case. Since 2002 the case has been delayed in the Nakawa High Court. Despite significant delays in the judicial process, there is still hope that the court can ensure accountability for these alleged violations of the right to food.

b. Non-judicial monitoring

In addition to the role of courts as monitoring mechanisms, many countries have established independent national human rights institutions, which monitor the compliance of the State with its obligations in the area of human rights, and which in some cases receive complaints from aggrieved individuals. In Eastern and Southern Africa national human rights institutions are playing an ever-increasing role as monitoring agents and active promoters of the progressive realization of the right to food. In countries like Malawi and South Africa, as well as Uganda, where the Ugandan Human Rights Commission played a key role in ensuring a rights based approach in the national Food and Nutrition Policy, national human rights institutions are taking an active role in conversations regarding the right to food. The support of these institutions by government, civil society and donors, while maintaining their independence, will further enhance their ability to monitor and advance the right to food.

In Latin America, national human rights institutions and commissions have played an active role in the promotion and protection of the right to food by serving as monitors of government implementation. For example, the Human Rights Procurator’s Office in Guatemala has issued a series of reports which monitor the implementation of the National Policy on Food and Nutrition Security, and a series of thematic reports on the status of realization of the right to food have been prepared by the Human Rights Procurator’s Office in El Salvador; in Brazil, the Public Ministry is composed of independent public prosecutors who can hold public authorities accountable in the implementation of programmes related to food and nutrition; and in Argentina, following an action by the National Ombudsman, the Supreme Court decided, in September 2007, that the national State and the Government of Chaco Province should provide food and drinking water to the province’s indigenous Toba communities. These are all means of ensuring that Governments take measures guided by the need to...
support the most vulnerable, that they abstain from
action that has a detrimental impact on the enjoyment
of the right to food, and that they move at a reasonable
speed towards the full eradication of hunger and
malnutrition.

3. The relationship to the
Millennium Development Goals

The Committee on Economic, Social and Cultural Rights
underlined that the full realization of the right to food is
“inseparable from social justice, requiring the adoption
of appropriate economic, environmental and social
policies, at both the national and international levels,
oriented to the eradication of poverty and the fulfillment
of all human rights for all.”98 As acknowledged recently
by the European Parliament,99 the right to food can serve
as a compass to shape the international environment in
order to support efforts pursued at the national level.

Indeed, the relevance and credibility of the United
Nations Millennium Development Goals could be
significantly strengthened by being grounded in the
requirements of human rights. The outcome document
adopted at the High-level Plenary Meeting of the General
Assembly on the Millennium Development Goals (20-
22 September 2010) is an important step in this
regard, since it makes an explicit reference to human
rights and, as regards specifically MDG 1, reaffirms “the
right of everyone to have access to safe, sufficient and
nutritious food, consistent with the right to adequate
food and the fundamental right of everyone to be free
from hunger, so as to be able to fully develop and
maintain his or her physical and mental capacities.”100

Why does this matter? Until now, the MDGs largely
failed to recognize human rights as essential to any
sustainable development strategy. Yet, human rights are
not just symbols; they are also tools. They are valuable
because they are operational. This is why the adoption
of development objectives, important as they are, are no
substitute for a legislative framework for the realization
of economic and social rights such as the right to food or
the right to healthcare. However, in order to effectively
provide the impetus required to ensure that States move
towards the full implementation of the MDGs, such a
framework should present a number of characteristics:

1. It should be designed through a participatory process
involving civil society, including marginalized groups.
It should define who, within which timeframe and
with what resources, should take what actions. The
intended beneficiaries of these actions should be
defined as rights-holders.

2. Accountability mechanisms should be established,
allowing victims to hold Governments responsible
for their failure to take action. This removes the stigma
of charity, and it is empowering for victims. Instead
of being helped because they have unsatisfied needs,
they are granted remedies because their rights are
being violated.

3. The framework should also include an equality and
non-discrimination requirement, ensuring that we
focus our attention on the most marginalized and
vulnerable groups – not just the well-connected, the
literate and the favourites of the regime, and not just
groups for whom quick wins can be achieved.

