

Food security

Law and governance between states, markets and society

**Wageningen University
Law and Governance Group**

General introduction

Food security

Despite its simple label, food security is a hugely complex issue. The project 'Food security' comprising of a symposium with conference papers intended to be published in a book, addresses this issue in the context of law and governance. The papers, written by friends and members of the Law & Governance Group at Wageningen University, address different aspects of food security at different levels and using different scholarly approaches. While it is self evident that laws do not feed people and governments only to a limited extent, the organisational arrangements of law, and governance regimes of a public or private nature may contribute to the prevailing situation in positive or negative ways.

The concept of food security has been defined in different but similar ways. The FAO 'Voluntary Guidelines to support the progressive realisation of the right to adequate food in the context to national food security' apply the following formula:

Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The four pillars of food security are availability, stability of supply, access and utilization.

The vast majority of the people in world live in food secure conditions. Sometimes to such an extent that it is taken for granted. A whole range of factors may have contributed to this state of affairs, like peace, climate conditions, adequate application of resources, wealth, favourable political and economic conditions and well designed policies in the private sector and at government level.

A devastating and increasing number of people however suffer from food insecurity. According to FAO (2006) the number of under nourished was at about 800 million in 1996 (the year of the world food summit) and has since then been rising.

The papers written for the symposium 'Food security' address different aspect of the impact of law and governance on food security. It will be shown that different situations lead to different priorities and different approaches.

The major legal expression of food security is the human right to adequate food. The Economic and Social Council of the UN defines the right to adequate food in terms very similar to the ones used by FAO to describe food security:

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.

This parallel between food security and the right to adequate food, is particularly relevant as the concept of 'adequate' has further been elaborated along and beyond the lines quoted above on food security. On the one hand the sustainable availability is relevant, on the other hand adequacy is understood to mean: sufficient to satisfy dietary needs, free from adverse substances and acceptable in a given culture.

It will be seen that depending on the circumstances policy emphasis on the one or the other of these aspects.

In September 2000 the United Nations Commission on Human Rights appointed a special rapporteur on the right to Food. His job is to ensure that governments are meeting their obligations with regard to the right to food of all people.¹ The special rapporteur elaborated a doctrine stating that the right to food does not require that governments feed the whole population. It does however include the obligation for authorities not to interfere with the population's means to feed themselves. In this doctrine four different obligations have been identified: 1- to respect (non-interference); 2- to protect (from the interference by third parties); 3- to promote (support self realisation) and 4-to fulfil (provide in case of emergency). These four obligations imply that we not only have to look at the way in which people have access to food, but also directs our attention at the way in which the means of production to produce food, and the ways in which people are hampered to produce food, or to acquire safe food, because of political and economic conditions not directly related to food itself. Power relations influencing the distribution of land, military insecurity and political oppression impeding people to produce food are a case in point. Pollution affecting the safety of food and food production are another case in point. Therefore, in the view of the special rapporteur, the right to food should be accepted – at the very least as far as its obligations to respect are concerned – as enforceable. That is to say individuals should have access to the (national) courts to defend their right to food in case national authorities unduly restrict it.

The implementation of the right to food in the member states of the UN is further supported by general comments by the Committee on Economic, Social and Cultural Rights (UN) and by Voluntary Guidelines to support the progressive realisation of the right to adequate food in the context of national food security (FAO).

Food policy

In most cases so far the reception of the UN's views on the human right to food by the member states has been lukewarm at best. Nevertheless, its practical complement 'food security', defined both in a quantitative way as having access to sufficient food as well as in a qualitative way as having access to safe food, has been a central policy concept for decades. The sustainable availability of sufficient food of good quality is an issue that plays a role in different guises all over the world. In the South the *provisioning* of the poor with food of sufficient quantity and quality has been a core objective of development policy at international as well as national level. In the North issues of food *safety* have re-emerged on the policy agenda with the introduction of Genetically Modified Organisms (GMOs), Mad Cow Disease (BSE: Bovine Spongiform Encephalopathy), dioxin chicken, and avian influenza. Moreover, the growing number of obese adults and children raises concern, not only in the United States, but also in Europe and recently in the Newly Emerging Economies in Latin America and Asia, where growing affluence is translated into a growing incidence of obesity.

