



THE RIGHT TO FOOD LEGAL PROTECTION IN BANGLADESH



RtF&SS Campaign for
Right to Food &
Social Security
খাদ্য অধিকার ও সামাজিক নিরাপত্তা আন্দোলন

THE RIGHT TO FOOD: LEGAL PROTECTION IN BANGLADESH

Bangladesh Legal Aid and Services Trust (BLAST)
Campaign for Right to Food & Social Security (RtF&SS)

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Bangladesh Legal Aid and Services Trust (BLAST)
Campaign for Right to Food & Social Security (RtF&SS)

LIST OF ACRONYMS

| | |
|----------|--|
| ASK | Ain O Shalish Kendra |
| BELA | Bangladesh Environmental Lawyers Association |
| BIDS | Bangladesh Institute of Development Studies |
| BIGD | BRAC Institute of Governance and Development |
| BLAST | Bangladesh Legal Aid and Services Trust |
| BLC | Bangladesh Law Chronicles |
| BNHRC | Bangladesh National Human Rights Commission |
| BRAC | Bangladesh Rural Advancement Committee |
| BSTI | Bangladesh Standards Testing Institution |
| CAC | Codex Alimentarius Commission's |
| CCTs | Conditional Cash Transfers |
| CESCR | Committee on Economic, Social and Cultural Rights |
| CHT | Chittagong Hill Tracts |
| CIP | Country Investment Plan |
| CPD | Centre for Policy Dialogue |
| CRC | Committee on the Rights of the Child |
| CSO | Civil Society Organisation |
| EGS | Employment Guarantee Scheme |
| FAO | Food and Agriculture Organisation of the United Nations |
| FPMU | Food Planning and Monitoring Unit |
| GoB | Government of Bangladesh |
| HRPB | Human Rights and Peace for Bangladesh |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ILO | International Labour Organisation |
| MDG | Millennium Development Goal |
| MDMS | Mid-Day Meal Scheme |
| MJF | Manusher Jonno Foundation |
| MoFDM | Ministry of Food and Disaster Management |
| NFP | National Food Policy |
| NGO | Non-governmental Organisation |
| NREGA | National Rural Employment Guarantee Act |
| PDS/PFDS | Public Distribution System/Public Food Distribution System |
| PIL | Public interest litigation |
| PoA | Plan of Action |
| PPRC | Power and Participation Research Centre |
| PUCL | People's Union for Civil Liberties |
| RIB | Research Initiatives Bangladesh |
| RtF | Right to food |
| RtF&SS | Campaign for the Right to Food and Social Security |
| RTI | Right to Information |
| SSN | Social Safety Net |
| UN | United Nations |
| UNDP | United Nations Development Organisation |
| UP | Union Parishad |
| VGd | Vulnerable Group Development |
| WFP | World Food Programme |

EXECUTIVE SUMMARY

This research paper on the legal framework of the right to food (RtF) has been prepared in support of the Campaign on the Right to Food and Social Security in Bangladesh (RtF&SS).¹ It is hoped that the paper will be used by campaigners, particularly lawyers, as the paper focuses on legal protection of the right to food and how existing legal mechanisms, such as public interest litigation (PIL) and Right to Information (RTI) requests, can secure the right to food.

The RtF&SS campaign aims to engage organizations and individuals across Bangladesh who are committed to work towards establishing people's fundamental entitlements. This includes the right to food and social security as necessary for creating a life free from hunger, malnutrition, and poverty, and essential for human dignity.

This work is vital in Bangladesh where food security remains a pressing problem. One quarter of the population of Bangladesh faces food insecurity. Chronic under nutrition, or stunting, is widespread, affecting an estimated 41% of children below 5 years of age. One in four women of reproductive age is too thin for her height and more than one in five new-born babies have a low birth weight.²

¹ The website of the RtF&SS campaign: <http://www.RtF&SS.org/>.

² WFP Household Food Security and Nutrition Assessment (2008-2009) and Bangladesh Demographic and Health Survey BDHS 2011; HIES 2010. See <<http://www.wfp.org/countries/bangladesh/overview>> accessed 18 March 2015.

The campaign specifically aims to voice the needs of individuals in order to increase effective implementation, distribution, and monitoring of Social Safety Net (SSN) Programmes; to demand proper implementation of the Public Distribution System (PDS) ; to seek action against food syndicates and illegal hoarding of food grains in the market; to monitor corruption within safety net distribution using the Right to Information Act; to advocate for policy and legal reforms related to securing right to food, social security, and disaster responses; and to undertake appropriate legal action, including public interest litigation, to secure the right to food and social security.

International Law

'The fundamental right of everyone to be free from hunger' was first established as a legal right in 1966 when the International Covenant on Economic and Social Rights (ICESR) was adopted by the UN General Assembly. The Covenant also refers, in Article 11, to, *'the right of everyone to an adequate standard of living for himself and his family, including adequate food...'* providing the foundation of the right to food in a treaty with 164 parties.

Article 11 has been interpreted as encompassing food availability, adequacy and accessibility. Article 2 puts obligations upon each state, notably the duty *'to take steps, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized.'* International law also prescribes how the

right to food should be implemented, monitored and what remedies should be available if it is breached.

The right to food as set out in ICESCR only binds the states who are party to the treaty. States which are not parties to ICESCR, or any other treaty which contains the right to food, may be bound by the right if it also exists in customary international law, which binds all states. The international consensus is that the right to be free from hunger is part of customary international law, but the broader right to food has not yet attained customary status.

Bangladesh national law states that, in general, international treaties are not part of national law until they have been incorporated by a Bangladesh statute. Thus, an individual cannot go to court and claim a right in international law unless that right also exists in national law. Customary international law is part of the law of every country, including Bangladesh. As such the right to be free from hunger is part of Bangladesh law.

Constitutional and Legal Framework

The Constitution of Bangladesh contains both judicially enforceable civil and political rights. It also recognizes economic, social and cultural rights as fundamental principles of state policy. Fundamental principles of state policy are not judicially enforceable, but are critical in interpreting the Constitution and are intended to guide the government and legislature. The right to food is enshrined as a fundamental principle of state policy in Article 15, and the right to safe food has been read into the right to life, guaranteed under Article 32, by the Supreme Court.

Despite the lack of an express constitutional right or a comprehensive framework law securing the right to food, prevailing laws in Bangladesh protect different facets of the right. For example, several laws aim to ensure food safety and punish food adulteration. Quality is protected in laws on grading; laws on the environment, agriculture and hoarding all address food sustainability, accessibility and availability.

Policy Framework

Research suggests that food policy has consistently been a top priority for the government. This is partly a legacy of the 1974 famine in which hunger led to millions of deaths and a loss of political legitimacy for the incumbent government. Since then, subsequent political leaders have been acutely aware that their own political power depends in part on ensuring hunger and famine is avoided. Thus, swift policy change to avert crises is not uncommon and, although nutrition levels are poor, Bangladesh has remarkably low levels of hunger.

The National Food Policy 2006 (NFP) is comprehensive, focusing on three key dimensions: availability, access, and utilization of food for balanced nutrition. Progress towards the NFP's goals has been positive. However, there are a number of criticisms of the policy: it is not accompanied by a framework law and thus does not provide any remedies for individuals when their food rights are violated, and it does not address issues connected to the right to food such as an insufficient minimum wage, land rights, inheritance rules that discriminate against women etc.

The NFP is supplemented by programmes such as the 100 Days Employment

Generation Scheme and policies including the National Child Policy 2011 (targeting food and nutrition issues for children), the Education Policy 2010 (contains provisions on mid-day meals for schoolchildren) and the National Women Development Policy 2011 (focuses on women's nutrition and food security for vulnerable women) which also contain provisions that buttress the right to food. Plans such as the NFP Plan of Action (PoA) and the Country Investment Plan (CIP) guide the implementation of the NFP.

Several Social Safety Net Programmes have been set up to facilitate access to food for vulnerable groups such as widows, ultra-poor women, landless individuals in rural areas and disabled people. Discrimination in the delivery of these safety net programmes is a huge problem, however, particularly in terms of the selection of beneficiaries. Reports suggest that those who do not enjoy political patronage may be especially vulnerable to discrimination.

Institutional Framework

The institutional framework on the right to food is extensive and complex. In terms of legal institutions, a range of courts could play an instrumental role in legal protection of the right to food. The High Court Division of the Supreme Court can and has issued judgments and orders dealing with aspects of food rights.

The Information Commission set up by the Right to Information Act, 2009, also has a key role to play in helping individuals gain information which they can use to assert food rights. The Jatiyo Sangsad, or National Parliament, has passed laws and approved budgetary allocations to secure the right to food. Key Ministries on Social Welfare, and Disaster Management play

a fundamental role in implementing the National Food Policy 2006 and Social Safety Nets alongside local authorities such as City Corporations, Municipalities and Upazila and Union Parishads (UPs). Mobile Courts are a significant innovation by the executive; individuals breaching certain food regulations and laws can be tried and fined on the spot by such Courts. NGOs and statutory bodies are two sets of institutions, often overlooked, which also have responsibilities vis-à-vis the right to food. NGOs such as the World Food Programme (WFP) have helped in the implementation of Social Safety Nets and statutory bodies such as the Bangladesh Standards and Testing Institution (BSTI), the Fisheries Research Institute and the Agricultural Research Institute, can provide key research to assist the campaign and have the potential to influence policy development.

Public Interest Law Initiatives

In Bangladesh, public interest lawyers, environmental lawyers and consumer activists have already brought a number of landmark public interest cases before the High Court Division of the Supreme Court on food rights. In one case, the Court relied on a harmonious reading of Article 15, the right to food and basic necessities, and Article 32, the right to life, in concluding that the failure to provide access to safe and potable water violated the right to life.³ In another case the Court found that individuals had the right to safe food as part of the right to life and, therefore, a shipment of radiated milk powder could not be sold within Bangladesh.⁴

³ *Rabia Bhuiyan, MP v Ministry of LGRD & Others* [2007] 59 DLR (AD) 176.

⁴ *Farooque v Bangladesh*, Writ Petition No. 92 of 1996, 48 DLR (HCD) 438.

Campaigners and organisations, particularly NGOs such as D.Net, Intercooperation, Manusher Jonno Foundation, Nagorik Uddyog, Nijera Kori and Research Initiatives Bangladesh, have also begun to make Right to Information applications relating to access to or distribution of food. These have been particularly useful in challenging corruption in the implementation of SSN programmes in Bangladesh. In one example, a woman eligible for benefits under the government's Vulnerable Group Development (VGD) programme was denied a benefits card by the Union Parishad (UP) Chairman. The woman submitted an RTI request, asking whether she was eligible for the card and how the cards were distributed. The UP responded, stating that she was eligible and she therefore compelled them to provide her with a card.

These initiatives have drawn on the strategies and approaches deployed by the powerful Right to Food campaign in India. The evolution of that campaign, leading to the passage of the Food Security Act 2013, following the public interest litigation petition before the Supreme Court of India by the People's Union for Civil Liberties (PUCI) also suggests the directions which a Bangladesh campaign may take. The PUCI litigation emerged from demands for state accountability on behalf of the poor in Rajasthan who had not been receiving the required employment and food relief mandated by the Rajasthan Famine Code of 1962 despite mounting stocks of food grains. The initial petition had sought enforcement of a constitutional right to food under Article 21 of the Constitution of India, deriving the right to food from the right to life. The Supreme Court of India's repeated interventions, following

initial interim orders directing states to ensure that all closed public distribution shops were reopened within a week, laid the groundwork for subsequent policy and legislative changes.

Campaigns on the Right to Food

The lack of explicit recognition in the Constitution of the right to food as an independent enforceable right is a source of frustration for some within Bangladesh. The Bangladesh National Human Rights Commission (BNHRC) has observed that direct constitutional recognition of the right to food would insulate the right from the ambiguity of judicial interpretation, provide individuals with remedies when their right to food has been violated and improve transparency and accountability by limiting governmental action, and provide individuals with the confidence and legitimacy to demand policies and laws which allow them to realise their right to food.

NGOs, academic institutions, and civil society are increasing the pressure to provide a legal framework for the right to food. After RtF&SS launched the right to food campaign nationally in 2011, they have organised a range of awareness raising events, public consultations, seminars and training events to catalyse the campaign. Now organisations such as Oxfam and Action Aid along with local rights NGOs such as Angikar Bangladesh Foundation and the Campaign for Sustainable Rural Livelihoods, are holding national forums - including briefings with parliamentarians - on food rights. The BNHRC and Oxfam have also held training sessions for lawyers to raise awareness of the need for judicial safeguards on the right to food and to help build the capacity of the legal

community to facilitate legal actions that advance the right.

Organisation and empowerment of farmers and labourers, employment creation, market intervention by the government to stabilize food prices, subsidized food, and adequate food storage have all been identified as key goals in achieving food security. Events such as the Youth Parliament on the Right to Food and the 2015 South Asian Right to Food Conference are further mobilising actors across a wide range of sectors.

Conclusion: Time to Act

Overall, Bangladesh has a number of existing institutions, laws and policies which are well placed to secure the right to food. It is recommended that more use is made of these existing mechanisms, particularly by lawyers, to advance the right to food. For example, the Right to Information Act may be used more widely to ensure fair selection of beneficiaries of Social Safety Nets; rights organisations may incorporate the right to food into their advocacy and casework, as well as monitoring of existing laws, such as food safety laws. Research is also needed to understand the existing situation more clearly, for example, regarding the extent of operation of Pure Food Courts operate or their effectiveness. Finally, reform may be considered to entrench the right to food into the law of Bangladesh, to put in place remedies against discrimination. Only then can the right to food be truly realised.

Questions for the campaign to consider

- How should any future constitutional amendment be drafted?
- Need a participatory process and public consultation to draft an amendment.
- How can we use public interest litigation to further indirect constitutional recognition of the right to food, through interpretation into the right to life, for example?
- How else might public interest litigation be used to secure the right to food? What other issues could be targeted?
- What can be done to improve implementation of existing legislation, particularly food safety legislation?
- How many of the institutions set up to regulate aspects of the right to food are still in existence and functioning?
 - For example, legal researchers should analyse the existence and effectiveness of Pure Food Courts.
 - Technical researchers should investigate how effective organisations such as the Fisheries Research Institute or the Bangladesh Agricultural Research Council are.
- Having examined and evaluated existing institutions, how can they be improved?
- Out of these functioning institutions, which should the campaign target? Which are best placed to effect change?
- Which right to food issues should be prioritised? (e.g. food safety, nutrition, sustainability etc.)
- What are the biggest challenges to the right to food in both the short and long term?

- How do broad, long term challenges such as climate change affect the right to food and what measures can we take to mitigate the effect of these challenges?
- What monitoring mechanisms are currently available to monitor the protection of the right to food? How can they be improved?
- What monitoring mechanisms would the campaign like to see put in place?
- What remedies are currently available when the right to food is violated and how effective are they?
 - For example, if an individual is not receiving their benefits under a SSN Programme, what remedy do they have? Where, or with whom, do they lodge a complaint?
- What remedies should be available if the right to food is violated? For example, should individuals have stronger remedies when their land rights are violated, when their SSN benefits are withheld or when they are unable to access safe food?
- How else can the RTI Act be activated to secure the right to food?
 - To improve beneficiary selection has been discussed as well as the broader issue of UP accountability, but how else can it be utilised?
- How can individuals be empowered to use the RTI Act themselves?
 - E.g. through training, awareness campaigns, etc.
- What is the role of lawyers/paralegals/NGOs in bringing RTI requests?
- Why have human rights NGOs and legal NGOs been inactive in using existing legislation to further the right to food? How can we make ourselves part of the discussion?
- How can we incorporate the right to food and RTI into existing action on rights and remedies?

Recommendations for Government

- Following public consultations, amend the Constitution to entrench the right to food as a fundamental right by including it in Chapter II of the Constitution.
- After public consultations, promulgate a framework law to secure the right to food, consistent with FAO guidelines.
 - This law should give a detailed definition of the scope and content of the right to food, set out obligations for state authorities and private actors, establish essential institutional mechanisms and provide the legal basis for subsidiary legislation and other necessary measures to be taken by the relevant state authorities. It should also contain a non-discrimination clause, provisions for monitoring and also remedies.⁵
- Review existing legislation to ensure its compatibility with the right to food as defined in international law.
 - This review could be carried out by the National Human Rights Commission, in collaboration with relevant NGOs and CSOs.

⁵ FAO, 'A Guide to Legislating for the Right to Food' (2009) <<http://www.fao.org/righttofood/publications/publications-detail/en/c/129278/>> accessed 7 March 2015.

- The review should cover all legislation from all sectors, including agricultural legislation, land legislation, environmental legislation, labour legislation, nutrition and health legislation, the Penal Code, etc.
- The review should conclude with a Plan of Action.
- Consolidate all existing legislation on the right to food and ensure it is consistent and does not overlap.
 - For example, the penalties for offences such as food adulteration should be the same in all applicable legislation to avoid confusion.
- Review policies to ensure that they are compatible with human rights and the right to food, in particular the FAO's PANTHER principles - participation, accountability, non-discrimination, transparency, human dignity, empowerment, and the rule of law.⁶
 - For example, ensure that Social Safety Nets do not discriminate on the basis of nationality or refugee status.
- Ensure that the National Food Policy is compatible with principles of good governance such as transparency and accountability.
- Review all institutional mechanisms for securing the right to food. Ensure that they are fit for purpose and up to date with modern standards. Furthermore, ensure that they comply with human rights

principles, particularly transparency, accountability and participation.

⁶ FAO, 'Integrating the Right to Adequate Food in National Food and Nutrition Security Policies and Programmes' (2014) <<http://www.fao.org/3/a-i4258e.pdf>> accessed 7 March 2015.

INTRODUCTION

This research paper on the legal framework of the right to food has been prepared in support of the Campaign on the Right to Food and Social Security in Bangladesh (RtF&SS).

The campaign aims to ensure participation of concerned organizations and individuals across Bangladesh who are committed to work towards establishing people's fundamental entitlements. This includes the right to food and social security as necessary for establishing a life free from hunger, malnutrition, and poverty, and essential for human dignity. More specifically, the campaign aims to voice the needs of individuals in order to increase effective implementation, distribution, and monitoring of Social Safety Net Programmes; to demand proper implementation of the Public Distribution System; to seek action against food syndicates and illegal hoarding of food grains in the market; to monitor corruption within safety net distribution using the Right to Information Act; to advocate for policy and legal reforms related to securing right to food, social security, and disaster responses; and to undertake appropriate legal action, including public interest litigation, to secure the right to food and social security.



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This paper is intended to inform the campaign in framing recommendations for policy and legal reforms related to securing right to food. It is hoped that this will facilitate interventions by campaign members and others to use existing laws, through public interest litigation or right to information applications, to secure the right to food and social security.

The paper first outlines a conceptual framework for the right to food and then describes the international legal framework for securing the right to food. It then examines the national legal framework on the right to food, encompassing the Constitution as well as laws on agriculture, the environment and food safety. Next, the paper examines the policy framework on the right to food, specifically the National Food Policy 2006, and discusses different Social Safety Net Programmes regarding food access and distribution. The paper also reviews the existing institutional

framework. It then analyses the extent to which public interest litigation and right to information applications are being used to secure the right to food in Bangladesh, and briefly examines and draws on lessons from the experiences of the Right to Food movement in India. The conclusion sets out suggestions for directions and approaches which the campaign may adopt in Bangladesh, including through activation of existing laws.