4. Because participation should be ensured in the
process, the people whom we seek to support will co-
design and co-improve the systems that are intended
to serve them. They become actors rather than
passive recipients of aid, and aid is more effective as
a result.

The transformative potential of a human rights
framework on how national policies seek to move
towards the full eradication of hunger and malnutrition
is thus considerable. But its potential to bring about
improvements in development cooperation is equally
important. At its core, the introduction of this framework
leads to a shift from a bilateral relationship between
donors and partner States, to a triangular relationship
actively involving the ultimate beneficiaries and their
representatives (national parliaments and civil society
organizations) in the design and implementation
of development policies. This represents a gain
in effectiveness (since these policies will be more
evidence-based), but also in legitimacy (since they will
be grounded in human rights as universally recognized
values), and in accountability (since we move from the
realm of charity and discretion in relations between
donors and recipients to relations defined as those
between duty-bearers and rights-holders). While the
recent efforts in reforming aid with a view to improving
its effectiveness are moving in the same direction,
explicit reliance on human rights could strengthen those
efforts and help guide them. This would be consistent
with one of the commitments of the States adhering
to the 2005 Paris Declaration on Aid Effectiveness,
which is to enhance partner countries’ accountability
to their citizens and parliaments for their development
policies, strategies and performance.101 It is also
consistent with the reference that the Accra Summit on
Aid Effectiveness of 2-4 September 2008 makes to this
objective.102
4. Conclusion

The examples highlighted above illustrate a change in the way many countries in Eastern and Southern Africa are addressing hunger and malnutrition. Rather than viewing hunger as simply a question of supply and demand, or a matter for private charity, a number of countries are recognizing that food is a legal entitlement. They are taking measures to implement their obligation to respect, protect and fulfill the right to food through domestic constitutional provisions, legislation, strategies, policies and programmes.

Governments, parliamentarians, civil society and independent monitoring institutions all have an important role to play in ensuring the progressive realization of the right to food. It is the role of parliamentarians to hold Governments accountable. It is also their role to create the legislative framework that will ensure that we make progress towards the full eradication of hunger and malnutrition, by setting clear targets, by monitoring progress and by institutionalizing the dialogue between government and civil society to ensure that we move away from technocratic stop-gaps, imposed from the top down, towards the identification of real solutions, developed from the bottom up. It is the role of governments to implement framework laws, strategies, policies and programmes and to guarantee that these instruments meet their targets. It is also the role of States to ensure that all processes, from drafting to implementation, are participatory and transparent. It is the role of civil society to demand from elected representatives human rights-based instruments supporting the right to food for all. It is, moreover, their role to engage with governments and parliamentarians in the drafting and implementing of instruments and to hold governments accountable when they do not meet targets and engage in unjust practices. Finally, it is the role of independent monitoring institutions to conduct periodic, thorough and participatory reviews of government implementation, and to ensure government accountability.

The human right to adequate food provides a signpost. It obliges us to pay attention to the situation of the most marginalized and vulnerable. It requires participation and accountability. It asks questions that are political and not merely technical. It enriches our understanding of what hunger is about, and how to combat it. It offers a better diagnosis of what has gone wrong, and of what to do to eliminate, at last, the injustice of hunger. The countries of Eastern and Southern Africa still have a way to go to ensuring accessible, available and adequate food for all. But with many of the recent developments discussed above, they are on their way.

References

4. As the researchers explain: “Long-term initiatives, such as the enhancement of food production for self-reliance and the reinforcement of access to employment for the most vulnerable, have been complementary to short-term approaches, such as the improvement of health services to mothers and children, improvement of access to safe water and better sanitation conditions, alongside social protection strategies such as cash conditional transfer programmes.” Ibid., p. 51.
7. The core content of the right to food and the corresponding obligations of States to respect, protect and fulfill the right to food, are defined by the Committee on Economic, Social and Cultural Rights, which monitors the implementation of the ICESCR, in its General Comment No. 12. The prescriptions found in General Comment No. 12 are complemented by the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security adopted by the Member States of the FAO Council in November 2004. FAO, Voluntary Guidelines on the progressive realization of the right to adequate food in the context of national food security, 2005 (adopted by the 127th Session of the FAO Council, November 2004) (hereinafter Voluntary Guidelines). For a copy of the Voluntary Guidelines, see http://www.fao.org/docrep/meeting/009/y9825ey/y9825e00.htm.
8. General Comment No. 12, para. 6.