With respect to the South there is increasing concern and embarrassment over the growing number of people who are not food secure and do not have the political and economic means to claim a larger share of the 'cake'. With the formulation of the Millennium Development Goals this issue has re-appeared on the policy agenda, though with the current pace of implementation of the proposed policies, it has become highly unlikely that the target can be met of halving the number of hungry people by 2015, especially in Africa. In addition the quality of food and the possible presence of all kind of pollutants (pesticide residues, but also mycotoxins etc) are also areas of growing concern.

¹ The Special Rapporteur makes an annual report on his work to the Commission on Human Rights in Geneva in April and, at the request of the Commission, he also makes an annual report to the UN General Assembly in November each year. He also makes country missions to look at the situations of the right to food in different countries in the different regions of the world. See <http://www.righttofood.org/>

The papers highlight a number of aspects of this crucial policy agenda mainly from the perspective of regulation. Two general beliefs support the importance of regulation: that people have a tendency to organise their lives according to certain rules and that actions of people can be influenced (but not determined) by manipulating those rules or by superimposing other rules through regulation. In this way, policy is about regulation, not just rules embodied by written legislation, but also by the various institutions and power networks that govern human behaviour i.e., in our case the production of food, the distribution of the means to produce food and the redistribution of the food that is produced. These domains are linked with regulatory mechanisms embedded in the law and the structures of governance of our societies at global, international, national and even local level.

Food security is a deeply normative concept. It is regarded as a basic human right by some, something inherently connected with the minimum levels of human dignity, so that no concession or discussion about the content of the concept is acceptable or even possible. But, taking the concept only for its normative dimensions is a risky undertaking from a scientific point of view. While focusing on the normative dimensions of food security we may lose sight of the ways in which people governments, non-state actors, and international organizations try to ensure food security as well as the structural constraints for improving food production, access to food and income, and social justice. Comparing the current situation with the desired situation is one thing. Analysing why this desired situation will not occur automatically, while the great majority of the world's population and its leaders are endorsing these goals, is quite another. In this perspective it could be wiser to start from its opposite, food insecurity, and begin to analyse where it starts and to identify the deeper lying causes of the problems sketched above.

Those responsible for food security in the world hold a wide variety of opinions and have developed a wide variety of frameworks for tackling the issue of food security. These frameworks are not only congruous with specific scientific approaches to food security, but also act as frameworks for orienting policies. They address what has been labelled in article 11 of the ICESCR the improvement of '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'.

The papers

Method

The Law & Governance Group has its home within the Department of Social Sciences at Wageningen University. Its makeup is of a multi disciplinary nature. On the one hand there are the firmly social science approaches of public policy and legal anthropology (legal pluralism in particular), on the other hand there are the legal sciences not usually seen as social sciences (but rather as a branch on their own or as belonging to the literature/alpha sciences). The scholarly methods of the legal sciences have been applied in the papers by Freriks, Grossman, Van der Meulen, Tromm, Szajkowska, Van der Velde, Vlemminx and Wernaart. The papers by Breeman, Goverde and Termeer apply approaches from policy sciences, while De Bruijn, Van Dijk, Hospes, Köhne, Paradza, Roth, Syntiche, Warner and Wiber can be categorised with legal anthropology.

Resource

Food security is discussed with a focus directly on food by Goverde, Van der Meulen, Tromm, Szajkowska, Van der Velde, Vlemminx and Wernaart, and with a focus on the management of resources in order to ensure sustainable availability of food by Grossman (arable land), Köhne (labour), Hospes (forest), Roth and Warner (water), Wiber (genetic plant

resources). De Bruijn, Van Dijk, Djindil and Paradza focus on causes of food insecurity and on vulnerability of certain groups. The role of international trade is the focus of Freriks.

Competing claims

Competing claims to resources: urbanisation, production of biofuel (Grossman), nature conservation and feed production (Hospes) are being addressed.

