

Source Document: FAO, [The Right to Food and Access to Justice: Examples at the national, regional and international levels](#)

The right to food and access to justice at the national level

Existing jurisprudence at the national level:

Case Studies for Argentina, India, Colombia and South Africa

The protection of the right to food for indigenous people through recognition of the direct applicability of international and regional instruments under domestic law: the Argentine case

In Argentina, the formal validity of international and regional instruments that enshrine the right to food has been accompanied by recognition of their direct applicability by national jurisdictions, generating substantial jurisprudence in this area. Within this body of law, *Defensor del Pueblo c. Estado Nacional y otra*, cited in the first part of this publication, occupies a particularly important position. Recall that the case was initially brought before the Supreme Court by Argentina's Ombudsman through an *amparo* action filed against Chaco Province and the national government which was aimed at forcing the two spheres to provide medical and food assistance to indigenous communities.

A total of eleven persons had died as a consequence of substandard living conditions. In his complaint, the mediator invoked the rights, including the right to life and the right to food, enshrined in the Constitution, ACHR, ADRDM, UDHR, ICESCR, and CEDAW.

In its decision of 18 September 2007, the Supreme Court recognized the direct applicability of the international and regional instrument that enshrine the right to food. To prevent imminent and irreparable harm, the Court ordered the national government and the government of Chaco Province to adopt *emergency measures* through the distribution of food and potable water to indigenous communities. In addition to the emergency measures, the Supreme Court affirmed the need to implement *structural measures* to fulfil the right to food of indigenous communities in Chaco Province. The national government and the government of Chaco Province were instructed to identify the indigenous communities living in the area and to submit a report to the Court on the implementation of food, health, sanitary assistance, potable water, education and housing programs developed to assist the communities in question and the corresponding budget allocations. The case remains under consideration by the Court; it could have a decisive impact on the realization of the right to food for indigenous communities in Chaco Province.

The protection of the constitutional right to food of fishing communities: the South African case

Incorporation of economic, social, and cultural rights as fundamental rights under the South African Constitution, reflecting the intent to put an end to the institutional discrimination of the Apartheid era, has given rise to a substantial body of jurisprudence in this area. In May 2007, following a series of decisions on the right to housing and to health, in *Kenneth George* the South African judicial system enshrined, for the first time, protection of the right to food.

The petition was aimed at protecting the rights of access of traditional fishing communities. A law on marine resources (*Marine Living Resources Act*) was introduced in 1998 in the Cape of Good Hope Province establishing a system of quotas through which the totality of fishable resources in a given year was divided into commercial licenses. The specific needs of traditional fishing communities were not taken into account by the law, while the quota licensing procedures were complex and burdensome, thereby excluding, *de facto*, traditional fishermen. With implementation of the law, entire fishing communities lost their access to the sea, and their nutritional status deteriorated significantly as a result.

In December 2004, with the support of a development organization, a number of traditional fishermen filed a complaint with the High Court of Cape of Good Hope Province, invoking the violation of their right to food. An *affidavit* was also submitted to the Court by the Special Rapporteur of the United Nations on the right to food, J. Ziegler. After months of negotiations, the fishing communities and the Ministries of the Environment and Tourism reached an amicable agreement. According to the agreement, nearly 1,000 traditional fishermen, who had demonstrated their historic reliance on fishing as their primary means of subsistence, obtained a fishing authorization and the right to fish and sell their products. The Court ratified the agreement, authorizing the fishermen to petition the body in the event the agreement was breached.

The Court also struck down the law and ordered the government to draft a new legislative and policy framework, with the full participation of the traditional fishing communities, in order to ensure the realization of their rights.

The protection of the right to food of displaced persons: the Colombian case

The 1991 Colombian Constitution does not expressly recognize the justiciability of economic, social, and cultural rights,²²⁴ although it does provide for the adoption of positive measures by the State on behalf of marginalized and vulnerable groups and enshrines the formal validity of international treaties under internal law, which may then be used to interpret fundamental rights. While the tutelary procedure is limited to violations of the fundamental rights set forth in the Constitution,²²⁶ the Constitutional Court has produced considerable jurisprudence on economic, social, and cultural rights based on the interdependence of these rights with civil and political rights and on the obligation of the State to protect the rights of vulnerable persons or groups.