CONCEPTS: THE RIGHT TO FOOD AND FOOD SECURITY

The right to food

*'The right to adequate food is realized when every man, woman and child, alone or in community with others, has the physical and economic access at all times to adequate food or means for its procurement.'*⁷

When realised, the right to food protects individuals from hunger, food insecurity, and malnutrition. The right further requires food to be 'adequate' as well as nutritious, safe and acceptable within a given culture. Furthermore, in situations where an individual is deprived of access to food because of detention, war or natural disaster, the government has an obligation to provide food directly to that individual.

Dr Jean Ziegler,⁸ former United Nations Special Rapporteur on the Right to Food, described the scope of the right as follows:

'... 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 ensures a physical and mental, individual and collective, fulfilling

⁷ UN Committee on Economic, Social and Cultural Rights (CESCR) 'General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)' (12 May 1999) E/C.12/1999/5, para 6.

⁸ Dr. Jean Ziegler (Switzerland), served as the United Nations Special Rapporteur from 2000 to 2008.

*and dignified life free of fear.'*⁹

*'The right to food is, above all, the right to be able to feed oneself in dignity. The right to food includes the right to have access to the resources and to the means to ensure and produce one's own subsistence, including land, small-scale irrigation and seeds, credit, technology and local and regional markets, especially in rural areas and for vulnerable and discriminated groups, traditional fishing areas, a sufficient income to enable one to live in dignity, including for rural and industrial workers, and access to social security and social assistance for the most deprived. The right to food also includes the right to have access to safe drinking water.'*¹⁰

Food security

The World Food Summit of 1996 defined food security as existing 'when all people at all times have access to sufficient, safe, nutritious food to maintain a healthy and active life.' The World Health Organisation adds that, generally, food security is defined as 'including both physical and economic access to food that meets people's dietary needs as well as their food preferences' and has three facets:¹¹

⁹ UN Special Rapporteur on the right to food, 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on the right to food' (9 January 2008) A/HRC/7/5, para 17.

¹⁰ *ibid*, para 18.

¹¹ World Health Organisation <<http://www.who.int/trade/glossary/story028/en/>> accessed 25 January 2015.

- *Food availability* is the availability of sufficient quantities of food on a consistent basis.
- *Food access* is maintaining and possessing economic and physical resources in order to obtain appropriate food for a nutritious diet.
- *Food use* means the appropriate use of specific foodstuffs based on knowledge of basic nutrition and care, as well as adequate water and sanitation.

The Food and Agricultural Organization of the United Nations (FAO) eventually added a fourth facet to demonstrate the connectedness of the elements of food security:

- The stability of the first three dimensions of food security.¹²

Rights-based approaches and needs-based approaches

Researchers¹³ have identified two different approaches in the discourse around poverty alleviation and food. This distinction is key to understanding exactly what the right to food is and why it is important. The first is the 'needs-based' approach which identifies the basic necessities for human life (food, clean water, sanitation, shelter etc.) and focuses on delivering these basic necessities through charity. According to this approach, the recipient of the services is passive, has no legal right or

protection to the assistance, and has no obligations to the service-giver. A needs-based approach does not require legislation to implement it or coordinated group action.

The other, more modern, approach is a rights-based approach. This approach creates a legal obligation on the state to ensure the right to food. It reconceptualises food as fundamental human right, inherent in the dignity of each person, and something which they are due, rather than something which they are given. This is empowering for the individual, allowing them to hold public authorities to account when they fail to perform their duties and gives individuals a voice in the courts. Furthermore, conceptualising food as a legal right introduces the concept of non-discrimination.

The right to food and related rights

The right to food demonstrates the interdependency of human rights. The right to food is part of the right to an adequate standard of living and is a prerequisite for the right to health. The right to health means that states must generate conditions in which everyone can be as healthy as possible. This includes access to timely, acceptable, and affordable health care of appropriate quality.

The right to food is also closely connected to the right to social security and social protection. Social protection schemes are essential to securing the right to food for many people either directly, through food transfer schemes, or indirectly, through work programmes or cash transfers. The UN Committee on Economic, Social and Cultural Rights

¹² The Food and Agriculture Organisation of the United Nations 'Declaration of the World Food Summit on Food Security' (Rome, 16-18 November 2009) WSFS 2009/2, footnote 1.

¹³ Abdullah Al Faruque, 'From Basic Need to Basic Right: Right to Food in Context' (June 2014) prepared for the National Human Rights Commission of Bangladesh <<http://www.nhrc.org.bd/PDF/Study%20reports/basic%20Right.pdf>> accessed 25 January 2015.

(CESCR) explains this interconnectedness as below:

*'The right to adequate food is indivisibly linked to the inherent dignity of human person and is indispensable for the fulfilment of other human rights enshrined in the Bill of Human Rights. It is also 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 fulfilment of all human rights for all.'*¹⁴

¹⁴ CESCR, 'General Comment No. 12'(12 May 1999) E/C.12/1999/5,para 4.

INTERNATIONAL LEGAL FRAMEWORK FOR SECURING THE RIGHT TO FOOD

Treaty law

Existence of the right

Whilst providing food has long been seen as a moral obligation on the state, the development of the concept of food as a human right has resulted in a wider understanding of a legal obligation on the state to provide food for individuals.¹⁵

As early as 1945, the UN Charter¹⁶ recognised the need to improve the living standards of the global population, and in 1948 the Universal Declaration of Human Rights recognised the right to adequate living standards, including food.¹⁷The International Covenant on

Economic, Social and Cultural Rights, was the first binding international treaty which recognised the right to food in 1966 (coming into force in 1976). Article 11 states:

'1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an

¹⁵ University of Minnesota, 'Economic, Social and Cultural Rights Activism: A Training Resource' section 5, module 12 <<http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module12.htm>> accessed 25 January 2015.

¹⁶ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16 (UN Charter) art 55: *'With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:*
a. higher standards of living, full employment, and conditions of economic and social progress and development;
b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'.

¹⁷ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 25: *'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.'*

*equitable distribution of world food supplies in relation to need.*¹⁸

The scope and content of Article 11 has been interpreted by the CESCR (the UN body of experts that monitors the implementation of ICESCR). In General Comment 12, the Committee defined the core content of the right as follows:

'The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;

The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.'

Availability requires that food should be available in shops for individuals to purchase. It also requires that food should be available from natural resources, either through farming, fishing, hunting or gathering.

Accessibility requires a guarantee of economic and physical access to food. Food should be affordable and individuals should not have to compromise on other basic rights (healthcare, education etc.) in order to secure food. Food should also be physically accessible to those for whom it could be hard to reach such as those living in remote areas, those affected by natural disasters, children, people with disabilities or the elderly.

The idea of **adequacy** encompasses the three requirements of *'quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given*

culture.' Food must provide an individual with all the nutrients that they need to be healthy, taking into account their age, sex, health, occupation, living conditions etc. It must also be safe and uncontaminated with dangerous chemicals or pesticides. Finally, food must not be taboo within the specific culture, thus a state cannot give non-halal meat to Muslims, or beef to Hindus. Adequacy is also connected with **sustainability** – the idea that food should be accessible to future, as well as present, generations. The principle of **non-discrimination** in terms of access to food, as well as to means and entitlements for its procurement, is also fundamental to the right to food.

Obligations imposed upon the state

As well as giving individuals rights, human rights law imposes obligations, particularly upon states. This is reflected in the preamble of the ICESCR which reiterates states' duty under the UN Charter to *'promote universal respect for, and observance of, human rights and freedoms.'*

Article 2 of the ICESCR states:

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

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised

¹⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 11.

without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.'

'Take steps'

Article 2(1) states that states parties must 'take steps' towards the realisation of the right to food. Although the process of 'taking steps' may be long, the Committee has stated that they must be 'deliberate, concrete and targeted'¹⁹ and must be taken within a reasonably short time after the Covenant's entry into force. States must use 'all appropriate means' to take steps such as passing legislation as well as adopting new food policies or passing financial reforms.

'With a view to achieving progressively the full realization of the rights recognized'

According to the Committee, the concept of 'progressive' realisation reflects a recognition that rights will not and cannot be realised immediately. In contrast, they must be realised over a period of time, or progressively. Some obligations must be fulfilled immediately, however, such as the obligation to not discriminate. Also states must ensure that the minimum, core content of each right is satisfied immediately. Thus, any state that fails to ensure the minimum core content of the right, breaches the Covenant.

¹⁹ CESCR, 'General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)' (14 December 1990) E/1991/23, para 2.

Finally, states parties have a duty to 'move as expeditiously and effectively as possible'²⁰ towards full realization of the right to food for all.

'To the maximum of its available resources'

In order for a state party to be able to justify its failure to meet its minimum core obligations by reference to a lack of available resources the state must show '*every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.*'²¹ The Committee emphasises, however, that even when resources are obviously inadequate, a state's obligation to ensure the widest possible enjoyment of all the rights in the Covenant remains, and the obligations to monitor the fulfilment of the rights and to create new strategies and policies do not disappear.²²

Obligation to not discriminate

Article 2(2) clearly establishes the fundamental principle that states may not discriminate in securing human rights. However, 'positive' discrimination in order to correct historic and/or systemic disadvantage is not prohibited. Any discrimination in access to food as well as means for procurement of food amounts to a violation of the Covenant.²³ Violations may be committed by the state itself, or entities insufficiently regulated by states.²⁴

²⁰ *ibid*, para 9.

²¹ *ibid*.

²² *ibid*, para 11.

²³ CESCR, General Comment No. 12, (12 May 1999) E/C.12/1999/5, para 18.

²⁴ *ibid*, para 19.

Respect, protect and fulfil

According to the Committee, Article 11 imposes three types of obligations on states: (1) the obligation to respect (2) the obligation to protect and (3) the obligation to fulfil.²⁵

1. **Obligation to respect:** A state has the obligation not to destroy people's access to food. Even the poorest state must refrain from destroying or interfering with people's access to food. 'Respect-bound obligations' are absolute and imperative.
2. **Obligation to protect:** A state has the obligation to protect an individual's access to food against destruction by a third party, such as their neighbours, employers, or business enterprises.
3. **Obligation to fulfil:** The obligation to fulfil includes both the obligation to facilitate and obligation to provide. The obligation to facilitate requires the state to pro-actively engage in activities to solidify individual's access to and use of resources and means to ensure their livelihood. The obligation to provide states that, when a person or group, for reasons beyond their control, are unable to secure food, the state must provide for them.

Finally, according to international law, international law always prevails over domestic law.²⁶ Therefore, a state cannot rely on its domestic law as a defence for breach of its international obligations.²⁷

²⁵ *ibid*, para 15.

²⁶ *Applicability of the Obligation to Arbitrate under section 21 of the United Nations Headquarters Agreement of 26 June 1947* (Advisory Opinion) [1988] ICJ Rep 12, para 57.

²⁷ *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory* (Advisory Opinion) [1932] PCIJ Series A/B No 44, page 24.

Implementation

In General Comment 12, the Committee elaborates upon ways in which states can implement the right to food. It clearly states that each state has a significant margin of discretion but some steps are essential. One such step is the adoption of a national strategy, based on human rights principles, to ensure food and nutrition security. In implementing the national strategy, states should also set benchmarks for national and international monitoring.

Framework legislation is also key to the implementation of a national strategy. According to the Committee:

*'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.'*²⁸

Monitoring, remedies and accountability

Finally, the Committee has noted that states must set up effective monitoring mechanisms to monitor progress of implementation and ensure corrective administrative and legislative measures can be taken if necessary.

²⁸ CESCR, 'General Comment No. 12' (12 May 1999) E/C.12/1999/5, para 29.

States must also ensure victims of violations of the right to food have access to effective judicial or other appropriate remedies at both international and national levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition.²⁹

Other international treaties

The right to food is also protected in a range of other international treaties, targeting specific groups. The **Convention on the Elimination of All Forms of Discrimination against Women** recognizes the right of pregnant and lactating women to nutrition in article 12(2) in the context of maternity protection.³⁰ The **Convention on the Rights of the Child** also recognizes the right of children to adequate nutrition in article 24(2)(c) and (e) in the context of the right to health and in article 27(3) in the context of the right to an adequate standard of living.³¹ The **Convention on the Rights of Persons with Disabilities** recognizes the right to food in article 25(f) in the context of the right to health and in article 28(1) in the context of the right to an adequate standard of living and social protection.³²

The Human Rights Committee, the body established to monitor the **International Covenant on Civil and Political Rights**,

²⁹ *ibid*, para 32.

³⁰ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) art 12(2).

³¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) arts 24(2), 27.

³² Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD) arts 25(f), 28(1).

has stated that states must adopt positive measures to protect the right to life, including measures to eliminate malnutrition.³³ The Committee against Torture, which monitors the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, has also affirmed that lack of adequate food in prisons can amount to inhuman and degrading treatment.³⁴

The **Geneva Conventions**, which state the fundamentals of international humanitarian law, also recognise the right to food in armed conflict in a range of different provisions. For example, the Third Geneva Convention requires the state to provide prisoners of war with adequate food.³⁵ Another example is Article 55 of the Fourth Geneva Convention which places an affirmative duty on the occupying state to provide food and medical supplies for the occupied population.³⁶

Regional treaties

The right to food is recognised in Article 12 of the **Protocol of San Salvador**. It also addresses the right in article 17 in the context of the protection of the elderly.³⁷ The **African Charter on**

³³ Human Rights Committee, General Comment No. 6: Article 6 (the right to life), (30 April 1982) HRI/GEN/1/Rev.9 (Vol. I) p.176, para 5.

³⁴ Committee Against Torture, 'Conclusions and recommendations of the Committee against Torture: Argentina' (10 November 2004) CAT/C/CR/33/1 para 6(h).

³⁵ Geneva Convention Relative to the Treatment of Prisoners of War (entered into force 21 October 1950) 75 UNTS 135 (Geneva III) arts 20, 26.

³⁶ Geneva Convention Relative to the Protection of Civilian Personnel in Time of War (entered into force 21 October 1950) 75 UNTS 287 (Geneva IV) art 55.

³⁷ Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (entered into force 16 November 1999) OAS Treaty Series No 69 (1988) reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System OEA/Ser L V/II.82 Doc 6 Rev 1 at 67 (1992) (Protocol of San Salvador) art 12.

the Rights and Welfare of the Child recognizes the right of children to nutrition in article 14(2)(c), (d) and (h) in the context of the right to health and health services.³⁸The **Maputo Protocol** recognizes the right to food in article 15. It also addresses the right of pregnant and breastfeeding women to nutrition in article 14(2)(b).³⁹There is no regional human rights treaty for the Asia Pacific, or for South Asia.⁴⁰

Reporting and treaty bodies

Bangladesh consistently reports to the CEDAW Committee and⁴¹ the CRC Committee.⁴²Its first reports to

the CRPD Committee,⁴³ and the HRC are under preparation. It has also reported sporadically to the CERD Committee.⁴⁴Bangladesh has ratified the Optional Protocol to the CRPD⁴⁵ and the Optional Protocol to CEDAW⁴⁶ and, therefore, individuals can make direct complaints to the CRPD and CEDAW Committees. Bangladesh has not ratified the Optional Protocols to ICESCR,⁴⁷ CRC,⁴⁸ or ICCPR.⁴⁹ However, the Bangladesh National Human Rights Commission has recently reported to the UN Human Rights Council as part of the Universal Periodic Review process, as have Bangladesh human rights organisation.⁵⁰

³⁸ African Charter on the Rights and Welfare of the Child (entered into force 29 November 1999) CAB/LEG/24.9/49 (1990) arts 14(2)(c), 14(2)(d) and 14(2)(h).

³⁹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (entered into force 25 November 2005) CAB/LEG/66.6 (September 13 2000); 1 Afr. Hum.Rts. L.J. 40 (2001) (Maputo Protocol) arts 15, 14(2)(b).

⁴⁰ Regional institutions such as the Asia Pacific Forum of National Human Rights Institutions or inter-governmental organisations such as the South Asian Association for Regional Cooperation (SAARC) have not as yet developed any common standards on the right to food. We have not examined in this paper the work of regional human rights organisations, such as Forum-Asia, or of international organisations such as International Commission of Jurists, which have examined aspects of legal protection of the right to food in the region.

⁴¹ CEDAW South Asia, 'Bangladesh' <<http://cedaw-southasia.org/country-status/bangladesh>> accessed 26 February 2015; CEDAW Committee, 'Concluding observations of the Committee on the Elimination of Discrimination against Women: Bangladesh' (22 March 2011) CEDAW/C/BGD/CO/7.

⁴² CRC Committee, 'Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Bangladesh' (June 2009) CRC/C/BGD/CO/4; CRC Committee 'Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Bangladesh' (27 October 2003) CRC/C/15/Add.221; CRC Committee 'Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Bangladesh' (18 Jun 1997) CRC/C/15/Add.74.

⁴³ Ministry of Social Welfare, Government of Bangladesh, 'Implementation of the Convention on the Rights of Persons with Disabilities in Bangladesh' (August 2010) <<http://www.nfddp.gov.bd/index.php/reports/report-of-uncrpd>> accessed 26 February 2015.

⁴⁴ CERD Committee, 'Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: Bangladesh (25 November 1991) CERD/C/192/Add.3; CERD Committee, 'Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: Bangladesh (30 May 2000) CERD/C/379/Add.1.

⁴⁵ On 12 May 2008, see UN Treaty Collection <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en> accessed 26 February 2015.

⁴⁶ 6 September 2000, see UN Treaty Collection <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en> accessed 26 February 2015.

⁴⁷ UN Treaty Collection <https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-3-a&chapter=4&lang=en> accessed 26 February 2015.

⁴⁸ UN Treaty Collection <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11-d&chapter=4&lang=en> accessed 26 February 2015.

⁴⁹ UN Treaty Collection <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en> accessed 26 February 2015.

⁵⁰ Bangladesh National Human Rights Council, 'Annual Report 2013' <<http://www.nhrc.org.bd/PDF/BNHRC%20Annual%20Report%202013%20English.pdf>> accessed 9 March 2015, page 9, 18.

UN Special Procedures and the Right to Food

The Special Rapporteurs (also known as special procedures) of the Human Rights Council are independent human rights experts with mandates to investigate, monitor, report and advise on human rights from a thematic or country-specific perspective. Special Rapporteurs visit countries; provide support in individual cases as well as act on concerns of a wider, structural nature by sending communications to states and others in which they draw attention to alleged violations or abuses; conduct thematic studies; carry out advocacy; raise public awareness, and provide advice for technical cooperation.⁵¹

The mandate of the Special Rapporteur on the right to food was established by the Commission in April 2000 by Resolution 2000/10.⁵² Subsequent to the replacement of the Commission by the Human Rights Council in June 2006, the mandate was endorsed and extended by Resolution 6/2 of September 2007.⁵³ The present Special Rapporteur is Hilal Elver (since June, 2014), a research professor from Turkey. She was preceded by Olivier De Schutter (2008-2014) and Jean Ziegler (2000-2008). The mandate of the Special Rapporteur on the right to food includes:

- a) To promote the full realization of the right to food and the adoption of measures at the national, regional and international levels

for the realization of the right of everyone to adequate food and the fundamental right of everyone to be free from hunger so as to be able fully to develop and maintain their physical and mental capacities;

- b) To examine ways and means of overcoming existing and emerging obstacles to the realization of the right to food;
- c) To continue mainstreaming a gender perspective and taking into account an age dimension in the fulfilment of the mandate, considering that women and children are disproportionately affected by hunger, food insecurity and poverty;
- d) To submit proposals that could help the realization of Millennium Development Goal (MDG) No. 1 to halve by the year 2015 the proportion of people who suffer from hunger, as well as to realize the right to food, in particular, taking into account the role of international assistance and cooperation in reinforcing national actions to implement sustainable food security policies;
- e) To present recommendations on possible steps with a view to achieving progressively the full realization of the right to food, including steps to promote the conditions for everyone to be free from hunger and as soon as possible enjoy fully the right to food, taking into account lessons learnt in the implementation of

⁵¹ OHCHR, 'UN Special Procedures' <<http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx>> accessed 1 March 2015.

