

# The realisation of the human right to adequate food and nutrition and the principle of prohibition of social regression as an argument for social struggles

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## The concept of the human right to adequate food and nutrition

Since early human history, individuals and groups that control land and the process of food production have held a large amount of political power.

The affirmation that food and nourishment are fundamental rights, and not a commodity, is, above all, a form of questioning the historical structure of power (and of the market), by recognising that the State—government, people and territory—must organise itself to ensure that all people can exercise this right, regardless of their economic, social or generational condition and of their geographic, environmental and political circumstances.

This is the great conceptual advance illustrated by the fact that there are now international treaties, constitutions and laws that recognise the right to food, a recognition that results from historical social struggles.

The human right to adequate food and nutrition (HRTAFN) is established in many international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the United Nations through Resolution 2200A (XXI) of 16 December 1966. Some 164 countries around the world have ratified or adhered to this Covenant.

According to General Comment No. 12 (United Nations 1999) of the Committee on Economic, Social and Cultural Rights (CESCR),<sup>2</sup> which expounds on the concept of the right to food established in the ICESCR, the HRTAFN has two dimensions. The first, more immediate dimension is the right to be free of hunger. The second

dimension is achieved 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” (United Nations 1999).

In general, the promotion of this right encompasses access to all necessary rights for people to feed themselves in a dignified and emancipatory manner, overcoming all injustices, inequalities and the lack of sustainability that affect the food process,<sup>3</sup> which include racial, ethnic and gender inequalities.

## Brazil: advances, limitations and regressions in the fulfilment of the human right to adequate food and nutrition

In Brazil there have been many advances in the field of social rights since 2003. The most significant achievements concerning the HRTAFN have been made regarding its first dimension, as revealed by indicators of food and nutrition security.

The main institutional and legal examples of this phenomenon were: the reinstatement of the National Council for Food and Nutrition Security (*Conselho Nacional de Segurança Alimentar e Nutricional*—CONSEA) in 2003, the approval of the Organic Law of Food and Nutrition Security in 2006 (Law No. 11.346/2006) with the resulting creation of the National System of Food and Nutrition Security, and the approval of Constitutional Amendment No. 64, which included the right to food in the list of social rights in Brazil’s Federal Constitution.

As a result of many efforts, according to the National Household Sample Survey (*Pesquisa Nacional por Amostra de Domicílios*—PNAD) of the Brazilian Institute of Geography and Statistics (*Instituto Brasileiro de Geografia e Estatística*—IBGE), dire food insecurity

in the country decreased continuously from 2004 (6.9 per cent) to 2013 (3.2 per cent), when it reached its lowest historical record (IBGE 2014). Because of this, the Food and Agriculture Organization of the United Nations (FAO) declared that Brazil had left the Hunger Map.

These and other advances were recorded in the *State of Food Insecurity in the World* (SOFI) 2014 report (FAO 2014). This document attributes the Brazilian results to advances in the country’s legal and institutional frameworks and to the public programmes and policies that had been designed and implemented since 2003. Furthermore, the document emphasises the importance of social participation for these achievements.

It is important to note that, during the same period, concerning the second dimension of the HRTAFN, non-governmental organisations and social movements have harshly criticised not only officers of the executive authority but also the legislative and judicial authorities and state oversight bodies, pointing out, among others:

- the lack of land reform;
- the absence of guarantees over land and territories, especially for Afro-Brazilian populations, indigenous peoples and other traditional peoples and communities;
- the large support given to agribusiness in comparison to support for family farming;
- the authorisation of the cultivation of genetically modified organisms (GMOs);
- the lack of effective regulation of the use of agrochemicals; the support



Photo: Sérgio Amaral/MDS. Production of family farmers is used to feed children aged 2-5 in daycare, Federal District, Brazil, 2013 <<http://goo.gl/OOQfm>>.

for projects that negatively impacted human rights within and outside Brazil (Instituto Rosa Luxemburgo et al. 2009); and

- judicial decisions and laws harmful to fundamental rights.

The criticisms identified the development model and the food production and consumption model adopted in Brazil as structural causes of the violation of rights (CONSEA 2013).

Despite these negative aspects, many sectors also recognise social gains, which are now suffering an intense process of regression, due to the country’s current political situation.<sup>4</sup>

The interim government that was instituted during President Dilma Rousseff’s impeachment process has adopted several measures that negatively impact the fulfilment of social rights and, thus, the fulfilment of the HRTAFN.

