

National Food Policy Briefing Note: Legal Obligations on the Right to Food *Prepared by Nadia Lambek, SJD candidate University of Toronto Faculty of Law*

I. Basic Definition

The right to food has been defined as follows:

The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.

*CESCR, [General Comment # 12](#), at para. 6
(legally authoritative definition in international law)*

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

[Olivier De Schutter](#), UN Special Rapporteur on the right to food

The right to food is the right of every individual, alone or in community with others, to have physical and economic access at all times to sufficient, adequate and culturally acceptable food that is produced and consumed sustainably, preserving access to food for future generations.

[Olivier De Schutter](#), UN Special Rapporteur on the right to food

II. Core Elements of the Right to Food

Adopting a right to food approach would result in a serious change in how we think about food, govern our food system and address food insecurity in Canada. Some key elements of the right to food are outlined below:

Legal Entitlement

The right to food implies that addressing hunger and food insecurity should not be left to charity. The right to food enshrines available, accessible, adequate and sustainably produced food as a human right with corresponding obligations on the state to ensure the full realization of the right.

The right to food is however, not the right to be fed. Rather: “The right to food is ... primarily the right to feed oneself in dignity. Individuals are expected to meet their own needs, through their own efforts and using their own resources. To be able to do this, a person must live in conditions that allow him or her either to produce food or to buy it. To produce his or her own food, a person needs land, seeds, water and other resources, and to buy it, one needs money and access to the market. The right to food requires States to provide an enabling environment in which people can use their full potential to produce or procure adequate food for themselves and their families. However, when people are not able to feed themselves with their own means ... the State must provide food directly.”¹

The right to food implies a move away from focusing on low prices of food stuffs and a reliance on charity based approaches such as food banks, to policies that focus on rights based social protection, protection of living wages and support of local and sustainable food production. A right also implies that individuals or groups can pursue a remedy where their rights are violated.

Implications for A National Food Policy for Canada:

- The state has obligations towards those living in Canada to ensure accessible, available, adequate and sustainably produced food
- The state cannot pawn off responsibility on charities to address food insecurity

State Obligations

To create this enabling environment, the right to food places three main obligations on states:

(1) The obligation to *protect* requires “measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food” (i.e. regulate industry, legislate living-wages etc.)²;

(2) The obligation to *respect* requires States “not to take any measures that result in preventing ... access” to adequate food (i.e. ensuring government programs do not interfere with access to country foods, to land for new farmers, to seeds, etc.)³; and

(3) The obligation to *fulfill* requires that the states (a) provide access to food or the means to procure if for individuals or groups unable to enjoy the right to food and (b) to “proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security”⁴ (i.e. implement rights based social protection, extension services for agroecology farmers, etc.).

Implications for A National Food Policy for Canada:

- There are a range of different obligations that fall on the state and there are many different ways in which the state should engage in food system governance
- Not all state obligations involve the provision of services or programs – the state is also required to regulate its own activities and the activities of third parties to ensure they don’t interfere with the right to food

Procedural Requirements: Participation and Democracy

The right to food also places a number of procedural requirements on the state when policy making. These are nicely summarized by the “PANTHER framework”, which says that all policy making should ensure: Participation, Accountability, Non-discrimination, Transparency, Human dignity, Empowerment and the Rule of law.⁵

Key among these requirements is an ongoing requirement of engaging all those individuals and groups that will be affected by policies, programs and legislative frameworks in the drafting, implementation, review and revising of the policies, programs and legislation.

Implications for A National Food Policy for Canada:

- The creation of the food policy must be participatory
- The governance of the food system must continue to be democratic and involve the participation of affected individuals and groups in the future

Progressive Realization

The right to food is to be progressively realized. This means that states are required to continually try to do better: to reduce/prevent food insecurity, to ensure better health outcomes, to increase the sustainability of the food system etc. However, states are at a minimum required to ensure freedom from hunger.⁶

Progressive realization, also requires that a state “has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations.”^[7] It is clear that Canada cannot use the excuse of progressive realization to explain the rate of food insecurity in Canada and its limited/weak response.

Implications for A National Food Policy for Canada:

- It is essential to regularly collect national data on food insecurity in Canada to better understand who is food insecure and why
- Benchmarks should be set, programs to reach those benchmarks should be designed and monitoring should be put in place to ensure that benchmarks are met
- The policy should address federal budgeting and the allocation of resources

Focus on marginalized groups

The right to food requires that states focus on marginalized groups and put in place special programs to address their realization of the right to food.^[8]

Implications for A National Food Policy for Canada:

- A policy must include rights-based programs for marginalized groups and included members of the groups in drafting, implementing and monitoring the programs

National strategy/law

International law clearly provides that states should make use of national strategies, policies and legislative frameworks to ensure the right to food.⁹ These strategies and policies *inter alia* coordinate various government bodies (across federal ministries and provincial, territorial, Aboriginal and local governments), ensure resources are allocated, create benchmarks and institute new programs.