⁵² UN Commission on Human Rights, 'Commission on Human Rights resolution 2000/10' (17 April 2000).

⁵³ Human Rights Council, 'Resolution 6/2: Mandate of the Special Rapporteur on the right to food' (27 September 2007) A/HRC/6/L.5/Rev.1.

- national plans to combat hunger;
- f) To work in close cooperation with all States, intergovernmental and non-governmental organizations (NGOs), the Committee on Economic, Social and Cultural Rights, as well as with other relevant actors representing the broadest possible range of interests and experiences, within their respective mandates, to take fully into account the need to promote the effective realization of the right to food for all, including in the on-going negotiations in different fields;
- g) To continue participating in and contributing to relevant international conferences and events with the aim of promoting the realization of the right to food.⁵⁴

Customary international law

It is almost unanimously accepted that Article 38 of the Statute of the International Court of Justice definitively states the four sources of international law: a) international treaties/conventions b) international custom, as evidence of a general practice accepted as law c) general principles of law d) judicial decisions and teachings of the most highly qualified publicists, as a subsidiary means for determining the rules of law. The first two sources, treaties and customary international law, are generally recognised as the most important and widely used sources of law. International human rights law is comprised of all four sources of law.

⁵⁴ *ibid.*

Whilst a treaty is only binding on its parties, customary international law is binding on all states. Furthermore, treaties and custom may exist in parallel: therefore, although the right to food is recognised in the ICESCR, it may also exist in customary international law and therefore bind states who are not party to ICESCR. Whilst most states are bound by the right to food in treaty law, some, such as the United States and Cuba have only signed but not ratified ICESCR, meaning that they are not bound to uphold its provisions. Other states, such as Myanmar and Saudi Arabia have neither signed nor ratified the treaty. It is thus significant whether the right to food exists in customary international law.

Proving the existence of treaty law is straightforward – one merely needs to find the treaty. Proving the existence of customary international law, however, is far more complex. Two requirements must be fulfilled to prove a legal rule: (1) the existence of extensive and virtually uniform state practice that complies with the asserted rule and (2) the existence of *opinio juris*, the belief on the part of states that an action was carried out because it was a legal obligation. For example, in order to prove the right to food in customary international law, one would need to show that states act in conformity with the right to food (state practice), and that they do this because they believe they have a duty in law to do this (*opinio juris*).

These two requirements often merge into each other – evidence of state practice can sometimes also be evidence of *opinio juris* and vice versa. Treaties, declarations, the behaviour of states in international forums and UN General

Assembly Resolutions⁵⁵ are just a few types of evidence that can be used to prove the existence of both *opinio juris* and state practice.

There are a range of declarations and statements by states regarding the right to food, suggesting that it may be emerging as a principle of customary international human rights law. However, that position remains controversial, and many argue that whilst the right to be free from hunger has emerged as a principle of custom, the right to adequate food has not yet achieved that status.⁵⁶

Nonetheless, there are a number of pieces of evidence of state practice and *opinio juris*. The numerous declarations made by states at World Food Conferences and Summits through the past 40 years demonstrate a belief on the part of states that a right to food exists. For example, the Universal Declaration on the Eradication of Hunger and Malnutrition, drawn up at the 1974 World Food Conference which was held in the aftermath of the Bangladesh famine states:

‘Every man, woman, and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.’⁵⁷

⁵⁵ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 392 [191].

⁵⁶ Smita Narula, ‘The Right to Food: Holding Global Actors Accountable Under International Law’ (2006) 44 *Columbia Journal of Transnational Law* 691, 762.

⁵⁷ Universal Declaration on the Eradication of Hunger and Malnutrition (adopted 16 November 1974 by the World Food Conference) E/CONF.65/20 Chapter IV (United Nations publication, Sales No. E.75.II.A.3). Endorsed by UNGA Res 3348 (XXIX) (17 December 1974).

At the 1996⁵⁸, 2002⁵⁹ and 2009⁶⁰ World Food Summits governments repeatedly

⁵⁸ During the 1996 World Food Summit, governments adopted the Rome Declaration on World Food Security, affirming in Article 1: ‘We the Heads of State and Government, or our representatives, gathered at the World Food Summit at the invitation of the FAO, reaffirm the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.’ See Rome Declaration on World Food Security (13 November 1996) <<http://www.fao.org/docrep/003/w3613e/w3613e00.htm>> accessed on 10 February 2015.

The World Food Summit was attended by 185 countries and the European Community, as well as 790 NGO delegates representing a total of 457 organizations. At the same summit governments also signed up to the Plan of Action of the World Food Summit. One of the objectives of this plan was: ‘To clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger, as stated in the International Covenant on Economic, Social and Cultural Rights and other relevant international and regional instruments, and to give particular attention to the implementation and full and progressive realisation of this right as a means of achieving food security for all. To this end, governments, in partnership with all actors of civil society, will, as appropriate: (a) Make every effort to implement the provisions of Article 11 of the International Covenant on Economic, Social and Cultural Rights (the Covenant) and relevant provisions of other international and regional instruments’ See World Food Summit Plan of Action (13-17 November 1996) <<http://www.fao.org/docrep/003/w3613e/w3613e00.htm>> accessed 10 February 2015, Objective 7.4.

⁵⁹ At the 2002 World Food Summit the governments adopted the ‘Declaration of the World Food Summit: five years later’ which called for the establishment of an intergovernmental working group to prepare a set of guidelines on the implementation of the right to food. This resulted in the Right to Food Guidelines - a practical tool that seeks to reflect existing human rights standards and guide states in implementing the right to food. They are designed to help states draw up their own national policies and programmes. See ‘The Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security’ (November 2004) <<http://www.fao.org/docrep/009/y7937e/y7937e00.htm>> accessed 10 February 2015, adopted by the 127th Session of the FAO Council.

⁶⁰ Finally, again, at the 2009 World Food Summit, states restated: ‘We affirm the right of everyone to have access to safe, sufficient and nutritious food, consistent with the progressive realization of the right to adequate food in the context of national food security.’ See Declaration of the World Summit on Food Security (16-18 November 2009) WSFS 2009/2, para 16.

reaffirmed their commitment to the right to adequate food and the fundamental right to be free from hunger.

The World Food Summit's declarations were part of the process that led to the Millennium Development Goals in which states pledged to halve, between 1990 and 2015, the proportion of people who suffer from hunger. The MDGs were unanimously adopted by the UN General Assembly⁶¹ and represent almost universal acceptance of the right to be free from hunger. It has even been posited that they represent customary international law themselves,⁶² but this view is not widely held. In September 2015 the draft Sustainable Development Goals (SDGs) should be officially adopted, building upon the MDGs. Goal 2 is currently stated as, '*end hunger, achieve food security and improved nutrition, and promote sustainable agriculture*' thus restating the importance of food to the international community.⁶³

A number of UN General Assembly resolutions also affirm the existence of an obligation to provide food.⁶⁴

⁶¹ Road Map Towards the Implementation of the United Nations Millennium Declaration (6 September 2001) UN Doc A/56/326.

⁶² Philip Alston, 'Ships passing in the night: the current state of the human rights and development debate seen through the lens of the Millennium Development Goals' (August 2005) 27(3) Human Rights Quarterly 755.

⁶³ Sustainable Development, 'Open Working Group proposal for Sustainable Development Goals' <<https://sustainabledevelopment.un.org/focussdgs.html>> accessed 9 March 2015.

⁶⁴ UNGA Res 57/226 (adopted 18 December 2002 by 196 states), '*Also reaffirms the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger so as to be able fully to develop and maintain their physical and mental capacities.*'

State practice also supports the view that there is a customary right to food. States which do not have an obligation imposed by constitutional or national law still consistently respect the right to food, particularly the right to be free from hunger. Countries regularly send food aid to foreign countries to alleviate hunger and governments consistently subsidise food for vulnerable groups, provide social safety net programmes and provide food aid to their own populations. Even the United States, a non-signatory of ICESCR, still respects the right to food through a number of Social Safety Net programmes, subsidies and domestic and foreign food aid.⁶⁵

Overall, whilst the position may not be conclusive, there is a wide range of state practice and *opinio juris* to support the idea that the right to food is emerging as a right in customary international law.

Social protection

The right to social protection provides that all persons have the right to equal enjoyment of adequate protection from social risks and contingencies, through contributory (social insurance) or non-contributory (social assistance) schemes, without discrimination of any kind. It is linked to the right to social security, established in Article 9 of ICESCR.

Social protection policies are crucial to realising the right to food, as well as helping individuals out of poverty. The ILO's Social Protection Floors Recommendation 2012 (No. 202) demonstrates global commitment to the right to social security as a human right.⁶⁶

⁶⁵ Smita Narula, 'The Right to Food' 777.

⁶⁶ Recommendation No. 202 was adopted almost unanimously (one abstention) by governments and employers' and workers' representatives of the International Labour Organization (ILO)'s member States at the 101st Session of the International Labour Conference.

This document is the first international legal instrument to recognise the role of social security as both an economic and social necessity and a human right. The Recommendation identifies four basic social security guarantees that, if present, should allow individuals to live in dignity:

- Access to essential health care, including maternity care;
- Basic income security for children;
- Basic income security for persons of working age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability;
- Basic income security for older persons.

Social Safety Nets

Social Safety Nets (SSNs) are a key poverty alleviation tool. They are usually non-contributory transfer programs which protect vulnerable people from shocks which can lead to them falling into (abject) poverty. SSNs can be delivered by both the public and private sector. Types of SSNs include:

- Cash transfers
- Food-based programs such as food stamps, vouchers, and coupons
- In-kind transfers
- Conditional cash transfers
- Price subsidies for food, electricity, or public transport
- Public works/employment programmes
- Fee waivers and exemptions for health care, schooling and utilities

Rights-based Social Safety Nets

The idea of a ‘rights-based social safety net’ has been emerging in discourse around Social Safety Nets, but exactly what does it mean? According to the FAO:

‘A rights-based social or food safety net explicitly recognizes that its purpose is to fulfil rights rather than provide discretionary charity. Such a safety net is designed and implemented with full regard for all human rights and may be closely related to the realization of other rights, such as the right to health, education, work and participation.’⁶⁷

A rights-based social safety net confers upon an individual a justiciable right – if a person is denied their benefit under a social safety net they can pursue legal action, claiming that their right has been breached.⁶⁸ The Indian National Rural Employment Guarantee Act, discussed further below, is an excellent example of such a social safety net, embedded in law.

Finally, respect for the principle of non-discrimination is fundamental in the design and implementation of any rights-based social safety net. As stated by the Committee on Economic, Social, and Cultural Rights:

...[A]ny discrimination in access to food, as well as to means and entitlements for its procurement,

⁶⁷ Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security, FAO, ‘Safety Nets and the Right to Food’ (2-5 February 2004) IGWG RTFG 3/INF 1.

⁶⁸ Devesh Kapur and Prakirti Nangia, ‘A Targeted Approach: India’s Expanding Social Safety Net’ (24 September 2013) <<http://www.worldpoliticsreview.com/articles/13244/a-targeted-approach-indias-expanding-social-safety-net>> accessed 17 February 2015.

*on the grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth or other status with purpose or effect of nullifying or impairing the equal enjoyment of exercise of economic, social and cultural right constitutes a violation of the Covenant.*⁶⁹

Targeting traditionally disadvantaged groups, i.e. ‘positive discrimination’, is permitted, if not encouraged, to redress the balance between different groups based on class, race, gender or other factors.⁷⁰

International law in Bangladesh

It is now clear that the right to food is recognised in many areas of international law. However, what is the relevance of a right in international law in Bangladesh? What is the relationship between international and national law?

Treaties

Once a treaty is signed and ratified, a state is obliged under international law to follow the provisions of that treaty. The situation in domestic law (the law of that country) may be different from the position of international law, however.

States generally adopt either a monist or dualist approach to international treaties. Monist states allow treaties to be incorporated automatically into domestic law, without requiring the passage of any new domestic legislation. The Constitution of the Netherlands, for example, states that provisions of treaties

⁶⁹ CESCR, ‘General Comment No. 12’ (12 May 1999) E/C.12/1999/5, para 18.

⁷⁰ Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines, FAO, ‘Safety Nets and the Right to Food’ (2-5 February 2004) IGWG RTFG 3/INF 1.

and of resolutions by international institutions become binding as soon as they are published.⁷¹ Thus, once the state has signed and ratified a treaty, if an individual citizen believes that a right contained in that international treaty has been breached, they can bring a case in their national courts against the state, demanding fulfilment of their right.

Dualist states, on the other hand, require the national legislature to pass legislation incorporating the treaty into national law. The UK, for example, takes this approach.⁷² Thus, until the national legislature has passed this legislation, individual citizens cannot rely on rights in the treaty in their national courts.

Article 25 of the Bangladesh Constitution states that Bangladesh will respect the principles of international law and UN Charter. Nevertheless, Bangladesh adopts a strictly dualist position.⁷³ However, the Supreme Court has stated that treaties can be used as an aid to interpretation of provisions of domestic law, including the Constitution:

*‘the court can look into these conventions and covenants as an aid to interpretation of the provisions of Part III, particularly to determine the rights implicit in the rights like the right to life and the right to liberty, but not enumerated in the Constitution.’*⁷⁴

Furthermore, if domestic law is silent on a particular issue, the courts can turn to international law:

⁷¹ Constitution of the Netherlands, article 93.

⁷² *JH Rayner (Mincing Lane Ltd) v Department of Trade and Industry* [1990] 2 AC 419.

⁷³ *BNWLA v Government of Bangladesh and Others*, 14 BLC (2009) 703.

⁷⁴ *ibid.*

*'The national courts should not... straightway ignore the international obligations which a country undertakes. If the domestic laws are not clear enough or there is nothing therein the national courts should draw upon the principles incorporated in the international instruments.'*⁷⁵

In *Rabia Bhuiyan, MP v Ministry of LGRD & Others*⁷⁶ the Supreme Court made extensive reference to provisions of ICESCR and comments of the Committee on Economic, Social and Cultural Rights, as well as the CRC, in defining the duties and responsibilities of the respondents.

Finally, the Supreme Court has stated that:

*'Unless provisions of international instruments are contrary to our domestic laws, the beneficial provisions may profitably be referred to and implemented in appropriate cases.'*⁷⁷

Overall, international treaties have the potential to play a key role in domestic courts. For example, using the principle that international conventions can be used to interpret concepts such as the 'right to life' in the Constitution, one could argue that the right to food is a 'right implicit in the right to life' and therefore a right in domestic, as well as international law. This possibility is explored further in the following section.

Customary international law

It has been suggested earlier that the right to food, or at least the right to be free from hunger, also exists at customary international law. The orthodox position in Bangladesh is that, unless there is clearly contradictory domestic legislation, courts should give effect to international customary law.⁷⁸ Although a number of cases do refer to customary law, there are very few examples of its direct application.⁷⁹

⁷⁵ *HM Ershad v Bangladesh* 21 BLD(2001) (AD) 69.

⁷⁶ *Rabia Bhuiyan, MP v Ministry of LGRD & Others* 59 DLR (2007) (AD) 176. See section on public interest litigation for full case summary.

⁷⁷ *Anika Ali v Rezwanul Ahsan* [2011] 40 CLC (AD) 5145 para 17.

⁷⁸ *Bangladesh v Unimarine SA Panama* 29 DLR (1977) 252; *Bangladesh and others v Sombon Asavhan* 32 DLR (1980) 198.

⁷⁹ M Shah Alam, *Enforcement of International Law by Domestic Courts* (2007, New Warsi Book Corporation, Dhaka) p114.

NATIONAL FRAMEWORK FOR SECURING THE RIGHT TO FOOD

Context

Almost immediately after the birth of Bangladesh in 1971, famine struck the country, peaking in 1974. The causes of the famine are complex, but significant contributing factors include the skyrocketing price of basic food items such as rice, which, despite being available, were unaffordable for most people; the government's failure to control the price hikes due to its lack of reserves; flooding and bad weather; legislation preventing the movement and distribution of food grain around the country; and the US government's decision to deliberately withhold food aid until Bangladesh acceded to its political demands, including the cessation of jute exports to Cuba.

The government's failure to deal with the famine effectively led to the deaths of thousands and political turmoil. Since then, political instability has consistently been a feature of Bangladeshi politics, leading to a number of military coups, election boycotts and *hartals* (strikes).

Nevertheless, development has been impressive. Poverty⁸⁰ fell from 57% of the population in 1992 to 32% in 2010. In the same period, infant mortality fell from 92 deaths per 1000 to 39.⁸¹ The percentage of the population with access to an improved water source has also increased from 70% in 1992 to 83% in

⁸⁰ Poverty headcount ratio at national poverty lines, from the World Bank Databank <<http://data.worldbank.org/country/bangladesh>> accessed 28 March 2015.

⁸¹ *ibid.*

2010.⁸² This is due to a combination of government policy and the very strong role of international and local NGOs such as BRAC. Although food grain production has increased and hunger is reducing, other problems such as malnutrition are on the increase.⁸³ Further new challenges, such as increasing urbanisation and climate change also require new approaches and research.

Food and related issues are consistently a key concern for Bangladeshis. In a 2011 baseline study by the Bangladesh National Human Rights Commission (BNHRC) people were asked to identify major problems facing Bangladesh. 80% identified price hikes of essentials (including food) as the biggest problem.⁸⁴ In 2008, the media reported that 'food riots', caused by global 2007-2011 food price hikes, had erupted in Bangladesh. Whilst the reasons behind these riots are undoubtedly more complex, it is clear that people's inability to access food was an important factor.⁸⁵

⁸² *ibid.*

⁸³ BD News, 'Bangladesh's serious hidden hunger problem' (29 March 2015) <<http://bdnews24.com/bangladesh/2015/03/29/bangladesh-s-serious-hidden-hunger-problem>> accessed 30 March 2015.

⁸⁴ Bangladesh National Human Rights Commission (BNHRC), 'Perceptions, Attitudes and Understanding: A baseline survey on human rights in Bangladesh' (December 2011) <<http://www.NHRC.org.bd/PDF/Summary%20Report.pdf>> accessed 22 March 2015.

⁸⁵ Naomi Hossain and Ferdous Jahan, 'The Food Riots that Never Were: The Moral and Political Economy of Food Security in Bangladesh' (2014), Food Riots and Food Rights project report. Brighton/Dhaka: Institute of Development Studies/University of Dhaka, Annex.

As further evidence of the importance of food, when asked by the BNHRC what services the government should provide for free, just under 50% of individuals identified food.⁸⁶ Furthermore, food safety has been identified as one of the biggest human rights concerns in Bangladesh.⁸⁷ In the same survey by BLAST, 82% of people identified food rights as important.

In India, a right to food movement began in 2001 and quickly made significant progress, leading to the passing of new legislation establishing a legal guarantee of food to two-thirds of the population. Bangladesh social policy has, in the past, tended to resemble India's but it is notable that, until now, there has been no parallel right to food movement in Bangladesh.⁸⁸

Now, however, the food scene in Bangladesh is undergoing another shift. The campaign to establish a right to food is taking hold and change is on the horizon.

Legal Framework

The Constitution of the People's Republic of Bangladesh

The Constitution of Bangladesh includes two basic categories of individual rights: civil and political rights; and economic, social, and cultural rights. Civil and political rights, which are enforced directly by the judiciary, have been termed as fundamental rights. Economic,

⁸⁶ BNHRC, 'A baseline survey on human rights in Bangladesh' (2011).