12. Ibid., art. 11.2.

13. In the Convention, the right to adequate food is to be read in conjunction with the right to life, survival and development stipulated at Article 6. States parties to the Convention on the Rights of the Child commit themselves to combat “disease and malnutrition, including within the framework of primary health care, through, inter alia, (…) the provision of adequate nutritious foods and clean drinking-water.” Convention on the Rights of the Child, G.A. res. 44/25, Annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), art. 24(2)(c). All of the countries discussed in this study have either ratified or acceded to the CRC. While Malawi (2 January 1991) has acceded to the CRC, Kenya (30 July 1990), Mozambique (26 April 1994), Rwanda (24 January 1991), South Africa (16 June 1995), Uganda (17 August 1990), United Republic of Tanzania (10 June 1991), Zambia (6 December 1991) and Zimbabwe (11 September 1990) have ratified.

14. Other international instruments have since dealt with the right to food, among them Articles 12 and 14 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the UN General Assembly on 18 December 1979, and the Convention on the Rights of Persons with Disability adopted on 13 December 2006 (Article 28). At regional level, the right to food is protected in the European Social Charter (Articles 4, 12 and 13); the African Charter on Human and People’s Rights (Articles 16, 22 and 24); the African Charter on the Rights and Welfare of the Child (Article 14); the American Convention on Human Rights (Article 26); and the S. Salvador Additional Protocol (Article 12).

15. In 1999, the UN Committee on Economic, Social and Cultural Rights, the body of independent experts monitoring States’ compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted General Comment No. 12 on the right to food. General Comments are not legally binding but are authoritative interpretations of the ICESCR, which is legally binding upon the States Parties to this treaty.

16. In 2003, an Intergovernmental Working Group was established under the auspices of the United Nations Organization for Food and Agriculture (FAO) in order to prepare a set of guidelines on the implementation of the right to food. This process led to the adoption on 23 November 2004, by the 187 Member States of the General Council of the FAO, of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. The Guidelines build on international law and are a set of recommendations States have chosen on how to implement their obligations under Article 11 of the International Covenant on Economic, Social and Cultural Rights.

17. The right to food also places extraterritorial obligations on States. The General Comment No. 12 on the right to food of the UN Committee on Economic, Social and Cultural Rights states that “In the spirit of Article 56 of the Charter of the United Nations, the specific provisions contained in Articles 11, 2, 1, and 23 of the Covenant and the Rome Declaration of the World Food Summit, States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food. In implementing this commitment, States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required” (para. 36).

18. Ibid., para. 29 (“States should consider the adoption of a framework law as a major instrument in the implementation of the national strategy concerning the right to food. The framework law should include provisions on its purpose, the targets or goals to be achieved and the time-frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures. In developing the benchmarks and framework legislation, States parties should actively involve civil society organizations”).


20. General Comment No. 12, para. 21.


23. General Comment No. 12, para. 32.

24. Lidija Knuth and Margret Vidar, Constitutional and Legal Protection of the Right to Food Around the World (FAO Right to Food Unit, 2011), p. 13, available from http://www.fao.org/righttofood/publi_en.htm. Ten countries recognize the right to food as a self-standing right available to all. Ten other countries stipulate the right to food for a specific category of the population only, such as children or prisoners. Five countries have constitutional provisions that stipulate the right to food explicitly as being part of another human right. Also in 2010, Brazil incorporated the right to food into Article 6 of the Federal Constitution and in October 2011, and the constitutional reform process was completed in Mexico, inserting the right to food in the Constitution by amending Articles 4 and 27. Other countries whose constitutions explicitly guarantee the right to food include Bolivia (art. 16), Ecuador (art. 13), Guatemala (art. 99), Guyana (art. 40), Haiti (art. 22) and Nicaragua (art. 63) in Latin America and the Caribbean, while in Asia the Interim Constitution of Nepal recognizes an individual right to food sovereignty (art 18.3). A range of countries in all regions protect the right to food of specific
categories of persons, such as children, or they ensure protection of the right to food through other constitutional provisions, such as those related to the right to health or the right to life. In some countries such as Argentina and Costa Rica, the right to food is given constitutional rank by the International Covenant on Economic, Social and Cultural Rights being directly integrated in the domestic legal order, thus empowering courts to give effect to Article 11 of the Covenant. See generally, ibid.