The right existing jurisprudence has most clearly set out to protect is the right to food of displaced persons, in particular in cases of extremely vulnerable persons or groups, such as the elderly, children, and women heads of households. *Abel Antonio Jaramillo y otros* illustrates this point. In this case, the Constitutional Court ruled on the situation of 1,150 families, representing over 4,000 persons, who had brought a total of 108 *tutelary* procedures. All of the families had lived in situations of extreme vulnerability for many years and had unsuccessfully sought assistance from the State agencies with primary responsibility for displaced persons, particularly with respect to food. Based on the rights recognized in the Constitution, interpreted in the light of the ICESCR, the general

recommendations of the Committee on Economic, Social, and Cultural Rights, and the guiding principles on displaced persons developed by F. Deng, the Court concluded that the situation constituted a violation, among others, of the right to life, the right to essential minimum needs, and the right to special protection for elderly persons, women heads of households, and children. The Court stipulated that the rights enshrined in the Constitution, as defined in the light of the principles on displaced persons developed by F. Deng, ensured the right to food. In the Court's view, because the massive, ongoing, and repeated violation of fundamental rights was not attributable to a single authority but represented a structural problem – the absence of resources to fund policies aimed at assisting displaced persons and the lack of institutional capacity to implement such policies – the situation correspond to an *unconstitutional state of things*.

As discussed above, to remedy the unconstitutional state of affairs, the Court ordered the State to reallocate resources to programs for displaced persons. It also instructed the authorities to develop a plan within two months and allocate the necessary resources within a period of one year, while ensuring the hard core of fundamental rights for each displaced person, including the distribution of food assistance, until such time as they could provide for their needs through their own means on the basis of the mandated socioeconomic development programs that were to be implemented.

The case did not produce significant structural changes with respect to State support to the development of the 1,150 displaced families, but it was followed by a considerable increase in government food aid to displaced persons.

The protection of the right to food of the beneficiaries of food assistance programs based on the right to life: the Indian case

Among all the States that have enshrined the right to life in their Constitutions, India provides, without question, the best example of direct involvement by judges to protect the right to life of the most disadvantaged, defined as the protection of the right to live in dignity. To protect the right to life, the Supreme Court has ruled to protect, for example, the right of traditional fishermen to access the sea and the right of local farmers to safeguard their lands and water against the activities of the shrimping industry. The Court has also protected the means of subsistence of tribal populations against State mining concessions to private enterprises. However, the most important case on the protection of the right to food in India was *People's Union for Civil Liberties*, in which the Court handed down a series of resolutions beginning in 2001 requiring state governments in India to implement food distribution programs to the most disadvantaged.

There are more than 200 million undernourished people in India, primarily women, children, Dalits, and members of tribal communities who live in rural zones. Nearly 2 million children die every year as a result of malnutrition and diseases linked to malnutrition. It was in this context that the Supreme Court decided to hear a public interest petition in 2001 submitted by the *People's Union for Civil Liberties*, with the objective of protecting the right to food of various communities suffering from hunger in the state of Rajasthan. A large number of people in those communities were dying of hunger, yet they did not receive any government assistance, despite the availability of food supplies only a few kilometers away. In response to the petition, the Supreme Court recognized that the right to food was enshrined in the Constitution under the right to life provision set forth in article 47, which requires that the State undertake measures to improve the nutritional state of the population. The Court followed this interpretation with the issuance of a number of directives to the state governments of India.

The Supreme Court ordered the state governments to identify the eligible beneficiaries under the different existing programs, while mandating the effective implementation of those programs. In the event the programs developed by the political branches of government were inadequate, the Supreme Court instructed that the necessary improvements be undertaken. To ensure fulfillment of its decisions, the Supreme Court appointed two Delegates to draft reports on the implementation of the programs undertaken across India's various states. Further, the body instructed that its resolutions be published in every food distribution center throughout India with the corresponding list of beneficiaries and that the information be widely disseminated through the media. Despite difficulties in the early stages of implementation, the Court's resolutions had a significant impact on the tangible realization of the right to food in India.

Food assistance programs which had begun to be abandoned were revived thanks to dramatic improvements in their implementation, enabling access to food for millions of individuals. More important, the resolutions of the Supreme Court carried symbolic importance: they transformed the beneficiaries of assistance programs into stakeholders of justiciable rights, reminded state governments of their constitutional obligations, and fostered a shift in the perception of judges regarding their role as guardians of the right to food.