⁸⁷ BLAST, 'Baseline Perception Study of Access to Justice for the Marginalized and Excluded Through Community Legal Services' (2014).

⁸⁸ Naomi Hossain and Ferdous Jahan, 'The Food Riots that Never Were' (2014), page 39.

social, and cultural rights, which are not enforced judicially, are defined as fundamental principles of state policy.

In general, constitutional recognition of the right to food tends to occur in three different ways: 1) direct recognition as a human right in itself⁸⁹ or as part of another human right 2) recognition as a directive principle of state policy⁹⁰ 3) implicit recognition through expansive interpretation of other human rights (e.g. right to life).⁹¹ The Bangladesh Constitution recognises the right to food in the second way, and there are suggestions that it may recognise the right to food in the third way too. There is no direct recognition of the right to food, however, at present.

Fundamental rights

The most important fundamental right in relation to the right to food is the right to life. Article 32 of the Constitution of Bangladesh states:

'No person shall be deprived of life or personal liberty, save in accordance with law.'

Fundamental principles of state policy

Fundamental principles of state policy are not judicially enforceable, but are critical in interpreting the Constitution and are intended to guide the government and legislature.

⁸⁹ Bolivia, Ecuador, South Africa and Columbia are several examples of countries that protect the right to food directly.

⁹⁰ Nigeria and Sri Lanka are two examples of countries that protect the right to food as a directive principle of state policy.

⁹¹ FAO, 'A Guide to Legislating for the Right to Food' (2009) <<http://www.fao.org/righttofood/publications/publications-detail/en/c/129278/>> accessed 7 March 2015, page 34.

The right to food is enshrined as a fundamental principle of state policy in Article 15(a):

'It shall be a fundamental responsibility of the State to attain, [...] a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens [...] the provision of the basic necessities of life, including food, clothing, shelter, education and medical care.'

Furthermore, Article 16 promotes rural development:

'The State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution, the provision of rural electrification, the development of cottage and other industries, and the improvement of education, communications and public health, in those areas, so as progressively to remove the disparity in the standards of living between the urban and the rural areas.'

Finally, Article 18 requires the state to promote public health.

'The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health.'

If the right to not be deprived of one's life is interpreted to include the right not to die from hunger, malnutrition or poisoning then there is a possibility that a harmonious reading of Articles 15, 16, 18 and 32 could produce a right to food. In a number of cases the High Court has taken this interpretation: these cases are explored in detail later.⁹²

The BNHRC has observed that direct constitutional recognition of the right to food would protect the right from the ambiguity of judicial interpretation and empower individuals to demand policies and laws which allow them to realise their right to food.⁹³ Crucially, it would also provide individuals with remedies against the authorities when their right to food is violated.

A number of other articles of the Constitution are relevant to the right to food, particularly to campaigning for the right to food. Article 31 guarantees the right to protection before law, Article 33 sets out safeguards as to arrest and detention, Article 27 guarantees equality before the law and Article 28 prohibits discrimination. Furthermore, Articles 37, 38 and 39 guarantee freedom of assembly, association, and thought and conscience.

Food Safety

Access to safe food is a crucial facet of the right to adequate food. Food adulteration and contamination is a prevalent problem in Bangladesh,⁹⁴with,

⁹² See section on public interest litigation in Bangladesh.

⁹³ Faruque, 'From Basic Need to Basic Right: Right to Food in Context' (June 2014). <<http://www.nhrc.org.bd/PDF/Study%20reports/basic%20Right.pdf>>.

⁹⁴ The Daily Star, 'Food Safety in Bangladesh' (8 May 2014) <<http://www.thedailystar.net/business/food-safety-in-bangladesh-23177>> accessed 11 February 2015.

as noted earlier, food safety being identified as one of the biggest human rights concerns in Bangladesh.⁹⁵

The **Penal Code, 1860** was the first law to establish food adulteration as an offence. Sections 272 and 273 make food adulteration, or the sale of adulterated food or drink, punishable by up to six months imprisonment, a Tk 1,000 fine or both.

The **Pesticides Ordinance, 1971** requires pesticides to be registered and requires individuals intending to use them in any way (including sale, import, manufacture etc.) to obtain a licence. The Ordinance also establishes the Pesticide Technical Advisory Committee which is still functioning. It has also recently been updated by the Pesticides (Amendment) Act 2009.

The **Bangladesh Standards and Testing Institution Ordinance, 1985** establishes the Bangladesh Standards and Testing Institution (BSTI) for establishing Bangladesh-specific standards of quality and dimensions, to promote standardization, quality control, to secure compliance with its standards, and to certify the quality of foods, among others. The law also empowers the government to restrict the sale or import of certain goods that do not meet BSTI standards, and to punish those in breach of its provisions. The BSTI may appoint inspectors for inspecting the quality and standard of articles and to take samples of any article to test it against the BSTI's standards.

⁹⁵ BLAST, 'Baseline Perception Study of Access to Justice for the Marginalized and Excluded Through Community Legal Services' (2014).

The **Consumer Rights Protection Act, 2009** addresses defines consumer offences, or '*acts against consumer rights*', such as '*selling food containing banned substances or selling expired products*.' It clearly stipulates the punishments, the highest being three years imprisonment or a fine of Tk 2,00,000. It also provides for the establishment of a National Consumer Rights Protection Council. The courts of first class magistrates or metropolitan magistrates are empowered to try offences under this Act. Overall, the Act has the potential to ensure the right to safe food, but due to lack of public awareness, it has not been implemented widely.

The **Mobile Courts Act** was also passed in **2009**. Mobile courts are staffed by executive magistrates and are empowered to hear and try certain offences on the spot and impose up to 2 years imprisonment. Under the Act, Mobile Courts have jurisdiction to try offences under sections 272 and 273 of the Penal Code, and all offences under the Safe Food Act, 2013, enumerated below.⁹⁶

Executive Magistrates in charge of Mobile Courts have the power to search, seize and dispose of perishable, dangerous or hazardous substances if necessary.

The most recent comprehensive legislation⁹⁷ is the **Safe Food Act, 2013**. Repealing the Pure Food Ordinance, 1959,⁹⁸ this aims to ensure the right to safe food through the practice of safe food production, importation, processing, storage, logistics, marketing

⁹⁶ Section 75 of the Safe Food Act, 2013.

⁹⁷ See Annex 1 for a comprehensive list of all food safety legislation.

⁹⁸ Section 90 of the Safe Food Act, 2013.

and sales. It establishes Food Courts⁹⁹ to try new offences of adding radioactive ingredients, heavy metals, insecticides, hormones, antibiotics, or harmful chemicals to food, and the creation of health hazards in restaurants and hotels. It also includes offences such as the storage, marketing and sale of toxic foodstuffs; the sale, import, manufacture, storage or supply of adulterated foodstuffs; and the sale, import, manufacture, storage or supply of food articles which have expired.

The law also establishes the National Safe Food Management Advisory Council and the Bangladesh Safe Food Authority. Any aggrieved person can lodge a complaint with the Bangladesh Safe Food Authority. It has also empowered Mobile Courts to try cases according to the Mobile Court Act, 2009.

The **Formalin Control Act, 2015** provides for harsher penalties for production, import, transport, stock, sale and use without license, including life imprisonment and a Tk 20,00,000 fine as the maximum punishment for importing, producing or hoarding formalin without a licence. The Act has provision of 7 years imprisonment, but not less than 3 years or a fine of Tk 5,00,000, but not less than 2,00,000 for traders in case of the violation of the terms and conditions of the license. For transporting formalin or possessing it without having license, the specified punishment is 2 years imprisonment, a Tk 3,00,000 fine or both. The Act also specifies punishments for filing false cases to harass individuals.¹⁰⁰

⁹⁹ 'Khaddo Adalots' (Food Courts), see Section 64 of the Safe Food Act.

¹⁰⁰ The Daily Star, 'Formalin Control Bill passed' (17 February 2015) <<http://www.thedailystar.net/back-page/formalin-control-bill-passed-2486>> accessed 20 March 2015.

Though the Act provides for testing of formalin, there is no adequate equipment available for testing which is a barrier for the proper implementation of the Act.

Quality of food/nutrition

Several laws also regulate the *quality* of food. For example, the **Agricultural Produce (Grading and Marking) Act, 1937** requires that all products be given a visible designation so consumers can identify their quality and the **Seeds Ordinance, 1977** regulates the Seed Certification Agency which carries out quality control of seeds. Other laws such as the **Fish and Fish Products (Inspection and Quality Control) Ordinance, 1983** regulate the processes of food production to ensure that the resulting product is of high quality.¹⁰¹ Bangladesh was one of the first countries in South Asia to ban iodised salt from the market due to concerns over iodine deficiency, which inhibits growth and brain function in children and causes thyroid diseased in adults, with the **Iodine Deficiency Disorders Prevention Act, 1989**.¹⁰² The **Breast-Milk Substitutes (Regulation of Marketing) Ordinance, 1984** was later followed by the **Breast-milk Substitutes, Baby Food, Commercially Manufactured Supplementary Baby Food and its Equipment (Regulation of Marketing) Act, 2013**, which updates the restrictions on advertising breast milk substitutes, baby food and commercially manufactured supplementary baby food. These emerged from a health rights movement, focusing on ensuring breast-feeding of children, given its proven

¹⁰¹ See Annex 1 for further detail.

¹⁰² UNICEF, 'Review of National Legislation for Universal Salt Iodization: South Asia and East Asia and the Pacific' (2013) <http://www.unicef.org/eapro/Review_of_National_Legislation_for_Universal_Salt_Iodization_Final.pdf> accessed 19 March 2015.

nutritional benefits, and resisting the influx of expensive powdered milk of less nutritional value. The significant overlap, between the health and food issues raised by breast milk and iodised salt demonstrates the interconnectedness of the right to food with other rights.

Sustainability

The notion of *sustainability* is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations.¹⁰³ Bangladesh has a number of laws that deal with sustainability such as laws to protect against overfishing, laws to protect forest produce, and laws to preserve the environment.¹⁰⁴

For example, the **Protection and Conservation of Fish Act, 1950** gives the government the power to make rules on a range of issues including the use and size of fishing nets, the use of poison or explosives in fishing, the seasons during which fishing may take place and the minimum size of fish which may be caught. The Act bans monofilament synthetic nylon fibre nets. Punishments for violation of any of its provisions include up to 3 years imprisonment and a Tk 10,000 fine. This Act has been amended recently, and supplemented by among others the **Marine Fisheries Ordinance, 1983** which also makes provision for the conservation of marine fisheries and prohibits certain types of fishing.

The **Forest Act, 1927** gives the government the power to designate certain forests as protected or reserved, and consolidates the law relating to forests and transit of forest-produce.

¹⁰³ CESCR, 'General Comment No. 12' (12 May 1999) E/C.12/1999/5, para 7.

¹⁰⁴ See Annex 1 for further detail.

More recently, the government has passed the **Bangladesh Environmental Conservation Act, 1995** which aims to reduce pollution and protect the environment.

Although it has not previously been prioritised as a right to food issue, the notion of sustainability will continue to grow in importance as the effects of climate change become more severe. Bangladesh is, and will continue to be, more affected than most states by climate change, and so it is essential that future food policies and legislation consider sustainability and resilience to natural disasters and extreme weather.

Agriculture and food production

The *availability* of food refers to the possibilities either for feeding oneself directly from productive land or other natural resources or for proper distribution, processing and market systems that can move food from the site of production to where there is demand. Many laws dealing with food production, agriculture and land secure the first facet of food availability in different ways.

For example, the **Agriculturists' Loans Act, 1884** allows the government to loan money to farmers in order to help them purchase seed and cattle, and several Acts set up Institutes to research better methods of farming. A century on, the **Land Reforms Ordinance, 1984** sought to reform the law relating to land tenure, land holding and land transfer with a view to maximising production and ensuring a better relationship between landowners and *bargadars* (share croppers).¹⁰⁵ For example, it

¹⁰⁵ A *bargadar* or sharecropper is a person who cultivates another person's land on the condition that he delivers a portion of the produce of that land to the owner.

requires *bargardar* relationships to be formalised through a contract and sets out specific circumstances in which such contracts may be terminated. It also sets out how produce cultivated by the *bargardar* should be divided between the *bargardar* and the landowner. Finally, if the landowner decides to sell to someone other than his family, the *bargardar* has a right to be asked if he would like to buy the land, before it is offered to other buyers.

The **Agricultural Labour (Minimum Wages) Ordinance, 1984** provides for a minimum wage for agricultural workers and the **Bangladesh Labour Act, 2006** provides for minimum wages and working conditions (including health and hygiene) – all of which are relevant to the capacity to purchase food and maintain health.

Accessibility

Even before the 1974 famine, food scarcity was a pervasive problem in Bangladesh, leading to a number of laws preventing food hoarding and regulating the quantities of certain essential food items that individuals could buy. For example, the **Famine Insurance Disaster Fund, 1937** requires the government to earmark a fund for famine and disaster relief. The **Essential Articles (Price Control and Anti-Hoarding) Act, 1953** gives the government the power to fix the maximum prices of some essential articles and set limits on the quantities of certain essential articles that families can possess. The **Control of Essential Commodities Act, 1956** further strengthens the government's power to intervene in the food market through the regulation or prohibition of the production, treatment, keeping, storage, movement, transport, supply,

distribution, disposal, acquisition, use, trade or commerce of certain essential items.

The **Essential Commodities Act, 1957** allows the government to regulate the production, movement, transport and sale of an essential commodity across Bangladesh and to regulate prices in order to secure the equitable distribution of an essential commodity between different areas in Bangladesh and availability at fair prices. This was extended to the Chittagong Hill-Tracts (CHT) in 1970 by a further Ordinance.

The **Agricultural Produce Markets Regulation Act, 1964** regulates the purchase and sale of agricultural produce and the markets in which such produce is bought and sold. It also establishes Market Advisory Committees.

Immediately after the 1974 Famine, the **Special Powers Act, 1974** was enacted, and provides for the harshest punishments for food hoarding and adulteration, including the death penalty. It also establishes Special Tribunals to try these crimes through fast-track procedures and put limits on the rights of the accused, including restrictions on bail, and the scope for preventive detention.

The **Rice Collection and Control Order, 2008** allows the government to intervene in the rice market to set reasonable prices and ensure an adequate rice stock. This order was passed during the 2008 food crisis, caused by the large spike in food prices internationally. It allows the government to collect sufficient amounts of rice from the owners of licensed rice mills and to compel mill owners to supply rice at set prices and quantities. It prevents unlicensed rice mill owners from operating in the rice business and

sets out requirements and regulations for the buying, selling and distribution of rice.¹⁰⁶

In general, the history of Bangladesh's food markets is marked by strong government intervention to stabilise food prices, prevent hoarding and ensure distribution throughout the country of essential products. Now, however, the most recent food policy (analysed below) envisages a different, more market oriented future.

Between 1980 and 2008 approximately 219 natural disasters took place, and annually around 10 million people in Bangladesh were affected by a natural disaster. The **Disaster Management Act, 2012** aims to reduce the risks and effects of natural disasters. Its provisions intend to achieve effective implementation of post disaster emergency response; rehabilitation and recovery measures; provision of emergency humanitarian assistance to the most vulnerable community people; strengthening of institutional capacity for effective coordination of disaster management involving government and non-government organisations, and establishing a disaster management system capable of dealing with all hazards for the country.¹⁰⁷

Conclusion

Although Bangladesh does not directly protect the right to food in a specific law or the Constitution, there are huge ranges of laws which indirectly protect

the various facets of the right to food. Taken together, these various laws create a strong national legal framework for protection of the right to food. The multiplicity of such laws, particularly on food safety, results in a number of overlaps and lack of clarity regarding responsibilities and powers. The offence of food adulteration, for example, is created by at least three different laws. Each law, however, frames the offence differently, with different punishments, which can lead to confusion, both for those seeking remedies, and those enforcing them.

Further, enforcement and implementation of the law in Bangladesh is a perennial problem. More effective policing and courts are required for progress in this area. Another issue in terms of activation of the legal mechanisms in place is the lack of accountability and transparency. There are no effective monitoring systems and remedies available to individuals if their right to food is violated.

Direct constitutional recognition of the right to food is one way in which effective remedies could be afforded to individuals. Another option is the promulgation of a framework law which could set out clearly the obligations of all state actors; set out the rights of each individual and remedies available in case of their violation; set up enforcement and monitoring mechanisms and institutions; and set out the financial arrangements needed to implement these provisions.¹⁰⁸

¹⁰⁶ Naomi Hossain and Ferdous Jahan, 'The Food Riots that Never Were' (2014) Annex.

¹⁰⁷ Bangladesh Awami League, 'Disaster Management – Institution, Policies And Legal Framework' <<https://www.albd.org/index.php/en/resources/special-reports/1387-disaster-management-institution-policies-and-legal-framework>> accessed 19 March 2015.

¹⁰⁸ FAO, 'A Guide to Legislating for the Right to Food' (2009) <<http://www.fao.org/righttofood/publications/publications-detail/en/c/129278/>> accessed 7 March 2015, page 53.

Policy Framework on the Right to Food

Food policy has frequently been a priority for the Bangladesh government. Hossain and Jahan¹⁰⁹ have argued that it is the spectre of the 1974 famine that has kept food policy at the top of the government's agenda. The 1974 famine led the incumbent government to lose popular support and so, in order to prevent a similar outcome, subsequent governments have been keen to rapidly change and adopt policies necessary to prevent acute mass hunger (rapid onset events). Hossain argues, however, that there is less political pressure on the government to address issues such as malnutrition and chronic hunger and, as a result, they remain significant problems.

The first Food Policy of 1988 aimed to achieve food security for all by increasing food production and focused primarily on the availability of food grain. In the decades since, with vastly improving food availability, government policy is moving to focus on improving nutrition, particularly for women and children,¹¹⁰ and food security in a context of an increased population and a decrease in cultivable land. It should also be noted that it is increasingly acknowledged that a significant cause of malnutrition in tropical countries such as Bangladesh is not lack of food, but parasites and similar conditions caused

¹⁰⁹ Naomi Hossain and Ferdous Jahan, 'The Food Riots that Never Were' (2014).

¹¹⁰ See, for example, the government's a new cash incentive policy for poor pregnant women and children. Women must attend child nutrition classes and must check their child's growth to receive the money. BD News 24, 'Bangladesh introduces cash incentives for poor pregnant women and children' (23 March 2015) <<http://bdnews24.com/bangladesh/2015/03/23/bangladesh-introduces-cash-incentive-for-poor-pregnant-women-and-children>> accessed 30 March 2015.

by poor water and sanitation, that ensure chronic malabsorption of nutrients. Thus, in order to ensure better nourishment, measures to improve sanitation and water quality are essential.

National Food Policy 2006

The National Food Policy 2006 (NFP) is a comprehensive approach to food security encompassing three key dimensions: availability, access, and utilization of food for balanced nutrition. It follows the Bangladesh National Plan of Action for Nutrition 1997 which aimed to ensure that malnutrition would no longer be a public health problem. The Ministry of Food and Disaster Management is responsible for formulation and implementation of the NFP.

A primary goal of the NFP 2006 is to improve nutrition. Other changes are notable in the NFP which reflect changes in the food scenario of Bangladesh more widely such as a move towards a more liberalised market orientated system.

The goal of the NFP is to ensure a dependable food security system for all Bangladeshis at all times. The specific objectives of the food policy are:

- 1) to ensure adequate and stable supply of safe and nutritious food;
- 2) to enhance purchasing power of the people for increased food accessibility; and
- 3) to ensure adequate nutrition for all, especially women and children.