34. Ibid., art. 61(1).

35. Ibid., art. 25(2).

36. Ibid., art. 25(1).


40. The current constitution was put in place on May 18, 1995. For the full text of Malawi’s constitution see, http://www.sdnp.org.mw/constituti/tdtintdx.html.

41. Article 30(2) of the Malawian Constitution states: “The State shall take all necessary measures for the realization of the right to development. Such measures shall include, amongst other things, equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure.”

42. Article 13(b) of the Malawian Constitution states: “The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals . . . (b) Nutrition . . . To achieve adequate nutrition for all in order to promote good health and self-sufficiency.”

43. Argentina in 2003 (Law creating the National Nutrition and Food Program, 17 January 2003), Guatemala in 2005 (National Nutrition and Food Security System Law, 6 April 2005), Ecuador and Brazil in 2006 (Nutrition and Food Security Law, 27 April 2006 and Law creating the National Nutrition and Food Security System, 15 September 2006, respectively), and Venezuela in 2008 (Nutrition and Food Security Law, Ley Orgánica de Seguridad y Soberanía Agroalimentaria, 31 July 2008). On 19 June 2009, the Nicaraguan Government approved a law on food security and nutrition, the Law of Food and Nutritional Security and Sovereignty (SSAN), which allows the current Government and subsequent Governments to plan and execute policies and actions that guarantee the production of sufficient food in order to ensure the supply and consumption among the poorest population of Nicaragua.

44. The countries concerned are Costa Rica, Dominican Republic, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Bolivia and Uruguay.

45. See the national reports by the América Latina y Caribe Sin Hambre initiative on the right to food: http://www.rlc.fao.org/iniciativa/infda.htm.

46. Coordination may be improved by other means than by the adoption of a framework law. In Panama for instance, a coordinating body was established by Executive Decree of 18 October 2004, creating the National Secretariat for the Coordination of the National Plan on Food Security (Secretaría Nacional de Coordinación y Seguimiento del Plan Alimentario Nacional) (SENAPAN).

47. While not fully ensured yet, the participation of civil society organizations is being considered with coordinating bodies of Bolivia (Consejo Nacional de la Alimentación y Nutrición), Argentina (la Comisión Nacional de Nutrición y Alimentación), and Colombia (Comité Nacional de Prevención y Control de Micronutrientes, CODEMI).

48. In Honduras for instance, civil society participates in local entities overseeing the Poverty Reduction Strategy (Estrategia para la Reducción de la Pobreza, ERP) and is involved in the elaboration of the draft food and nutrition security law. In Brazil, two thirds of the members of the National Council on Food and Nutrition Security (CONSEA) represent civil society organizations. In Peru, civil society is represented in the Inter-Ministerial Commission for Social Affairs (Comisión Intermunicipal de Asuntos Sociales, CIAS). In Venezuela, civil society can participate through the agrarian assemblies (Asambleas Agrarias) and Community Councils (Consejos Comunales). Civil society participates in the National Council for Food and Nutrition Security (Consejo Nacional de Seguridad Alimentaria y Nutricional, CONASAN) in Nicaragua, and in the National Council for Food and Nutrition Security (Consejo Nacional de Seguridad Alimentaria y Nutricional) and the Council for Urban Rural Development (Consejos de Desarrollo Urbano Rural) in Guatemala.
49. The status of these food security councils also may differ from jurisdiction to jurisdiction. In the Brazilian case, CONSEA has a consultative nature, addressing recommendations to the Inter-Ministry Chamber of Food and Nutrition Security, the cross-departmental taskforce in charge of implementing the national food security strategy. See Report of the Special Rapporteur on the right to food, Olivier De Schutter, to the Human Rights Council, Addendum: Mission to Brazil (12-18 October 2009), A/HRC/13/33/Add.6, para. 14, available from http://www.srfood.org/index.php/en/country-missions. But in other countries such as Guatemala and Ecuador the body can make binding decisions. Some of these councils allow for the participation of the private sector. They may then favour a chain-wide learning process about the food system, from the farmer to the consumer, allowing Governments to identify blockages and to improve the sustainability of the system as a whole.