As noted by Olivier De Schutter, the rights based dimension of national strategies also “require that they identify which actor is responsible for which action, and that implementation be supported by independent monitoring in the hands of national human rights institutions or, perhaps preferably, food security and nutrition councils.”¹⁰

General Comment No. 12 details that states should “consider the adoption of a framework law [enshrining the right to food into national law] as a major instrument in the implementation of the national strategy.”¹¹

III. Legal Sources and Canada's Commitments

The Charter, Canadian Human Rights Act and provincial human rights acts, do not protect the right to food. However, Canada has made clear international commitments towards the protection and full realization of the right to food:

- [Universal Declaration of Human Rights](#) (UDHR):
 - “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food ...” (art. 25).
- [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR) (*ratified by Canada in 1976*):
 - The “right of everyone to an adequate standard of living for himself and his family, including adequate food ...” (art. 11(1))
 - “the fundamental right of everyone to be free from hunger” (art. 11(2))¹²
- Enshrining the rights to food of particular groups:
 - [Convention on the Elimination of Discrimination Against Women](#)¹³ (*ratified in 1981*)
 - [Convention on the Rights of the Child](#)¹⁴ (*ratified in 1990*)
 - [Convention on the Rights of Persons with Disabilities](#)¹⁵ (*ratified in 2010*)

IV. Other important documents:

Two key international legal documents outline Canada's responsibilities towards the right to food – defining the scope, content and application of commitments under the ICESCR and the UDHR, and providing guidance on national implementation.

- United Nations Committee on Economic, Social and Cultural Rights, [General Comment No. 12](#) (1999)
 - General Comment No. 12 is considered a legally authoritative interpretation of the right to food and corresponding state obligations.
- UN Committee on World Food Security, [The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security](#) (2004)
 - The Voluntary Guidelines were negotiated and unanimously adopted by all member states of the Committee on World Food Security, including Canada. They provide detailed guidelines on national implementation of the right to food, including what should be included in a national right to food strategy/policy.

If you want to know more, consider checking out the following documents:

On the right to food in Canada:	In May 2012, at the invitation of the Canadian government, then UN Special Rapporteur on the right to food, Olivier De Schutter conducted a mission to Canada to assess the realization of the right to food. He presented a report to the UN Human Rights Council on his findings. The report includes a detailed set of recommendations. It can be found here .
On national implementation of the right to food more broadly:	Olivier De Schutter's reports: " Assessing a Decade of Right to Food Progress " (2013) and " The Transformative Potential of the Right to Food " (2014). Civil Society Report, " 10 Years of the Right to Adequate Food Guidelines: Progress, Obstacles and the Way Ahead " (2014). UN Office of the High Commissioner for Human Rights, The Right to Adequate Food: Fact Sheet No. 34 (2010).

[1] UN Office of the High Commissioner for Human Rights, [The Right to Adequate Food: Fact Sheet No. 34](#) (2010), at pp. 3-4.

[2] UN Comm. on Econ., Social and Cultural Rights [UNCESCR], General Comment No. 12: The Right to Adequate Food, U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter "General Comment No. 12"], at para. 15.

[3] *Ibid.*

[4] *Ibid.*

[5] UN FAO The Right to Food Unit, [Guide to Conducting a Right to Food Assessment](#) (FAO The Right to Food Unit, 2009), at Box 2.1.

[6] General Comment No. 12, *supra* note 2, at para. 17.

[7] *Ibid.*

[8] *Ibid.* at paras. 13-28.

[9] See [International Covenant on Economic, Social and Cultural Rights](#), 16 December 1966, U.N. Doc. A/6316 (1966), at art. 2(1).

[10] Olivier De Schutter, UN Special Rapporteur on the Right to Food, [The Transformative Potential of the Right to Food](#), UN Doc. A/HRC/25/27 (2014), at para. 44.

[11] General Comment No. 12, *supra* note 2, at para. 29.

[12] Article 11(2) includes a list of measures that states should take individually and through international cooperation to ensure the fundamental right of everyone to be free from hunger.

[13] See art. 12(2), recognizing the right of pregnant and lactating women to nutrition.

[14] See art. 24(2)(c) and (e) recognizing the right to adequate nutrition and art. 27(3) recognizing the right to an adequate standard of living.

[15] See art. 25(f) recognizing the right to food in the context of the right to health and in art 28(1) in the context of an adequate standard of living and social protection.