The Food Planning and Monitoring Unit's (FPMU) reports suggest less than consistent progress in policy implementation. Three indicators are used to monitor progress: prevalence of

undernourishment, child underweight and child stunting. Bangladesh met the MDG target for undernourishment in the early 2000s. No progress was made for the next decade, however, and undernourishment has risen in the last three years, reaching 16.3% in 2012/13. Underweight and stunting declined between 2007/08 and 2011/12. Estimates for 2012/13 show child underweight at 35.1% and child stunting at 38.7%. Overall, if the improvement recorded for stunting and underweight can be maintained, the targets for 2015 should be met.¹¹¹

According to the FAO:

*'The National Food Policy 2006... is a good document outlining important strategies for managing food security, and supported by a plan of action. Effective implementation of the strategies of the food policy is, however, important as many such policies in developing countries are mostly rhetoric... The NFP provides a holistic framework for addressing food security challenges at national, household and individual levels, embracing all key dimensions of food security- availability, economic, social and physical access, and nutrition/food utilization.'*¹¹²

The NFP is focused on ensuring national food security rather than securing people's right to food. It recognises food

as a basic need, but not as a right.¹¹³ It also provides no remedy for the failure to implement various strategic interventions or programmes. The policy does not refer to the obligations of Bangladesh under the ICESCR to protect, fulfil and respect the right to food through, for example, preventing the destruction of access to food. The obligation to respect the right to food is particularly important in Bangladesh as many development projects destroy existing access to food and the livelihood of the population.

Further, the NFP does not address any requirements for the private sector to ensure preserving natural habitats and developing sustainably. It addresses some sustainability issues including expanding using bio-fertilizers, water conservation, and soil and water testing to conserve and protect the environment.

The NFP has not been accompanied by the framework legislation mandated by international standards. As noted earlier, the standards set by the Committee on the Covenant on Economic, Social and Cultural rights require a framework law with provisions on purpose, target and goals to be achieved alongside the means by which this purpose could be best achieved. It should also include monitoring procedures and remedies as well as setting out institutional responsibility for each process.¹¹⁴

Discrimination

International standards mandate that any national strategy should prohibit discrimination in terms of access and to food or resources. This includes

¹¹¹ FPMU, Ministry of Food, GoB, 'National Food Policy Plan of Action and Country Investment Plan: Monitoring Report 2014' (June 2014) <<http://fpmu.gov.bd/agridrupal/monitoring-report-national-food-policy-plan-action-and-country-investment-plan>> accessed 15 February 2015.

¹¹² FAO, 'Improving Food Safety, Quality and Food Control in Bangladesh: Review of Food Safety and Quality Related Policies in Bangladesh' (June 2010.) pages 4-5.

¹¹³ Ministry of Food and Disaster Management, GoB 'National Food Policy 2006' (14 August 2006) page 3.

¹¹⁴ CESCR, 'General Comment No. 12' (12 May 1999) E/C.12/1999/5, para 29.

guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families.¹¹⁵ Bangladesh law, however, still discriminates against women in terms of inheritance meaning that women own as little as 3.5% of all land in Bangladesh.¹¹⁶

Accountability

The Committee on Economic, Social and Cultural rights has stated that the implementation of national food strategy should comply with a number of principle of good governance, notably accountability, transparency, people's participation, decentralization, legislative capacity and the independence of the judiciary. The NFP 2006, however, falls short of compliance with these principles in certain ways. For example, as stated earlier, there is no discussion of measures required for scope for participation of poorer people and transparency and accountability are limited.¹¹⁷

National Plans

NFP Plan of Action 2008-2015

The NFP Plan of Action (PoA) translates the NFP into 26 'Areas of Intervention' for the 2008-2015 period (see Annex 2). The plan identifies both non-governmental

and governmental actors responsible for implementation of the policy and suggests indicators and a strategy for monitoring progress as well as policy targets. It also sets out guidelines on inter-ministerial coordination and sectoral planning and budgeting, with the aim of promoting implementation effectiveness.

The PoA was formulated after several rounds of consultations with representatives of relevant partner ministries/agencies, including selected regional and local representatives, as well as non-government experts and practitioners. This is in line with the CESCR's recommendation that all national strategies should '*devise appropriate institutional mechanisms to secure a representative process towards the formulation of a strategy, drawing on all available domestic expertise relevant to food and nutrition.*'¹¹⁸

Special emphasis was placed on aligning the PoA with Bangladesh's Poverty Reduction Strategy Paper titled 'Unlocking the Potential: National Strategy for Accelerated Poverty Reduction' and related monitoring framework. This demonstrates a degree of compliance with international standards, which mandate that a national food strategy should '*address critical issues and measures in regard to all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food, as well as parallel measures in the fields of health, education, employment and social security.*'¹¹⁹ However, more could be done to align the plan with other

¹¹⁵ *ibid*, para 26.

¹¹⁶ The Economist, 'Who Owns Bangladesh?' (20 August 2013). <<http://www.economist.com/blogs/banyan/2013/08/women-and-property-rights>> accessed 27 February 2015.

¹¹⁷ CESCR, 'General Comment No. 12' (12 May 1999) E/C.12/1999/5, para 23.

¹¹⁸ *ibid*, para 24.

¹¹⁹ *ibid*, para 25.

measures in the fields of education, employment and health.

Country Investment Plan 2010-2015

The ‘Bangladesh Country Investment Plan: A Road Map towards Investment in Agriculture, Food Security and Nutrition’ (CIP) is the investment arm of the NFP 2006 and the PoA (2008-2015). It is a five-year plan (2010-2015) which identifies 12 investment programmes, with 40 sub-programmes, to ensure implementation of the PoA. It is a country-led planning, fund mobilisation and alignment tool which supports more effective public investment to improve food availability in a sustainable way and increase access to food and nutrition security.¹²⁰ It was coordinated by the Ministry of Food and Disaster Management with support from the FAO.¹²¹

The Sixth Five Year Plan (2011-2015)

The Sixth Five Year Plan (2011-2015) titled ‘Accelerating Growth and Reducing Poverty’ also provides strategic directions, a policy framework, sectoral strategies, programs, and policies for attaining various goals including national food security.

Other recent food policies

Internal Food Collection Policy 2010

This policy aims to ensure adequate profit for farmers, stabilisation of the food grain market, adequate stock to ensure food security and sufficient supply to the

¹²⁰ Ministry of Food and Disaster Management, GoB, ‘Country Investment Plan’ <http://www.feedthefuture.gov/sites/default/files/country/resources/files/BangladeshCountryInvestmentPlanGovernmentofBangladesh_June2011.pdf> accessed 19 March 2015.

¹²¹ FAO, ‘Making it Happen in Bangladesh: Country Investment Plan’ <http://www.fao.org/fileadmin/templates/rap/files/Field_programme/bgd-country_investment_plan.pdf> accessed 19 March 2015.

Public Food Distribution System. It states that food grain must be bought directly from farmers, and prohibits intervention by any middlemen or businessmen.¹²²

National Industrial Policy 2010

The National Industrial Policy prioritises the agro-based and food processing industry within the ‘thrust sector industries.’ These industries are specifically considered in order to provide special incentives, tax exemptions, and financial assistance.¹²³

National Education Policy 2010

The National Education Policy 2010 orders the provision of free lunches to street children, rural children and other underprivileged children in order to incentivize attending primary school and avoid dropping out.¹²⁴ However, there are no specific provisions regarding nutrition education, which is a key strategy for food utilization outlined in the NFP.

Fair Price Policy 2010-2014

This policy aims to ensure the poor receive food at reasonable prices, to develop a price monitoring system and to develop a method of identifying those most vulnerable to the existing market system. Specifically, it aims to develop a system for the poorest to use ration cards to purchase food at an affordable cost. Committees in each division, district and union are empowered to select beneficiaries.¹²⁵

¹²² Naomi Hossain and Ferdous Jahan, ‘The Food Riots that Never Were’ (2014), Annex.

¹²³ National Industrial Policy, 2010, paragraph 3.6.1.

¹²⁴ Ministry of Education, GoB, ‘National Education Policy 2010’ Section 2 (Pre-Primary and Primary Education), subsection B, points 13 and 24. Also see Section 22 (Students’ Welfare and Counseling), point 6.

¹²⁵ Naomi Hossain and Ferdous Jahan, ‘The Food Riots that Never Were’ (2014), Annex.

National Women's Development Policy 2011

Several paragraphs focus on women's food and nutrition security. Paragraph 16 details the objectives of the National Women Development Policy. Specifically, objective no. 14, paragraph 16 guarantees that proper measures are taken to ensure the good health and nutrition of women; and objective no. 18 focuses on food security for physically challenged, aged, women without guardians, deserted women, unmarried, or childless women. Paragraph 17.7 speaks of equal access to social security measures whereas 18.2 emphasizes non-discriminatory treatment in fulfilling needs of female children like food, nutrition, and health services. Paragraph 23.4 provides for creating a Social Safety Net for women and paragraph 23.7 provides for equal opportunity in employment. Ultra-poor women have been included in the Social Safety Net in paragraph 24.1 and the needed inclusion of poor women in mainstream economy and the increase of national budget allocation for women have been stated respectively in paragraphs 23.1 and 23.4. Food security for women has been particularly articulated in paragraph 30. The role of women in agriculture, health and nutrition provisions of women, and disaster response for women and children have been discussed in paragraph 31, 34, and 37 respectively.

National Child Policy 2011

This Policy contains government pledges to provide children with adequate and nutritious food, health service, social security, and extended Social Safety Net benefits (paragraphs 2, 3 and 6.1). It also contains a government pledge to provide protection to children during and after

disaster, which can include the provision of adequate food (paragraph 6.2).

Open Market Sales Policy 2012

This policy provides the basic guidelines for the Fair Price Policy. Its aims were to develop a guideline to distribute products through the public distribution system, control food price rises and stabilise the market.¹²⁶

School Feeding Programme

The school feeding programme provides a nourishing mid-morning snack to school children across Bangladesh aiming to contribute to the government's goal of universal primary education by improving access to basic education for school aged children, particularly those living in poverty prone areas.¹²⁷ The Government of Bangladesh (GoB) and World Food Programme (WFP) together, currently support 2.7 million school children with high-energy nutritional biscuits everyday they come to class.¹²⁸ Under this programme school children are provided with a packet of eight biscuits weighing 75 grams, which provide 338 kilocalories per day to primary school children and 225 kilocalories per day to pre-primary school children and meet 67 percent of their daily micronutrient requirements.¹²⁹ The vitamin and mineral biscuits encourage children to attend school and give students the energy and micronutrients to concentrate and

¹²⁶ *ibid.*

¹²⁷ School Feeding Factsheet (WFP) (July 2012) <<https://www.wfp.org/sites/default/files/SF%20factsheet.pdf>> accessed 27 April, 2015

¹²⁸ Operations- Bangladesh | WFP Activities <<https://www.wfp.org/countries/bangladesh/operations>> accessed 27 April, 2015

¹²⁹ School Feeding Factsheet (WFP) (July 2012) <<https://www.wfp.org/sites/default/files/SF%20factsheet.pdf>> accessed 27 April, 2015

focus on their studies and help address widespread micronutrient deficiencies.

The programme has been successful in improving primary school enrolment and attendance, reducing dropouts and alleviating micronutrient deficiencies and hunger among pre-primary schoolchildren and primary school children in food insecure and high poverty prone areas. For families who cannot afford enough nutritious food every day, school feeding is a powerful and effective incentive to enroll their children and also ensure they attend class every day.

Since 2013, the WFP and GOB launched a cooked meals initiative to provide a hot lunch instead of biscuits with a view to making school feeding more sustainable and enhancing the programme. Now cooked meals are being provided in two upazillas of Barguna and Jamalpur districts.¹³⁰ These meals are freshly prepared from fortified rice and oil, protein rich pulses, vegetables and spices.



Source: WFP.org

¹³⁰ WFP in Bangladesh (Issued: August 2014) <<https://www.wfp.org/sites/default/files/WFP%20in%20Bangladesh.pdf>> accessed 27 April 2015

The 100 Days Employment Generation Scheme

The most significant programme is the 100 Days Employment Generation Scheme. Its stated objective is ‘to bring rural extreme poor and capable people including marginal farmers under a Social Safety Net during the time they remain unemployed.’ This programme was launched by the GOB in September 2008. Though the entire country was to be covered, priority was to be given to river erosion, flood affected, munga-prone, haor, baors and char areas. The programme is intended to run during two lean season cycles for 60 days from September to November and for 40 days from March to April with a view to tackling seasonal unemployment. The scheme provides employment to combat *monga* (seasonal food shortage among the poor in selected areas) especially in the greater Rangpur and Dinajpur districts.

The 100-Day EGS is consistent with the main policy frameworks dealing with poverty and food security. For example, the NFP highlights greater geographical targeting of safety nets to specific distress-dense areas of the country, especially those with less employment opportunities, lower levels of development and a propensity to natural disasters. Flood prone areas are considered as the most nutritionally distressed areas of the country.

The Ministry of Food and Disaster Management (MoFDM) is implementing the programme in partnership with local governments. The selection criteria as per the implementation guidelines are:

- The extreme poor including marginal farmers, who are capable and permanent

residents of rural areas including river erosion, monga prone, haor, baor and char areas.

- Unemployed and unskilled poor persons, who are eager to work.
- The landless (with 0.5 or less acres of cultivable land) who have a low income and have no pond for fish culture and no animal resources.
- Any person who is “capable” and aged between 18 and 50.
- Individuals considered for the programme should not be covered by any other safety net.

Notably, the 100-day EGS programme differs from the NFP, in the sense that it is ‘gender neutral’ and does not specifically give priority to poor women, a major target group of the NFP with regard to income generating activities. The NFP Plan of Action calls for increasing coverage and improving the effectiveness of employment generation focused safety net programs – with a special reference to Food-for-Work and Cash-for-Work in *monga*-prone areas and other disadvantaged regions. Finally, the National Strategy for Accelerated Poverty Reduction (NSAPR II) also advises support to *monga*-prone areas through agricultural diversification and food assisted infrastructure development during difficult seasons.¹³¹

Public Food Distribution System

Public distribution of grain has its roots in the British system of rationing during World War II. Rationing was introduced

into Bombay in 1939 and covered much of British India by 1946.¹³² The Public Food Distribution System (PFDS) played an important role during the 1943 Bengal Famine by attempting to provide a minimum amount of cereals at stabilised prices to consumers. After the liberation of Bangladesh in 1971, food grain distribution increased massively, largely due to the famine, and subsequent natural disasters reaffirmed its importance.

Today, the PFDS in Bangladesh has four key functions:

- (1) to supply food grains to food-based Social Safety Nets;
- (2) to provide incentive prices to farmers to encourage increased production;
- (3) to maintain a security stock of food grains in case of emergency;
- (4) to stabilize market prices in order to prevent excessive price rises.

The government obtains food grain from the domestic market and imports from abroad, then distributes it through both monetised and non-monetised channels.

Monetized channels include:¹³³

- (1) Essential priorities (EP) for the armed forces, Bangladesh Rifles, police, Ansars (paramilitary group), and jail staff;
- (2) Other priorities (OP) for government employees, jail and hospital inmates, students’ hostels, and so forth;

¹³¹ National Food Policy Capacity Strengthening Programme and BRAC, ‘Study on the first phase of 100-day Employment Generation Programme’ (10 February 2009). <http://www.nfpcsp.org/agridrupal/sites/default/files/100_day_final.pdf> accessed 27 February 2015.

¹³² FAO, ‘Public Distribution System in India’ <<http://www.fao.org/docrep/x0172e/x0172e06.htm>> accessed 22 March 2015.

¹³³ FPMU, ‘Bangladesh Food Situation Report’ (April – June 2014) <http://www.nfpcsp.org/agridrupal/sites/default/files/FSR_97.pdf> accessed 22 March 2015.

- (3) Large employers (LE) for industrial and tea garden workers;
- (4) Open market sales (OMS), channels that sell food grains to the general population at subsidized prices.

Non-monetized channels serving the poor include:¹³⁴

- (1) Food-for-Work (FFW)
- (2) Vulnerable Group Development (VGD)
- (3) Vulnerable Group Feeding (VGF)
- (4) Test Relief (TR)
- (5) Gratuitous Relief (GR)
- (6) Others

A number of factors, however, are reducing the need for strong government intervention in the market through the PFDS. Increased domestic food production, lower real food prices, crop diversification leading to less seasonal variation in prices and the lifting of restrictions on trade have all led to big changes in the agriculture and food sector of Bangladesh. Furthermore, the private sector is starting to play a much larger role in stabilising food prices.¹³⁵

Social protection policies

In the past, safety nets in Bangladesh focused on two main areas – disaster relief and food rationing. Many people also benefitted from informal safety nets, created by their own families or communities. However, over time, the traditional extended family structure

deteriorated to some extent and such informal safety nets ceased to exist in the same way. Along with an increased recognition in the development world of the value of safety nets and increased pressure on the state to fulfil its welfare responsibilities, the idea of public, state safety nets became more important in Bangladesh.¹³⁶

After the 1974 famine, the government scaled up the Food For Work programme, using it as a way of combating *monga* (seasonal poverty) and, in society, the Grameen micro-credit scheme was born. Later, at the end of the 1980s, rationing was phased out because of its inefficiency at reducing poverty and severe flooding in 1987-88 encouraged the government to extend the Food For Work model to combat other issues aside from *monga*.¹³⁷

In the 1990s, a new type of safety net, called Conditional Cash Transfers (CCTs), which had become particularly popular in Latin America, spread to Bangladesh. One of the earliest CCTs focused on girls' education and introduced the idea of empowerment and long-term development into safety net programmes. In the late 1990s, groups who had traditionally been cared for by their extended families were now provided with state help - e.g. the elderly and destitute women such as widows. Finally, the 1990s saw the formalisation of the post-disaster relief safety net system. After the devastating 1998 floods, the government introduced Vulnerable Group Feeding (VGF) cards

¹³⁴ *ibid.*

¹³⁵ Ahmed, Dorosh, Shahabuddin and Talukder, 'Income Growth, Safety Nets and Public Food Distribution' (May 2010) Prepared for the Bangladesh Food Security Investment Forum, page 14.

¹³⁶ Hossain Zillur Rahman, Liaquat Ali Chowdhury, and Khondoker Shakhawat Ali, *Social Safety Nets in Bangladesh: Volume I'* (2011) Power and Participation Research Centre and United Nations Development Programme (UNDP), pages 23-29.

¹³⁷ *ibid.*

which individuals could use to claim their entitlements.¹³⁸

Four key developments have occurred in Bangladesh in more recent years. Firstly, safety nets target certain geographic areas more explicitly e.g. *monga* prone areas. Secondly, safety nets are increasingly engaging with long-term development goals. Thirdly, safety nets are focusing more on employment: the 2008 100 Days Employment Generation Scheme is evidence of this. Finally, a more integrated and comprehensive safety net framework has been created.¹³⁹

The government is currently developing a National Social Protection Strategy. This policy is an attempt to streamline and strengthen SSN programmes in order to make them more efficient, and to further broaden the scope of social protection to include employment policies and social insurance.¹⁴⁰

Social Safety Net Programmes

There are approximately 84 SSN programmes in Bangladesh.¹⁴¹ These programmes include food-based programs as well as cash programs. They are consistent with the NFP 2006 which states that improving coverage of vulnerable and disadvantaged people and areas, especially *monga*-prone areas, is a priority.

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ General Economics Division, Planning Division, GoB, *National Social Protection Strategy of Bangladesh: Third Draft* (26 January 2014).