53. Early drafts of the Food and Nutrition Policy lacked a rights-based framework. At the National Seminar on the Implementation of the Right to Adequate Food in Uganda in 22-24 January 2003, organized by Uganda Human Rights Commission (UHRC), the Ministry of Agriculture (MAAIF), Makerere University (MU) and the Oslo-based International Project on the Right to Food in Development (IPRFD) and attended by a representative cross-section of stakeholders, a rights-based framework was envisioned. The seminar made specific recommendations for rights-based amendments to the draft Food and Nutrition Policy, prior to its submission for Cabinet approval. It also laid out a wider strategy and agenda for action to advance the implementation of the right to adequate food in Uganda. Interview with Isabella Rae, Gorta, The Freedom from Hunger Council of Ireland, March 2012.

54. More information on Uganda’s right to food policy can be found in Section 2.3 on national strategies and policies regarding the right to food.


56. Ibid., art. 5(1). However, the right to food is qualified in the Draft Bill. The Draft Bill states that notwithstanding the recognition of the right to food, “interference with or limitation of the exercise of the right to food may be allowed where it is provided by law or where it is necessary for the purpose of a compelling public interest or for promoting the general welfare of the country and is compatible with the nature of the right to food.” Ibid., art. 6. The content of the obligation to fulfill the right to food is also qualified: “the State is only responsible for making provision of a minimum amount of food to a person who is identified as vulnerable under this Act, where that person is suffering or is at risk of suffering from hunger under nutrition.” Ibid., art. 5(3).

57. Attention has slightly been drawn away from it and diverted to the new Nutrition Action Plan launched in 2011 by the President, which is the new political focus at national level. The Plan itself, however, mentions the need to fast-track the adoption of the Bill.

58. The most recent draft of the Bill can be found at http://www.health.go.ug/nutrition/docs/population/FOOD_AND_NUTRITION_BILL_2009.pdf.


63. MKUZA is the Kiswahili acronym for Zanzibar Strategy for Growth and Reduction of Poverty, and stands for: “Mkakati wa Uchumi na Kupunguza Umaskini Zanzibar”.

64. FAO Right to Food, “Creating an Enabling Policy and Legislative Environment for Right to Food Actions at Grassroots Levels”, 2011.


67. On this front, progress in Latin America has been particularly remarkable. Several national strategies and action plans have been developed in the region in recent years, including the Plan Nacional de Seguridad Alimentaria 2009-2015 of Paraguay, the Política Nacional de Seguridad Alimentaria y Nutricional of Nicaragua, the Política de Seguridad Alimentaria y Nutricional 2005-2015 of Honduras, the Política Nacional de Seguridad Alimentaria y Nutricional 2008 in Colombia, the Programa para la Erradicación de la Desnutrición Crónica 2007-2012 in Guatemala, and the Política Nacional de Seguridad Alimentaria y Nutricional in El Salvador. Brazil
From Charity to Entitlement


82. The 2010 Constitution of Kenya provides some guidance regarding land. The Constitution declares that “land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles: (a) equitable access to land; (b) security of land rights; (c) sustainable and productive management of land resources; (d) transparent and cost effective administration of land; (e) sound conservation and protection of ecologically sensitive areas; (f) elimination of gender discrimination in law, customs and practice related to land and property in land; and (g) encouragement of communities to settle and cost effective administration of land; (e) sound conservation and protection of ecologically sensitive areas; (f) elimination of gender discrimination in law, customs and practice related to land and property in land; and (g) encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution.” Constitution of the Republic of Kenya (2010), art. 60.