According to some, these measures are perceived as striking the foundations that ensured the progress in the reduction of both hunger and poverty: the institutions that were created or strengthened over the last several years, the legal frameworks, the social programmes that inspired many countries in the southern hemisphere, and social participation. As examples, payments and budgetary and financial transfers to the Seasonal Family Farming

Plan (*Plano Safra*) were suspended, and the technical assistance and rural extension services offered to this sector and the acquisition of food by the National Supply Company (*Companhia Nacional de Abastecimento*—CONAB), under the Food Acquisition Programme (*Programa de Aquisição de Alimentos*—PAA),<sup>5</sup> were paralysed (Intini 2016).

In addition, the Ministry of Agrarian Development was closed (Beghin 2016), and there were indications of regressions in the process of indigenous land demarcation (Barros 2016), and in the *Bolsa Família* cash transfer programme (Mariz 2016).

The Inter-American Commission on Human Rights (IACHR) has stated that, according to the Protocol of San Salvador, ratified by Brazil in 1996, regressions of economic, social and cultural rights are forbidden to States.

The IACHR (2016) has suggested that the interim government’s announcement that funding previously earmarked for social programmes related to housing, education and poverty reduction will be reduced could constitute a violation of this Protocol.

## The principle of prohibition of social regression as an argument in the struggle for the human right to adequate food and nutrition

The origin of the principle of prohibition of social regression can be found in

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“The human right to adequate food and nutrition is established in many international human rights treaties.



Photo: Sergio Amaral/MDS. Quilombola women participate in a community association and are beneficiaries of the Bolsa Família programme, Bahia, Brazil, 2014 <<http://goo.gl/98YCPf>>.

the 1970s, when, in Germany, possible restrictions on social benefits were discussed due to the economic crisis (Continentino 2015).

The principle was conceptualised as a clause of ‘prohibition of social counter-revolution’ or of ‘reactionary evolution’. This means that social and economic rights (...), once obtained in a certain degree of fulfilment, become, simultaneously, an institutional guarantee and a subjective right” (Canotilho 2006).

Some courts have been softening the adoption of this principle, a phenomenon known as the ‘judicial tradition of crisis’ and which refers to the decision by these courts that economic crises can justify the involution of rights.

However, in these cases, it is still recognised that, even in periods of contingencies, this principle is linked to economic and social democracy and that it imposes limits to legislators and other public officers (Continentino 2015).

In this sense, one of the instruments that explains the principle of prohibition of social regression in the most instructive manner is General Comment No. 3 of the CESCR (United Nations 1991), the document that describes the nature of Member States’ obligations when they ratify the Covenant on Economic, Social and Cultural Rights (ICESCR).

This General Comment affirms that article 2.1 of the ICESCR contains an obligation of progressiveness—that is, that States should progressively strive towards the full realisation of the rights recognised in the Covenant, which implies both a positive and a negative dimension.

The positive dimension establishes the obligation to adopt measures that respect, protect, promote and provide the right to food and the other rights recognised in the Covenant. The negative dimension imposes on States the obligation to abstain from adopting measures that may result in regression of the advances made concerning these rights (Defensoria Del Pueblo de Colômbia 2009).

In addition, paragraph 9 of General Comment No. 3 determines that States must demonstrate that they are using the maximum available resources at their disposal to safeguard human rights and, moreover, that any potential retrogressive measures must be fully justified by reference to the totality of the rights provided for in the Covenant.

Therefore, if there is any concrete circumstance that requires the involution of a process of implementation of rights, it is necessary to demonstrate that the measure obeys the principle of proportionality—that it is necessary and that it is the most effective and least harmful measure to the holders of rights (Continentino 2015).

In this way, the principle of prohibition of regression, together with a human rights approach, is an important political argument. The counter-hegemonic use of rights can, on the one hand, bolster the direct struggles led by popular movements, especially by substantiating actions to combat the criminalisation of protests against retrogressions and in favour of the implementation of rights.

On the other hand, it can also substantiate the ability to demand rights through States’ institutional mechanisms and to protect human rights in Brazil and worldwide. Historically, the struggle for rights has led to their recognition in many national and international regulations. This recognition can and should strengthen, in turn, these same struggles, in a counter-hegemonic cycle of building and demanding rights. ●

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1. Secretary-General of FIAN Brazil.
2. “The Committee on Economic, Social and Cultural Rights (CESCR) is the body of 18 independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. The Committee was established under United Nations Economic and Social Council (ECOSOC) Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the ECOSOC in Part IV of the Covenant” (OHCHR 2016).
3. The concept of ‘food process’ (*proceso alimentario, in the original*) and its relationship with the HRTAFN can be found in more detail in Morales González (2013).
4. This article was written and submitted for publication in July 2016.
5. Created in 2003 under the Zero Hunger programme, the PAA programme in Brazil has two basic purposes: promoting access to food and supporting family farming.



Photo: Ana Nascimento/MDS. Children of Bolsa Família beneficiaries are fed at daycare, Minas Gerais, Brazil, 2013 <<http://goo.gl/OOQqfn>>.

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