¹⁴¹ Ferdous Ara Rume, Campaign for Right to Food and Social Security, 'Beneficiary Selection under Safety-Net (VGD and Old Age Allowance) Programme: Problems and Way Forward' (May 2012); FPMU 'National Food Policy Plan of Action (2008-2015) Monitoring Report 2010' (December 2009) page 101.

SSNs typically target those that are land/asset poor; have a per capita monthly income of approximately Tk 650; suffer from nutritional insecurity rather than hunger; and are vulnerable to crises e.g. illness and natural disaster.¹⁴² Widows, ultra-poor women, landless individuals in rural areas and disabled people are usually caught by these safety nets. Annex 4 describes a number of Social Safety Net programmes along with the concerned ministries and beneficiaries.

The test of non-discriminatory access and distribution

As noted earlier, non-discrimination in the formulation and implementation of social protection policies is fundamental. It is important to ask whether existing SSNs satisfy the test of non-discrimination. The Campaign for the Right to Food and Social Security (RtF&SS) conducted a study into two SSNs - the Vulnerable Group Development (VGD) Programme and the Old Age Allowance Programme - and found that there was significant discrimination in both programmes.¹⁴³

Vulnerable Group Development Programme

The VGD programme is one of the largest SSNs, set up by the government to address the needs of vulnerable and poor women. Beneficiaries of the VGD Programme are generally female, between 18 and 49 years old, own less than 0.15 acres of land and have no adult male earning family member and no other source of income. Beneficiaries

¹⁴² Hossain Zillur Rahman and Liaquat Ali Chowdhury, 'Social Safety Nets in Bangladesh: Volume II' (2012) Power and Participation Research Centre and United Nations Development Programme, page 45-55.

¹⁴³ Ferdous Ara Rume, 'Beneficiary Selection under Safety-Net (VGD and Old Age Allowance) Programme' (May 2012).

receive a card with which they can claim their allocation of wheat or rice (30kg/month) and skills training.¹⁴⁴

The campaign's research found that those benefitting from the VGD programme rarely met the eligibility criteria. For example, although single and destitute are the main target group under this programme, around 93% of beneficiaries are women living with their husbands. Only 7% of current beneficiaries met the programme's eligibility criteria.¹⁴⁵

The study also found that at least 20% of beneficiaries said they received benefit cards because they had worked for a particular candidate during elections. 3% said they were given benefit cards because they are relatives or acquaintances of the UP member or chairman. 13% stated that they were selected because they were poor. The majority of respondents (64%) said that they applied themselves to the UP member or chairman to receive a card.

56% claimed that they had to pay between Tk 1,000 and 2,500 for their card. Others stated that they received the benefits after visiting government offices and UP chairman or members several times. Of the VGD beneficiaries who paid money, 47% gave money to male UP members and 29% to female UP members. It was found that although UP members took money directly, the UP chairman typically received the majority of the money.

According to the government's policy, the Union VGD committee is supposed

to play a key role in selecting the primary list of VGD card beneficiaries but, in reality, it plays an insignificant part. In practice, male UP members selected 60% of beneficiaries and female UP members selected 27% of beneficiaries.

Those affiliated with the 'right people' were often given favourable treatment and corruption and malpractice was also discovered in the implementation and distribution of the benefits themselves. Examples include:

- Sale of wheat on the black market;
- Distribution of two months allocation of wheat in one month;
- Distribution of an amount greater than the allotted amount per person;
- Wheat distributed to individuals using names of deceased persons;
- Threats to exclude individuals who protested irregularities;
- Bribes;
- Distribution of wheat unfit for human consumption.

Further, individuals struggle to collect the full benefits under the programme – reports estimate that beneficiaries usually receive around 21% less wheat than their allocated amount.¹⁴⁶ It has been argued, however, that this is not predominately due to corruption, but rather other forms of leakage.¹⁴⁷ For example, some of the wheat shortfall occurs at local supply depots and a small percentage also goes to local handlers at union distribution points. Some is also lost because recipients are sometimes

¹⁴⁴ *Bangladesh Shorkarer Proadhan Proadhan Nirapat-tajal Karmashuchi O Nitimala (Shongkhipto)*, PPRC (December 2010).

¹⁴⁵ Ferdous Ara Rume, 'Beneficiary Selection under Safety-Net (VGD and Old Age Allowance) Programme' (May 2012) page 9.

¹⁴⁶ Naomi Hossain, 'The politics of what works: the case of the Vulnerable Group Development Programme in Bangladesh' (2007) page 13.

¹⁴⁷ *ibid*, page 14.

required by UP officials to share cards. It is estimated that 10-16% of women share cards. However, cards are usually shared with other poor individuals, and so it does not evidence corruption as such. Finally, wheat is sometimes distributed to those who are not beneficiaries but simply turn up to the union distribution point on the day of delivery (around 7%).¹⁴⁸

Beneficiaries under the programme are entitled to receive 150 hours of employment training during the two years of the programme. However, almost all the respondent's in the RtF&SS study stated that despite the passing of nearly 15 months, they had not received any training.

Old Age Allowance Programme

The Ministry of Social Welfare introduced an Old Age Allowance programme in 1998 for vulnerable people older than 65 years who have no or little income. The initial allowance of Tk100 has now been increased to Tk300 per month per person. To be eligible an individual must have an annual average income under Tk3000; and must not be a professional labourer, a vagrant, a retired government employee, or in receipt of any allowance from any private or social welfare organisation.

An RtF&SS study¹⁴⁹ on the process of beneficiary selection under the VGD Scheme found that 40% of the respondents were aged between 71 and 75 years old. 23% of respondents were between the ages of 76 and 80. Although the minimum age for this allowance is 65 years, it was found that 3% of recipients were below 65. Of the 30 total beneficiaries included in the survey, 19

¹⁴⁸ *ibid.*

¹⁴⁹ Ferdous Ara Rume, 'Beneficiary Selection under Safety-Net (VGD and Old Age Allowance) Programme' (May 2012) page 13.

were women and 11 were men. The majority of them (77%) could not work due to old age. Others worked because they had no other choice, and the allowance of Tk300 was inadequate for their living expenses. The majority, 57%, worked in agriculture, while 7% were involved in different professions, and others earned their livelihoods through handiwork, day labour, or by begging. The majority of the beneficiaries (63%) were women.

The study also noted several irregularities over how beneficiaries were selected. 23% said they had been selected by the UP members or Chairman. 50% said they had to apply to get the allowance while 13% said they were approved as they had 'helped during elections.' 46% said they had to 'purchase' the benefit cards which would entitle them to the allowance.¹⁵⁰

20% said they used to give Tk20-30 to the office assistants in order to collect their allowance, while all of them said office assistants often demanded money from them but they refused to respond to these demands.

Almost everyone felt that the allowance was too small to be useful. 46% said at least Tk 1,500 should be given as monthly allowance while 30% said a minimum of Tk2,000 monthly would be adequate.

Conclusion

The Government of Bangladesh has been swift at responding to impending food crises and, particularly in comparison to other countries in the region, rates of hunger and food scarcity in Bangladesh are low. Rates of malnutrition, however, are incredibly high, particularly in children and women. The NFP aims to reduce malnutrition and improve food security

¹⁵⁰ *ibid.*

as well as enhance people's purchasing power. The policy reflects the changing nature of Bangladesh's food markets, and acknowledges the greater, emerging role of the private sector. A range of other targeted plans, programmes and schemes have a role to play in securing the right to food, particularly for women and children. Social protection schemes are also critical in helping the most vulnerable people access food and the Bangladesh government has been active in setting up and implementing a range of Social Safety Net programmes that reach landless women, widows, school-age children etc. However, discrimination in the implementation of such programmes and leakage is a threat to their effectiveness.

Institutional Framework on the Right to Food

Judicial authorities

Supreme Court

The Supreme Court of Bangladesh is comprised of the High Court Division and the Appellate Division. Any individual alleging a breach of a fundamental right guaranteed by the Constitution may seek remedies before the High Court Division. They may also question decisions or actions or inaction on the part of the government or public authorities regarding fulfilment of their legal duties.

The Supreme Court may issue orders to secure fundamental rights through an order of prohibition (order not to do an action), mandamus (order to take or perform an action where there is a duty to perform), certiorari (directions) and in some cases through an order of compensation. For example, in the case of *Dr. Mohiuddin Farooque vs.*

*Bangladesh*¹⁵¹, the import and marketing of highly radioactive milk were restricted. In another PIL¹⁵² filed by Ain o Shalish Kendra (ASK), the High Court directed the Government to provide proper notice and rehabilitation measures before displacement as the right to shelter is one of the basic needs to protect the right to life. The Bangladesh Environmental Lawyers Association (BELA) filed a case¹⁵³ demanding compensation from the Canadian Company, Niko Resources Bangladesh Ltd. For the blowouts at Magurchhara and Tengratila under the Chhatak gas field in 2005. In this case, the Court directed the Government to take necessary steps to realize compensation from Niko for degradation of the environment, and damage to lives, properties and natural resources.

As discussed below, individuals and organisations that are not personally affected or aggrieved may also seek such remedies, through public interest litigation, on behalf of those who are unable to do so directly due to social or economic disadvantage.

Subordinate courts

Several courts have specific powers to provide legal protection connected to the right to food. This includes the Sessions Court, various Special Tribunals and the Environmental Court. The Special Tribunal can try offences under the Special Powers Act, 1974 such as hoarding, smuggling, and the adulteration of food and sale of adulterated food, drinks or drugs. Environmental Courts can try offences

¹⁵¹ *Farooque v Bangladesh*, DLR (HCD) (1996) 438.

¹⁵² *Ain o Shalish Kendra (ASK) and Others v Bangladesh and Others*, 19 BLD (HCD)(1999) 488.

¹⁵³ *Bangladesh Environmental Lawyers Association (BELA) and others v. Bangladesh and Others*, Writ Petition No. 6911 of 2005.

under the Environment Conservation Act such as pollution of water which adversely affects the production of food. Although Pure Food Courts exist in theory, in reality few have been set up. This inaction by the government has been the subject of public interest litigation discussed below.

Legislative authorities

While Parliament can and does enact laws protecting food rights, Parliamentary Standing Committees are tasked with examining legislative proposals, considering bills, inquiring or investigating into the performance of the ministries, and reviewing measures for enforcement of laws for proper governance (Article 76, Constitution of Bangladesh). They thus have the power to inquire into and ensure that any draft legislation as well as the actions/inactions of Ministries are rights compliant.

Executive authorities

Ministries

Some 18 ministries are responsible for certain areas of intervention on food rights, as set out in the National Food Policy Plan of Action.¹⁵⁴ Annex II sets these out. The Food Planning and Monitoring Unit of the Ministry of Food monitors progress regarding implementation of the Plan of Action and produces an annual report; the 2014 report was written in collaboration with 17 partner divisions from 13 ministries with technical assistance from FAO, under the National Food Policy Capacity Strengthening Programme.¹⁵⁵

¹⁵⁴ FPMU, Ministry of Food and Disaster Management, GoB 'National Food Policy Plan of Action (2008-2015)' (5 August 2008) page 10.

¹⁵⁵ FPMU, Ministry of Food and Disaster Management, GoB, 'National Food Policy Plan of Action and Country

Various Ministries and Departments are responsible for implementing SSNs. This is partially due to the range of persons the programmes target and types of programme (e.g. cash transfers, in kind transfers, subsidies etc.). Annex 4 contains a partial list of SSN programmes and the responsible ministry for each programme.

Mobile Courts

Mobile Courts empower executive magistrates to hear and try certain offences on the spot and impose up to 2 years imprisonment. Mobile Courts may try offences under sections 272 and 273 of the Penal Code (under the Mobile Courts Act 2009), and all offences under the Safe Food Act, 2013¹⁵⁶ (such as food adulteration, sale of expired foods etc.). Mobile Courts may search, seize and dispose of perishable, dangerous or hazardous substances if necessary.

The number of Mobile Courts and their effectiveness is unclear as little research has been done into their operations or achievements. An anti-adulteration drive was reportedly conducted in 2009 in response to a PIL filed by the rights body Human Rights and Peace for Bangladesh (HRPB) in a climate of increasing concern over food adulteration. Mobile Courts did find traders illegally using toxic chemicals in local and imported fruits, fishes, vegetables, eggs, baked goods and juice but, the drive did not last for long.¹⁵⁷

Investment Plan: Monitoring Report 2014' (June 2014). <<http://fpmu.gov.bd/agridrupal/monitoring-report-national-food-policy-plan-action-and-country-investment-plan>> accessed 15 February 2015.

¹⁵⁶ See Section 75 of the Safe Food Act, 2013.

¹⁵⁷ The Daily Star, 'Govt sits on setting up food courts' (1 July 2013) <<http://archive.thedailystar.net/beta2/news/govt-sits-on-setting-up-food-courts/>> accessed 17 February 2015.

In many cases, it has been found that punishments imposed by Mobile Courts have been stayed by the High Court. Moreover many lawyers also recommend that the function of the Mobile Court should be carried out by judicial magistrates instead of executive magistrates to ensure compliance with the principle of separation of the judiciary. Where Mobile Courts are operational, reports suggest that they mainly monitor hygiene and test food for the presence of formalin, so that individuals using any of a wide range of other dangerous chemicals escape scrutiny and punishment.¹⁵⁸ Some critics suggest that the inability of Mobile Courts to impose more severe punishments hampers their effectiveness; others note that they are limited in their reach and rarely operate outside of Dhaka.¹⁵⁹ Recent reports suggest that there are renewed efforts to enforce the Safe Food Act 2013 through greater use of the Mobile Courts.¹⁶⁰

Local authorities

In Bangladesh, there are different types of local government institutions in the rural and urban areas. In rural areas, the main local government institutions are called Union Parishads. In urban areas, there are two types of institution – City Corporations and Municipalities (*Paurashauvas*).

¹⁵⁸ New Age, 'Mobile courts can only check formalin-treated fruits, foods' (3 July 2014) <<http://newagebd.net/27225/mobile-courts-can-only-check-formalin-treated-fruits-foods/#sthash.ehB8PZDC.dpbs>> accessed 17 February 2015.

¹⁵⁹ The Daily Star, 'Govt sits on setting up food courts' (1 July 2013) <<http://archive.thedailystar.net/beta2/news/govt-sits-on-setting-up-food-courts/>> accessed 17 February 2015.

¹⁶⁰ The Financial Express, 'Mobile Courts to enforce Safe Food Act from Feb 1' (30 January 2015) <<http://www.thefinancialexpress-bd.com/2015/01/30/78465>> accessed 17 February 2015.

Union Parishads

Union Parishads (UPs) are the smallest rural administrative and local government units in the country. Each is composed of 9 wards,¹⁶¹ with each ward usually comprising of a village. Each UP consists of a Chairman and 12 members; 3 members must be women elected from reserved seats. They are formed according to the Local Government (Union Parishad) Act 2009.¹⁶²

UPs are essential in securing the right to food through their involvement with implementing SSN Programmes. UPs are responsible for selecting beneficiaries of SSNs (Schedule 2, 2009 Act). Ward Shabhas are required to make lists of beneficiaries with reference to specific criteria and then pass these on to the UPs, who will verify the list of selected beneficiaries.

Individuals may contact the UP Chairman or Members for any information regarding SSNs and the UPs have a duty to provide such information. UPs are also tasked with determining what action should be taken, at a local level, in emergencies such as natural disasters, epidemics or food shortages. Schedule 2 of the 2009 Act also tasks the UPs to carry out functions for the development of agriculture, fisheries, livestock and economy, ensure safe water and prevent pollution of sources of drinking water, maintain lists of widows, orphans, poor and destitute persons and take necessary steps to increase food production to meet the needs.

The actions of UPs are meant to be monitored by the government through

¹⁶¹ Section 3 of the Local Government (Union Parishad) Act, 2009.

¹⁶² Repealing the Local Government (Union Parishad) Ordinance 1983.

regular performance audits. Furthermore, the head of any government department and selected technical officers may inspect any development projects implemented under that department. The Deputy Commissioner or any other authorized officer may inspect any UP documents, and both completed and on-going development projects. The government or any officer authorized by the government can ask for any UP records, registers or any documents. These performance audits and reports could be a valuable source of information for the campaign.

If it appears to the government that any UP member has failed to perform their respective duties or functions prescribed by the 2009 Act, the authorities may order the person to discharge such duties within specific time. If they fail to do so, they may be asked to explain why, and a new officer may be appointed to discharge the duties.

The Union Parishad Governance Project, launched by the UNDP involves conducting in-depth performance assessments of participating Union Parishads, which includes assessing how much each UP spends on helping vulnerable groups.¹⁶³

City Corporations

The Third Schedule of the Local Government (City Corporation) Act, 2009 describes the functions of city corporations in detail. The schedule specifies that the City Corporation will be responsible for supplying adequate pure water for the public. The schedule also confers upon the city corporation a number of responsibilities regarding food and drink. It specifies that the City

¹⁶³ UNDP, 'Union Parishad Governance Project: Project Document' (2011).

Corporation, by regulation, can: prohibit the production, manufacture or sale of any particular food or drink at any place or house without license; prohibit the import or sale of any particular food or drink by any person except persons having licenses; prohibit to ferry food or drinks at any specific places mentioned in the regulations; control the time and manner of transport of specific foods and drinks; regulate the issuance and withdrawal of licenses and the amount of fees payable for licenses; detain and destruct any diseased animal, poultry or fishes or any toxic food or drinks.

The schedule also states that no person shall rear any cattle for the purpose of the sale of milk or import or sell milk or manufacture butter or ghee or any dairy products or use their homes for similar purposes without any license or except the conditions of the licenses issued by the city corporation. The City Corporation can formulate and implement dairy supply schemes and projects according to the rules with the prior approval of specific authorities and also can make rules to ensure the adequate supply of pure milk for the people.

The City Corporation can establish and maintain general markets for the sale of foodstuff, drinks and animals. No private market can be established or maintained without a license or except following the conditions specified in the licenses issued by the City Corporation. The owners of every private market where foodstuff or drinks or animals are sold or maintained, must apply for licenses under this act. If the City Corporation thinks necessary, it may close or acquire any private market for the protection of public interest. The City Corporation also shall arrange and maintain slaughterhouses for the slaughter of animals and sale of meat in

the municipal area.

The Fifth Schedule of the Act mentions offences under this act, including: carrying out an act without a licence or permission of the city corporation where a licence or permission is required; doing anything which contaminates or makes water unusable; using water from any source which has been banned for drinking by the municipality; feeding any toxic, dirty or waste products to cattle reared for milking or dairy products; slaughtering animals or selling meat except in specified places; selling food or drink which does not meet consumer standards etc. Any person found violating the provisions of this Act shall be punished with a maximum fine of Tk 5000, or, where no specific punishment has been specified and in case of repetition of the same offence, shall be fined with a maximum of Tk 500 for each day of involvement.

Municipalities (*Paurashavas*)

The functions of municipalities with respect to food are very similar to those of City Corporations. The Local Government (*Paurashava*) Act, 2009 combines the rules and regulations related to municipalities and repeals the *Paurashava Ordinance, 1977*. The Second Schedule of the Act describes the functions of the municipalities in detail.

Each municipality is responsible for supplying pure water for the people of the respective municipality. The schedule specifies that each municipality can, by regulation, prohibit the production/manufacture or sale of any particular food or drink at any place or house without license; prohibit the import or sale of any particular food or drink by any person except those having licenses; prohibit the ferrying of food or drinks

at any specific places mentioned in the regulations, control the time and manner of transport of specific foods and drinks; regulate the issuance and withdrawal of licenses and the amount of fees payable for licenses; detain and destruct any diseased animal, poultry or fishes or any toxic food or drinks.