83. According to a USAID report, the National Land Policy “mandates land restitution or resettlement for those who have been dispossessed and calls for reconsideration of constitutional protection for the property rights of those who obtained their land irregularly. The policy reasserts customary land tenure rights and repudiates the focus on converting customary tenure into individual ownership.” USAID, “Property Rights and Resource Governance: Kenya”, available from http://usaidlandtenure.net/usaidltprproducts/country-profiles/kenya.


85. Along with the National Land Policy, the government formed a National Land Commission. The exact functions of the Commission are not confirmed in the actual text of the policy in the drafting of this report, there is no reason to think that it has changed or dropped this language.

86. Ibrahim Sanger Osman & 1,122 others v. The Minister of State for Provincial Administration and Internal Security & 10 others (2011) eKLR, Constitutional Petition No. 2 of 2011, High Court at Embu (16 November 2011). These individuals and their relatives had occupied the concerned land since the 1940s, initially as grazing land, but beginning in the 1980s as homesteads. The residents were given no written notice of the eviction and the respondents did not obtain a court order or engage in any consultations with the residents.

87. Ibid., p. 8.
88. The rights concerned in this case were the right to adequate housing and the related prohibition of forced evictions as guaranteed by Article 11 of the ICESCR, as well as the right to education, guaranteed under Article 13. See ibid., p. 8.
89. On the justiciability of the right to food and the role of courts, see in particular Christian Courtis, “The right to food as a justiciable right: challenges and strategies”, Max Planck Yearbook of United Nations Law, Volume 11, 2007, p. 317-337; Christophe Golay, The right to food and access to justice. Examples at the national, regional and international levels, (FAO Right to Food Unit, 2009); FIAN International, Advancing the right to food at the national level. Some lessons learned, (Heidelberg, 2009).
91. South Africa, High Court, Kenneth George and Others v. Minister of Environmental Affairs & Tourism, 2007, Founding Affidavit by N. Jaffer, paras. 94 & 96.
92. South Africa, High Court, Kenneth George and Others v. Minister of Environmental Affairs & Tourism, Order 2007, para. 1.
94. South Africa, High Court, Kenneth George and Others v. Minister of Environmental Affairs & Tourism, Order 2007, para. 8.
96. Ibid., s. 1.4.1.
97. Ibid., s. 5.4.2.
98. General Comment No. 12, para. 6 (emphasis added).
99. On 27 September 2011, the European Parliament adopted a resolution detailing a European Union policy framework to assist developing countries in addressing food security challenges. The resolution is largely based on the FAO Voluntary Guidelines to Support Progressive Realization of the Right to Adequate Food in the Context of National Food Security, and it recognizes the need to move towards “A Human-Rights-Based Approach to Sustainable Agriculture.” The resolution also lists a series of measures based on the right to adequate food that could reduce price volatility and what it calls “uncontrolled land acquisition”; and it insists on the need for the European Union to ensure that all its policies converge towards the objective of realizing the Millennium Development Goals, consistent with its commitment towards “Policy Coherence for Development”. For the full text of the resolution, see http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0410+0+DOC+XML+V0//EN&language=EN.
100. UN General Assembly Resolution 65/1, Keeping the promise: united to achieve the Millennium Development Goals, para. 70, (u). See also para. 13, in which the Heads of States and Governments “recognize that development, peace and security and human rights are interlinked and mutually reinforcing”, and “reaffirm that our common fundamental values, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility, are essential for achieving the Millennium Development Goals”.

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Olivier De Schutter was appointed the UN Special Rapporteur on the right to food in March 2008 by the United Nations Human Rights Council. He is independent from any government or organization, and he reports to the Human Rights Council and to the UN General Assembly. For more on the work of the Special Rapporteur on the right to food, visit www.srfood.org or www2.ohchr.org/english/issues/food/index.htm. The Special Rapporteur can be contacted on srfood@ohchr.org.