The Schedule also states that no person shall rear any cattle for the purpose of sale of milk or import or sell milk or manufacture butter or ghee or any dairy products or use their homes for similar purposes without any license or except the conditions of the licenses. The Municipality can formulate and implement dairy supply schemes and projects according to the rules with the prior approval of specific authorities and also can make rules to ensure the adequate supply of pure milk for the people. The Schedule also has provisions regarding general markets (*bazar*) and private markets. The municipality has the responsibility of construction, management and development of government markets. No private market can be established or maintained without any license or without meeting the conditions specified in the licenses issued by the municipality. The owners of every private market where foodstuff or drinks or animals are sold or maintained, must apply for licenses under this act. If the municipality thinks necessary, it may close or acquire any private market for the protection of public interest. The municipal shall also arrange and maintain slaughterhouses for the slaughter of animals and sale of meat in the municipal area.

The Second Schedule of the Act also states that municipalities may adopt such measures as may be prescribed for the promotion of the welfare of women,

child and backward classes, and adopt any other measures likely to promote social development and social welfare. This may include measures such as SSNs.

The Fourth Schedule of the Act sets out offences including: carrying out an act without a licence or permission of the city corporation where a licence or permission is required; doing anything which contaminates or makes water unusable; using water from any source which has been banned for drinking by the municipality; feeding any toxic, dirty or waste products to cattle reared for milking or dairy products; slaughtering animals or selling meat except in specified places; selling food or drink which does not meet consumer standards etc. Any person violating the provisions of this Act shall be punished with a maximum fine of Tk 2000 and, in case of repetition of the same offence, shall be fined with maximum Tk 200 for each day of involvement.

Statutory Bodies

Many institutions empowered to set or monitor standards and quality regarding food have been established, or are required to be set up, by statute. For example, the Safe Food Act 2013 sets up the National Safe Food Management Advisory Council and the Bangladesh Safe Food Authority. Other statutory bodies include the Bangladesh Standards and Testing Institution and the National Consumer Rights Protection Council which also both have fundamental roles in monitoring food safety and quality. Similarly, the Fisheries Research Institute Ordinance 1984 created the Fisheries Research Institute and the Pesticides Ordinance 1970 establishes the Pesticide Technical Advisory Committee. These bodies can, and do, have a key role to

play in legal protection of the right to food through monitoring and providing remedies for violations.¹⁶⁴

Information Commission

The Information Commission (IC), was established under the Right to Information Act, 2009, to improve transparency and accountability. The IC enforces and oversees the RTI Act and rules and regulations made under the Act. Under the Act, every citizen has the right to obtain information (RTI) from an authority and every designated authority is required, on demand from a citizen, to provide such information (Section 4). This right is subject to certain conditions, such as protection of national security and relations with foreign countries (Section 7). The designated officer of every authority must respond to any RTI request made in form and on payment of a prescribed fee within 20 working days, unless it requires information from multiple authorities, in which case the time limit is 30 working days (Section 9). If any person fails to receive information within the specified period, he/ she can appeal to the appellate authority (Section 24).

The Information Commission may receive complaints from individuals if, for example, they are charged an exorbitant fee by the responsible officer, or if they do not receive the information sought; it may also conduct inquiries (sections 11 – 13).¹⁶⁵ Use of the RTI Act is explored further in the final section of the report.

¹⁶⁴ Annex 1 provides a comprehensive list of legislation and the relevant institutions set up by each piece of legislation.

¹⁶⁵ Information Commission <<http://www.infocom.gov.bd/>> accessed 17 February 2015.

Bangladesh National Human Rights Commission (BNHRC)

Established in 2009,¹⁶⁶ the BNHRC promotes the protection and fulfilment of human rights. It monitors the human rights situation in Bangladesh, receives complaints from individuals alleging violations of their rights, conducts advocacy and campaigns, organises training and conferences and engages in capacity building. The Commission's ability to receive and act upon complaints from individuals renders it particularly powerful in securing the right to food. It can also conduct fact-finding investigations in response to a complaint, exposing violations of human rights. The Commission also has the potential to play a role in standard setting and monitoring compliance with these standards. As noted earlier, the Commission has also begun reporting to the UN Human Rights Council.¹⁶⁷

The Commission has jointly held a public hearing with Oxfam on the right to food, calling for constitutional recognition of the right to food and the formulation of a law to ensure food security.¹⁶⁸ Further, the BNHRC has spoken out at a mock Youth Parliament event organised by Oxfam on the importance of recognising the right to food as a human right.¹⁶⁹

¹⁶⁶ By the National Human Rights Commission Act 2009.

¹⁶⁷ BNHRC, 'Annual Report 2013' <www.nhrc.org.bd/PDF/BNHRC%20Annual%20Report%202013%20English.pdf> accessed 9 March 2015, pages 9, 18.

¹⁶⁸ The Daily Star, 'Right to food must be constitutional' (28 October 2014) <<http://www.thedailystar.net/right-to-food-must-be-constitutional-47703>> accessed 19 March 2015.

¹⁶⁹ Oxfam, 'Youth vows on right to food at mock parliament' (15 January 2015) <<http://oxfamblogs.org/bangladesh/youth-vows-food-mock-parliament/>> accessed 19 March 2015.

Non-Governmental Organisations

NGOs increasingly play an important role in securing the right to food. Certain SSN Programmes are delivered in partnership with NGOs and therefore they play a key role in processes such as beneficiary selection. For example, the VGD Program is a intervention jointly managed and implemented by the Ministry of Women's and Children's Affairs and the World Food Programme. Local selection committees composed of government officials, elected local government representatives, and representatives of nongovernmental organizations select the female beneficiaries using prescribed criteria.¹⁷⁰ Further, under the scheme women are entitled to receive a package of development services which is delivered by another NGO, BRAC.¹⁷¹

Other examples of SSN Programmes which are entirely run by, or rely on collaboration with, NGOs are the Dushtha Shasthya Kendra Micro-Insurance Scheme and the Shakti Foundation for Disadvantaged Women's microfinance scheme.¹⁷²

WFP plays a key role in monitoring the food situation in Bangladesh. In particular, it monitors food prices of the most commonly eaten staple foods and, as a result, the cost of the average food basket. Through its Seasonal Monitor, WFP monitors satellite imagery of rainfall

¹⁷⁰ World Bank, 'The Design and Implementation of Effective Safety Nets for Protection and Promotion' (2008) <http://siteresources.worldbank.org/SAFETYNETSANDTRANSFERS/Resources/For_Protection_and_Promotion_complete.pdf> accessed 1 March 2015, page 270.

¹⁷¹ ILO Social Security Department, 'Bangladesh: Schemes' <http://www.ilo.org/dyn/illossi/ssimain.viewScheme?p_lang=en&p_scheme_id=1370&p_geoaid=50> accessed 1 March 2015.

¹⁷² *ibid.*

and vegetation in order to calculate the progress of the growing season and how conditions could affect the population. In 2014 WFP also established a food security monitoring system. This collects data on crop production, food prices trends and household food access. It also analyses environmental conditions and macro-economic indicators.¹⁷³WFP is working with the government to finalise its National Social Security Strategy and provides capacity support for the Ministry of Women and Children Affairs.¹⁷⁴

NGOs also have a central role in demanding law reform. In Bangladesh, the right to food campaign was catalysed through awareness raising events, public consultations, seminars and training events organised by RtF&SS.¹⁷⁵ Now Oxfam, Action Aid and local rights NGOs such as Angikar Bangladesh Foundation and the Campaign for Sustainable Rural Livelihoods, are holding national forums, including briefings with parliamentarians, on food rights.¹⁷⁶ The BNHRC and Oxfam have also held training sessions for lawyers to raise awareness of the need for judicial safeguards on the right to food and to help build the capacity of the legal community to facilitate legal actions that advance the right. Events such as the Youth Parliament on the Right to Food¹⁷⁷

¹⁷³ WFP, 'Publications' <<http://www.wfp.org/countries/bangladesh/publications>> accessed 15 March 2015.

¹⁷⁴ WFP, 'WFP in Bangladesh' (August 2014) <<http://www.wfp.org/node/3398/4438/642501>> accessed 15 March 2015.

¹⁷⁵ RtF&SS, 'Annual Report (2011 – 2012)' (2012) Implemented by Nagorik Uddyog, submitted to NETZ and Bread for the World.

¹⁷⁶ IRIN, 'Analysis: the right to food in Bangladesh' (22 January 2013) <<http://www.irinnews.org/report/97303/analysis-the-right-to-food-in-bangladesh>>.

¹⁷⁷ Oxfam, 'Youth Vows on Right to Food at a Mock Parliament' (15 January 2015) <<http://oxfamblogs.org/bangladesh/youth-vows-food-mock-parliament/>>.

and the 2015 South Asian Right to Food Conference are further mobilising actors across a wide range of sectors.

Several NGOs and lawyers have utilized public interest litigation for the realization of the right to food. Following a PIL filed by BELA in 1994, the concept of PIL was recognized by the Judiciary. Other organizations such as the Bangladesh Legal Aid and Services Trust (BLAST), Ain o Shalish Kendra (ASK), and Human Rights and Peace for Bangladesh (HRPB) have also undertaken PILs relevant to the right to food.

Research Organisations

Some organizations such as the Power and Participation Research Centre (PPRC), the BRAC Institute of Governance and Development (BIGD), the Centre for Policy Dialogue (CPD) and the Bangladesh Institute of Development Studies (BIDS) have carried out extensive research on various aspects of the right to food including safety net provision. Such research provides evidence to link food security programmes and initiatives with more effective policy making. For example, PPRC has conducted extensive research on social safety net programs in Bangladesh.¹⁷⁸

Conclusion

An institutional review is an essential step in the campaign for the right to food. Such a review should identify all the relevant institutions and their

¹⁷⁸ Hossain Zillur Rahman and Liaquat Ali Chowdhury, 'Social Safety Nets in Bangladesh: Volume II' (2012) Power and Participation Research Centre and United Nations Development Programme and Hossain Zillur Rahman and Liaquat Ali Chowdhury, Khondoker Shakhawat Ali, 'Social Safety Nets in Bangladesh: Volume I' (2011) Power and Participation Research Centre and United Nations Development Programme.

responsibilities and functions and review whether the institutions in question are functioning or whether they merely exist on paper. Following this, the usefulness of these institutions to the campaign can then be assessed.



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LEGAL PROTECTION OF THE RIGHT TO FOOD

Public interest litigation (PIL) and RTI applications can be useful tools to implement and enforce the right to food and social security, pending enactment of any framework law. PIL may be used to seek judicial recognition of the right to food as an enforceable right whilst RTI applications can be used to ensure implementation of government SSN programmes. Use of public interest litigation

Public Interest Litigation

In Bangladesh, human rights and environmental lawyers, as well as consumer activists have already brought a number of landmark public interest cases before the Supreme Court relating to the right to food, particularly safe food.

The Bangladesh Supreme Court has interpreted the right to food as part of the right to life. For example, a case brought by a senior lawyer of the Supreme Court, *Rabia Bhuiyan, MP v Ministry of LGRD & Others*,¹⁷⁹ concerned the government's failure to fulfil its legal duties under existing laws (including the Environment Conservation Act 1995 and the Environment Conservation Rules 1997) to take action to seal tube wells contaminated with arsenic; to test water quality; and to ensure that the contents of arsenic in the groundwater did not exceed a particular quantity (stipulated in the Environment Conservation Rules 1997). The government claimed that it

had no such legal duties to fulfil. The Supreme Court disagreed, finding that the government had a number of duties in law, including the Constitution.

The Court held:

'Non-compliance with the statutory duties...to ensure access to safe and potable water constitutes a violation of the right to life as guaranteed by Articles 31 and 32 of the Constitution read together with Articles 15 and 18 of the Constitution.'

As water is not specifically mentioned in Article 15, it follows that the Court derived the right to water from the reference to *'basic necessities of life, including food'* in the Article.

The Court ordered them to take a number of measures, including implementing the National Arsenic Mitigation Policy 2004 and the National Action Plan for Arsenic Mitigation, testing of tube wells for arsenic, a mass awareness campaign on the dangers of drinking contaminated water, sealing of contaminated tube wells and yearly reporting to the Court regarding implementation of the Plan and 2004 Policy.

In 2004, in *BLAST v Bangladesh*,¹⁸⁰ the High Court examined the issue of the sale of non-iodised salt. Iodine deficiency was common in Bangladesh, leading to the prevalence of two diseases: cretinism and goitre. The Iodine Deficiency Diseases Prevention Act 1989 was

¹⁷⁹ *Rabia Bhuiyan, MP v Ministry of LGRD & Others* [2007]59 DLR (AD) 176.

¹⁸⁰ *BLAST v Bangladesh*, Writ Petition No. 1043 of 1999, 25 BLD (HCD) (2005) 83.

passed to set a minimum iodine content in salt to tackle the problem. The Court found the Ministry of Health to be in breach of the Act and ordered it to: (1) ensure manufacturers conformed to the quality standards set in the Act; (2) prevent unregistered manufacturers from producing, marketing and selling salt; (3) to submit a list of registered manufacturers; (4) and to collect samples of salt and submit an analysis report to the Registrar of Supreme Court bi-annually.

The Bangladesh Environmental Lawyers Association (BELA) also succeeded through public interest litigation¹⁸¹ in preventing the import and sale of milk powder, samples of which tested positive for radiation. BELA sought redress against the inaction of the authorities in taking effective measures in dealing with a consignment of skimmed milk powder. They argued that consumers must be protected from the harmful effects of the radiated milk to give true meaning to the right to life in the Constitution. The High Court agreed, stating:

'The natural right of man to live free from all the man made hazards of life has been guaranteed under the aforesaid Articles 31 and 32 subject to the law of the land. Use of contaminated food, drink, etc., be it imported or locally produced, undoubtedly affects health and threatens life and longevity of the people.'

The Court directed the respondents to develop better methods of testing for radioactivity. Of critical importance is the way the court interpreted Articles 31 and 32 to include the right to health and longevity – if health rights can be

¹⁸¹ *Farooque v Bangladesh*, 48 DLR (HCD) (1996) 438.

interpreted into the right to life, surely food rights could be too? Furthermore, the Court recognised that access to safe food is a key element of the right to life.

The FAP- 20¹⁸² case is another landmark in our legal history. Dr. Mohiuddin Farooque challenged the validity of flood action programmes undertaken by the government in 1995 on the ground that the project would adversely affect more than a million people by way of displacement, damage to the soil, destruction of natural habitats and create a drainage problem, threatening human health and also worsening sanitation and drinking water supplies and causing environmental hazard and ecological imbalance. The Appellate Division held that Article 32 of the Constitution which protects the right to life as a fundamental right encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water and sanitation without which life can hardly be enjoyed. Therefore, any act or omission contrary thereto will violate of right to life.

In 2009, a lawyers organisation, Human Rights and Peace for Bangladesh (HRPB) filed a writ asking the High Court to order the government to set up Pure Food Courts, as mandated by section 41 of the (now repealed) Pure Food Ordinance 1959, and to appoint a public food analyst.¹⁸³ The High Court directed the Government to do so, and Food Courts have reportedly been formally

¹⁸² *Dr. Mohiuddin Farooque v Bangladesh*, 17 BLD (AD) (1997) 1.

¹⁸³ *Human Rights and Peace for Bangladesh v Ministry of LGRD* Writ Petition No. 324 of 2009 <http://www.hrpb.org.bd/images/frontImages/Writ_Petition_No._324_of_2009_-_Ensure-Pure-Food.pdf> accessed 4 March 2015.

established in some districts following the Law Ministry's publishing a gazette notification in this regard. However, lack of public awareness of their existence, as well as lack of awareness among lawmakers, has rendered them largely ineffective.¹⁸⁴ Non-appointment of food analysts also makes it difficult to activate these courts.¹⁸⁵

More recently another NGO, Shishuk, filed a writ to prevent the sale of potentially harmful genetically-modified eggplants. This was initially unsuccessful, but eventually led to an order from the High Court directing the Government to not release genetically modified crop 'bt. Brinjal' without assessing possible health risks and also requiring independent research into the harmfulness of the crop, based on the Codex Alimentarius Commission's (CAC) standards.¹⁸⁶

Advocate Shahidul Islam, a Supreme court lawyer filed another writ petition challenging the alleged failure of the Government in providing adequate rehabilitation and repairs to the 40 lakh people in eleven districts affected by cyclone Aila on May 25, 2009 as being violative of the rights to life and livelihood and property protected by the Constitution. The High Court directed the

government to submit a report stating the steps that have been taken for infrastructure development in the areas affected by Aila and also issued a Rule upon the government to explain why it should not be directed to take necessary steps for infrastructure development in the affected areas including repairing of embankments and for enacting a new law on disaster management.¹⁸⁷

While PIL in Bangladesh has focused on safe food, there has been no direct engagement with laws around food scarcity, distribution, SSNs, etc. In the neighbouring jurisdiction of India, however, PILs have demanded enforcement of a range of different laws. Thus, examining the experience of India may help illustrate how PIL could be used in a wider range of situations, particularly as the extensive and well-rooted Indian campaign has won major successes in the courts.

Lessons from India

The Right to Food Campaign in India, which led most recently to the passage of the Food Security Act, 2013, emanated from a PIL petition filed before the Supreme Court of India in 2001. The Indian experience is demonstrative of practical ways in which a socio-economic right, such the right to food, can become legally enforceable as a fundamental right through judicial interpretation and social mobilization.

¹⁸⁴ The Daily Star, 'Food Courts there but not functional' (August 2014) <<http://www.thedailystar.net/food-courts-there-but-not-functional-36464>> accessed 4 March 2015; The Daily Star, 'Govt sits on setting up food courts' (July 2013) <<http://archive.thedailystar.net/beta2/news/govt-sits-on-setting-up-food-courts/>> accessed 4 March 2015.

¹⁸⁵ BD News, 'Bangladesh enforcing tougher food safety law from February' (29 January 2015) <<http://bdnews24.com/health/2015/01/29/bangladesh-enforcing-tougher-food-safety-law-from-february>> accessed 17 February 2015.

¹⁸⁶ The Daily Star, 'HC bars Bt Brinjal's release' (30 September 2013) <<http://archive.thedailystar.net/beta2/news/hc-bars-bt-brinjals-release/>> accessed 30 January 2015.

¹⁸⁷ The Daily Star, 'Report Aila steps in 20 days' (2 August 2010) <http://archive.thedailystar.net/newDesign/print_news.php?nid=149073> accessed 23 April 2015.

In April 2001, the People's Union for Civil Liberties (PUCL) filed a PIL demanding accountability from the Indian State on behalf of the poor in the state of Rajasthan. The community had not been receiving the required employment and food relief mandated by the Rajasthan Famine Code of 1962 resulting in persistent hunger and starvation in Rajasthan despite mounting stocks of food grains.¹⁸⁸ The petitioners argued that people were starving and facing recurring droughts whilst the government was keeping overflowing warehouses full of rotting food grains. The petition sought to enforce a constitutional right to food under Article 21 of the Constitution of India, deriving the right to food from the right to life.

In response, the Union of India and various state governments claimed before the Supreme Court that a number of schemes were already being implemented to adequately secure the right to food. These included: (1) feeding programmes for infants, children attending school, expectant and nursing mothers; (2) subsidized cereals retailed through a countrywide network of ration shops; (3) pensions for the aged; and (4) wage employment for the able-bodied.¹⁸⁹

The Supreme Court accepted the petition, and on 23 July 2001 observed that:

In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men, who are in danger of starvation, pregnant and lactating women and

*destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them.*¹⁹⁰

The Supreme Court also passed an interim order directing states to ensure that all closed public distribution shops were reopened within a week.¹⁹¹

It went on to issue several significant interim orders, which in effect converted eight food and social security schemes into legal entitlements.¹⁹² These interim orders directed various authorities at the central and state level to protect the right to food through:

- (1) Effective implementation of all nutrition-related schemes
- (2) Cooked mid-day meals for all children in government schools
- (3) Reform and expansion of the public distribution system, including the provision of grain to all entitled families on a regular basis as per official guidelines
- (4) Implementation of food-for-work programmes in all scarcity areas
- (5) Social audits in various food and employment schemes

¹⁹⁰ *PUCL v Union of India and others*, Civil Writ Petition 196 of 2001 from Harsh Mander, Food from the Courts, Seminar (2012) <http://www.india-seminar.com/2012/634/634_harsh_mander.htm> accessed 17 February 2015.

¹⁹¹ *PUCL v Union of India and others*, Civil Writ Petition 196 of 2001, Order (23 July 2001) <<http://www.righttofoodindia.org/orders/july23.html>> accessed 17 February 2015.

¹⁹² (1) Public Distribution System (PDS); (2) Antyodaya Anna Yojana (AAY); (3) National Programme of Nutritional Support to Primary Education, also known as 'Mid-Day Meals scheme'; (4) Integrated Child Development Services (ICDS); (5) Annapurna; (6) National Old Age Pension Scheme (NOAPS); (7) National Maternity Benefit Scheme (NMBS); and (8) National Family Benefit Scheme (NFBS).

¹⁸⁸ The Supreme Court has yet to issue its final judgment.

¹⁸⁹ *ibid.*

- (6) Adoption of specific measures to ensure public awareness and transparency of these programmes.¹⁹³

Other notable orders handed out by the Supreme Court in the PUCL litigation have significantly contributed to defining the scope of the constitutional guarantee to the right to food in India. These orders include: (1) the preservation of the public distribution system, through which grains are delivered to people of extreme poverty; (2) the universalization of the Integrated Child Development Scheme (ICDS), which allows all children to access services provided at ICDS feeding centres; (3) mandated continuance of the Mid-Day Meal Scheme (MDMS) in schools; and (4) issuance of court directives prohibiting modification or termination of any food scheme covered in previous orders without prior permission of the Supreme Court.¹⁹⁴

The litigation ultimately also contributed to creating the environment for enactment of the National Rural Employment Guarantee Act 2005 (NREGA). Employment issues had been considered by the Supreme Court in its orders relating to the Universal Rural Employment Programme,¹⁹⁵ one of eight schemes addressed by the Supreme Court. The Supreme Court passed several orders from 2002 to

2004 to widen the applicability of the scheme as well as ensure its speedy implementation. Now, through the enactment of NREGA, any person willing to engage in unskilled manual labour at the statutory minimum wage is entitled to public works employment within 15 days (subject to a limit of 100 days per household per year), or failing that, to an unemployment allowance. NREGA thus creates definitive legal entitlements in respect of the right to work.

Subsequently the Supreme Court passed orders in 2009-2010, broadening the extent of the rights enforced by the PUCL litigation. The Commissioners submitted reports to the Supreme Court about the number of homeless persons who die in Delhi every winter from cold and malnourishment. As a result, the Supreme Court ordered the Government of Delhi to increase the number of night shelters for the destitute. This resulted in doubling the number of night shelters that originally existed.¹⁹⁶

Right to Information Applications

The Right to Information (RTI) Act has started to be used as an effective tool to implement SSN programmes in Bangladesh, and to challenge corruption.

Many NGOs have been involved in disseminating information about rights and remedies under the Act. Consequently there are active groups who are empowered by this knowledge to bring requests themselves, with background support from NGOs.

¹⁹³ Global Health Watch, *Applying Public Interest Litigation to Secure the Right of Food: A Case Study of India* <<http://www.ghwatch.org/ghw1/case-studies>> accessed 10 February 2015.

¹⁹⁴ Lauren Birchfield and Jessica Corsi, *The Right to Life Is the Right to Food: People's Union for Civil Liberties v. Union of India & Others'* (Spring 2010) 17(3) Human Rights Brief. <<http://www.wcl.american.edu/hrbrief/17/3corsi.pdf>> accessed 12 February 2015.

¹⁹⁵ Sampurna Grameen Rozgar Yojana (Hindi).

¹⁹⁶ Harsh Mander, *Food from the Courts*, Seminar (2012) <http://www.india-seminar.com/2012/634/634_harsh_mander.htm> accessed 17 February 2015.

For example, a local college student, Shamina, was the president of Ekota Youth Network, a youth group which took part in training on civic engagement and participatory local governance through Inter-cooperation's SHARIQUE project. Her network participated in RTI training and learned about their right to information. Later, Shamina learned that many extremely poor women were being excluded from the list compiled by the Upazila Administration of potential beneficiaries of the government's Vulnerable Group Development social security programme. Shamina filed an RTI application with the concerned Union Parishad to request the list of beneficiaries. The Union Parishad delayed their response to Shamina. Meanwhile, the Upazila Nirbahi Officer (Upazila Executive Officer) established a small committee to review the list. The Committee suggested the removal of ineligible persons and the inclusion of eligible persons. They presented the revised list to the VGD selection committee who approved it. Eventually, Shamina received the revised list from the Union Parishad. She and her colleagues can now review the list to ensure that all the beneficiaries are eligible according to the official criteria and ensure that the benefits are distributed fairly, and to those who need them.¹⁹⁷

Other NGOs, such as the Manusher Jonno Foundation (MJF), record similar success stories. MJF trained a local farmer on a range of accountability and governance issues, including the RTI Act.

¹⁹⁷ World Bank Institute 'The Power of Using the Right to Information Act in Bangladesh: Experiences from the Ground' (2011) <<http://wbi.worldbank.org/wbi/Data/wbi/wbicms/files/drupal-acquia/wbi/Final%20version%20-%20The%20Benefits%20of%20Using%20the%20RTI%20Act%20in%20Bangladesh.pdf>> accessed 28 January 2015.

Using this training, he was able to file an RTI application to find out how much rice individuals were entitled to under the government's Vulnerable Group Feeding Programme. He discovered that corrupt officials who were attempting to give beneficiaries less than they were due and organised a protest; as a result the community were given their fair share of rice. Another national NGO, Nagorik Uddyog, has used RTI training to help individuals demand pesticide equipment and training from their Upazila Agricultural Office which they are entitled to via the Integrated Pest Management club and Integrated Crop Management. Nijera Kori has used RTI to challenge unfairness in the distribution of maternal health vouchers for poor women and help landless poor access information about the distribution of *khas* land. Research Initiatives Bangladesh (RIB) has also helped a farmer access information on the rules for obtaining agriculture cards which entitled him to vital farming equipment and older people from the *Rabidas* community access information on the eligibility rules for the Old Age Pension allowance.¹⁹⁸

Lessons from India

Important lessons can be drawn from the use of RTI in India as an effective tool to secure implementation of social safety net programmes in India. Multiple examples of such actions can be cited;¹⁹⁹ in just one example, Parivartan,²⁰⁰ a Delhi-based movement, supported an

¹⁹⁸ *ibid.*

¹⁹⁹ India Together, 'Delhi's citizens acting en-masse' (1 September 2003) <<http://indiatogether.org/pdsmass-government>> accessed 1 April 2015; India Together, '... And Parivartan goes on' (1 March 2004) <<http://indiatogether.org/ptanpds04-rti>> accessed 1 April 2015.

²⁰⁰ Parivartan <<http://en.wikipedia.org/wiki/Parivartan>> accessed 1 April 2005.

individual to obtain a duplicate ration card, by filing an RTI application seeking information regarding the status of his application and the names of officials involved in processing his application, after the authorities initially failed to respond to his seeking a new card.²⁰¹

²⁰¹ Parivartan, 'Exercising Your Right to Information: A User's Guide' (2004) <http://www.humanrightsinitiative.org/programs/ai/rti/india/states/delhi/booklet_exercising_your_rt_to_info_04.pdf> accessed 5 January 2015.

PROPOSALS FOR LAW REFORM

Arguably, the Bangladesh government has secured the right to food in effect, even though it has not formally recognised it in law. For example, between 1990 and 2014, Bangladesh has achieved one of the biggest improvements in its Global Hunger Index score.²⁰² Similarly, underweight in children has reduced from a massive 62% in 1990 to 37% in 2011.²⁰³ Schemes such as the 100-Day Employment Guarantee Scheme and the range of Social Safety Nets available further demonstrate the government's commitment to protecting the right to food.

Nonetheless, the BNHRC has observed that direct constitutional recognition of the right to food would protect the right from the uncertainty of judicial interpretation, improve accountability by limiting the actions and policies of the government and providing remedies, and empower individuals to demand policies and laws which allow them to realise their right to food.²⁰⁴

There is now pressure from a range of NGOs, academic institutions, and civil society to provide a legal framework for the right to food. In 2011, after a number of consultations, the Campaign for Right

to Food & Social Security launched a national campaign to demand legal recognition of the right to food. As noted earlier, NGOs such as Oxfam, Action Aid, Angikar Bangladesh Foundation and the Campaign for Sustainable Rural Livelihoods are all involved with the campaign, amplifying calls for constitutional recognition of the right to food.

Furthermore, there have also been calls for public interest litigation to demand the Supreme Court to explicitly recognise the right to food as part of the right to life. There is also scope for the campaign to call for a framework law in which all the legal duties and rights of the state and citizens could be established.

²⁰² In terms of absolute progress. See International Food Policy Research Institute, '2014 Global Hunger Index' <<http://www.ifpri.org/publication/2014-global-hunger-index>> accessed 22 March 2015.

²⁰³ International Food Policy Research Institute, 'Global Hunger Index' <http://www.ifpri.org/sites/default/files/ghi/2014/feature_1813.html> accessed 22 March 2015, Chapter 2.

²⁰⁴ Faruque, 'From Basic Need to Basic Right: Right to Food in Context' (June 2014) <<http://www.nhrc.org.bd/PDF/Study%20reports/basic%20Right.pdf>>.

CONCLUSION

The idea of food as a human right, rather than just a basic necessity of life, has become increasingly accepted over the past few decades in the international community. In Bangladesh, while there have been remarkable achievements in terms of social development indicators, due to the contributions of some of the world's leading development organisations, they have been wary of adopting a rights discourse around food. In recent years, with increasing attention to social and economic rights, internationally and nationally, the demand for recognition of food as part of a *human right* has increased. Arguably, this shift in focus from food as a need to a right can be partially explained by a parallel shift from concern over food scarcity and famine to concern around nutrition and safety. In situations of famine and scarcity, food is more likely to be conceptualised as an essential necessity, whereas when issues such as quality, safety, nutrition and sustainability are at the forefront, the idea of food as a right is potentially more potent as it encompasses these issues.

Legal developments, particularly in constitutional case law, hint at the recognition of the right to food. A huge range of sectoral legislation protects different facets of the right to food such as safety, sustainability and availability. Much of it remains to be activated. Similarly, in the area of policy, there are encouraging signs. The National Food Policy 2006 sets out a strategy for dealing with food insecurity and hunger, in line with Bangladesh's international obligations, though it does not address

the issue of remedies and monitoring.

One notable concern which reappears throughout this report is the lack of remedies and monitoring. Individuals who have been failed by the authorities rarely seek any recourse. In large measure, this is due to lack of awareness and understanding of rights and remedies. It is also due to the failure of relevant authorities to make available to the public, information about rights but also about services and organisations and agencies that can provide remedies. Whilst the advent of the RTI Act brings some hope, it is not a panacea. Greater utilisation of institutions such as the Information Commission and the BNHRC may help, as well as the increasing use of the courts as they fashion appropriate judicial remedies through public interest litigation. It is essential, however, that mechanisms already existing under the law are activated. For example, the Food Courts exist on paper, but very few have, in reality, begun to receive or hear cases.

Society is no longer satisfied with the mere passing of a law to secure a right. Rather, campaigners want participation in the process, the chance to have their say and work collaboratively with the state to achieve solutions. We hope that this report will be a tool for campaigners who wish to engage in this process by providing them with information to help them participate effectively.

MOVING FORWARD AND RECOMMENDATIONS

Questions for the campaign to consider

- How should any future constitutional amendment be drafted?
 - Need a participatory process and public consultation to draft an amendment.
- How can we use public interest litigation be used to further indirect constitutional recognition of the right to food, through interpretation into the right to life, for example?
- How else might public interest litigation be used to secure the right to food? What other issues could be targeted?
- What can be done to improve implementation of existing legislation, particularly food safety legislation?
 - How many of the institutions set up to regulate aspects of the right to food are still in existence and functioning?
 - For example, legal researchers should analyse the existence and effectiveness of Pure Food Courts.
 - Technical researchers should investigate how effective organisations such as the Fisheries Research Institute or the Bangladesh Agricultural Research Council are.
- Research need to be done on:
 - Access to SSN in urban areas and beneficiary groups
 - Urban coverage of SSN programmes i.e. old age allowance, education policy etc.
 - Impacts of migration, climate change, river erosion etc. on food security/ realisation of the right to food.
 - Transparency in the use of public money budgeted for the SSN programmes.
 - Analysis from budgetary perspective- budget allocation.
 - Mapping of duty bearers, their responsibilities and functions under different related laws.
- Having examined and evaluated existing institutions, how can they be improved?
- Out of these functioning institutions, which should the campaign target? Which are best placed to bring about change?
- Which right to food issues should be prioritised? (e.g. food safety, nutrition, sustainability etc.)
- What are the biggest challenges to the right to food in both the short and long term?
- How do broad, long term challenges such as climate change affect the right to food and what measures

can we take to mitigate the effect of these challenges?

- What monitoring mechanisms are currently available to monitor the protection of the right to food? How can they be improved?
- What monitoring mechanisms would the campaign like to see put in place?
- What remedies are currently available when the right to food is violated and how effective are they?
 - For example, if an individual is not receiving their benefits under a SSN Programme, what remedies do they have? Where, or with whom, do they lodge a complaint?
- What remedies should be available if the right to food is violated? For example, should individuals have stronger remedies when their land rights are violated, when their SSN benefits are withheld or when they are unable to access safe food?
- How else can the RTI Act be activated to secure the right to food?
 - To improve beneficiary selection has been discussed as well as the broader issue of UP accountability, but how else can it be utilised?
- How can individuals be empowered to use the RTI Act themselves?
 - E.g. through training, awareness campaigns, etc.
- What is the role of lawyers/ paralegals/ NGOs in bringing RTI requests?
- Why have human rights NGOs and

legal NGOs been inactive in using existing legislation to further the right to food? How can we make ourselves part of the discussion?

- How can legal service and rights organisations take a more proactive role? How can they incorporate food rights into their work, including their work on disability rights with DPOs, and on Adibashi rights, or Dalit Rights? How can it be linked to their work on Family Courts, providing information on SSNs to clients through legal aid offices?
- How can such groups incorporate the right to food and RTI into existing action on rights and remedies and access to SSN Programmes?
- Monitor the enforcement of and compliance with judgments already given by the Supreme Court in past public interest litigation, through fact-finding and writing of biannual reports.
- How can rights groups monitor and provide feedback on the functions of responsible ministries?
- Arrange workshops for-
 - Critical analysis and determination of the main focuses of the RTF&SS campaign.
 - Dissemination of papers/ documents related to RTF&SS campaign widely.

Recommendations for Government

- Following public consultations, amend the Constitution to entrench the right to food as a fundamental right by including it in Chapter II of the Constitution.

- After public consultations, promulgate a framework law to secure the right to food, consistent with FAO guidelines.
 - This law should give a detailed definition of the scope and content of the right to food, set out obligations for state authorities and private actors, establish essential institutional mechanisms and provide the legal basis for subsidiary legislation and other necessary measures to be taken by the relevant state authorities. It should also contain a non-discrimination clause, provisions for monitoring and also remedies.²⁰⁵
- Review existing legislation to ensure its compatibility with the right to food as defined in international law.
 - This review could be carried out by the BNHRC, in collaboration with relevant NGOs and CSOs.
 - The review should cover all legislation from all sectors, including agricultural legislation, land legislation, environmental legislation, labour legislation, nutrition and health legislation, the Penal Code, etc.
 - The review should conclude with a Plan of Action.
- Consolidate all existing legislation on the right to food and ensure it is consistent and does not overlap.
 - For example, the penalties for offences such as food adulteration should be the same in all applicable legislation to avoid confusion.
- Review policies to ensure that they are compatible with human rights and the right to food, in particular the FAO's PANTHER principles - participation, accountability, non-discrimination, transparency, human dignity, empowerment, and the rule of law.²⁰⁶
 - For example, ensure that Social Safety Nets do not discriminate on the basis of nationality or refugee status.
- Ensure that the National Food Policy is compatible with principles of good governance such as transparency and accountability.
- Review all institutional mechanisms for securing the right to food. Ensure that they are fit for purpose and up to date with modern standards. Furthermore, ensure that they comply with human rights principles, particularly transparency, accountability and participation.

²⁰⁵ FAO, 'A Guide to Legislating for the Right to Food' (2009) <<http://www.fao.org/righttofood/publications/publications-detail/en/c/129278/>> accessed 7 March 2015.

²⁰⁶ FAO, 'Integrating the Right to Adequate Food in National Food and Nutrition Security Policies and Programmes' (2014) <<http://www.fao.org/3/a-i4258e.pdf>> accessed 7 March 2015.

Bangladesh Legal Aid and Services Trust (BLAST)

BLAST is the leading non-governmental dedicated legal services organization in the country, and the only one that provides access to legal aid across the spectrum, from the frontlines of the formal justice system at the village court, to the highest court. Established in 1993, following a resolution of the Bangladesh Bar Council, it now involves over 300 staff working in 19 district offices, and legal clinics, and a 2500+ network of pro bono lawyers. BLAST priorities support to women, men and children living in poverty or facing disadvantage or discrimination. It provides legal aid, advice and representation across a range of areas, including civil, criminal, family, labour and land law, as well as on constitutional rights and remedies, providing access to judicial remedies alongside alternative dispute resolution wherever appropriate. Alongside individual legal aid, BLAST undertakes strategic litigation, or public interest litigation, as a key part of its advocacy for law, policy and institutional reforms to ensure effective legal protection of rights.

Campaign for Right to Food and Social Security (RtF&SS)

The RtF&SS campaign is a national network of concerned organizations and individuals committed to work towards establishing people's fundamental entitlements and realizing the right to food. Launched on World Food Day, 16 October, 2011, the network involves its members in

- Campaigning and advocacy to ensure effective and non-discriminatory implementation, distribution and monitoring of social safety net programs
- Advocacy to reform laws and policies to secure the right to food, particularly for marginalized communities, and to implement pro-poor laws and policies
- Monitoring land reform measures seeking distribution of government land to landless people
- Monitoring and promoting disaster-risk reduction and monitoring relief and rehabilitation operations after disasters.

Nagorik Uddyog (Citizen's Initiative)

Since its establishment in 1995, Nagorik Uddyog has worked to increase access to justice and strengthen local governance in Bangladesh through raising public awareness about basic human rights and, building people's capacity to pursue and realize these rights. Nagorik Uddyog recognizes that effective democracy requires empowerment of poor, marginalized and disadvantaged women and men to participate in and contribute to all decision-making processes that affect their lives. It seeks to create and strengthen processes to enable people to set up institutions and mobilize to claim rights and justice.

RtF&SS Campaign for
Right to Food &
Social Security

খাদ্য অধিকার ও সামাজিক নিরাপত্তা আন্দোলন



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