Sources of law

In legal science usually four different sources of law are recognised: international treaties, legislation, custom and case law. Freriks discusses WTO-treaties, Van der Meulen and Wernaart discuss UN treaties, Szajkowska and Tromm elaborate on EU treaties and legislation. Federal and state legislation is the subject of Grossman's paper. Customary law comes to bear in the papers by De Bruijn, Van Dijk, Köhne, Paradza and Syntiche. Case law is the main topic addressed by Vlemminx. Finally self regulation is dealt with by Freriks and by Hospes.

The workshops

Workshop 2 focuses on policies addressing management of natural resources in order to ensure sustainable availability of food. Workshop 1 addresses legal measures directly addressing food, either with a view to availability or with a view to quality in particular in terms of safety. It will be seen that priority is with the former and shifts to the latter when availability seems to be under control.

Overview

The human right to food

Bernd van der Meulen

Workshop 1

In the paper 'The right to feed oneself. Food in the struggle for human rights as entitlements', Bernd van der Meulen discusses the intricacies of the human right to food in the context of the development of legal theory on human rights in general. He argues that civil and political rights developed into powerful instruments in the hands of people to protect them from abusive policies because courts of law like the European Court of Human Rights have lend them their full weight. Social, economic and cultural rights will only achieve a similar impact if and when the (national) courts will muster a similar courage.

Bart Wernaart

Workshop 1

In his paper titled 'A different juridical approach towards the human right to adequate food, Bart Wernaart addresses the human rights structures at UN level.

Frank Vlemminx

Workshop 1

'The right to adequate food: Dutch Food for Thought' Frank Vlemminx analyses case law in the Netherlands and finds it lacking with regard to recognising the right to food as a legal requirement.

Menno van der Velde

Workshop 1

Forthcoming

Food safety policy

Henri Goverde

Forthcoming

Food for Thought about Food Politics. Henri Goverde analyses a shift in emphasis of Dutch policy from food security to food safety.

Jacques Tromm

Workshop 1

Community policy on food safety. Jacques Tromm describes the development of EU legislation on food and its shift in focus from availability to safety

Anna Szajkowska

Workshop 1

Ensuring food safety in the internal market: legislative dynamics in EU food law. Anna Szajkowska analyses the competition of the current EU regulatory system with national law in the member states as far as risk regulation in food is concerned.

Vulnerability

Mirjam de Bruijn

Forthcoming

‘The perception of food security and the distribution of suffering in Sahelian societies.’ In the Sahel food security is the major problem families are facing every year. It is part of the seasonal rhythm of family life. Extreme scarcity is no exception. The Sahelian droughts have become so ‘normal’ that they are only reported when the circumstances are very extreme. Suffering related to food scarcity is not equally divided within societies. The analysis of Sahelian societies shows that social hierarchies are developed around risk positions vis-à-vis food security. This paper examines the normative systems that have developed in Sahelian societies to deal with this question of unequal share in food security. These normative systems are informed by social hierarchies, Islam and customary law, and have an informal character i.e. not related to state policy. How do these coincide with the ‘formal’ rights approach that is accepted by the governments of these Sahelian states and that also increasingly informs the Islamic discourse on poverty and inequality?

Han van Dijk and Nakar Djindil Syntiche

Workshop 2

The paper ‘Complex Emergencies, Food Insecurity and Chronic Poverty in Remote Rural Areas of Africa. The Case of Central Chad’ presents the results of some case studies on the causes of vulnerability to food insecurity.

Gaynor Paradza

Workshop 2

‘Female-headed Households’ Food Security: Nature, HIV/AIDS and the State; Exploring the Linkages. Case Study of a Communal Farming Area in Zimbabwe.’ This paper addresses the vulnerability of widows in HIV/AIDS stricken rural areas in particular with regard to access to arable land.

Management of necessary resources for food security

Dik Roth and Jeroen Warner

Workshop 2

In their paper ‘Virtual Water: virtuous impact?’ Dik Roth and Jeroen Warner analyse the policy concept of virtual water which requires to base food production and import decisions on the amount of water needed in order to enable market mechanisms to allocate water consuming production to water rich area’s and vice versa. This concept turns out to be not as politically neutral as at first sight it appears to be.

Margareth Rosso Grossman

Workshop 2

‘Farmland and Food Security: Protecting Agricultural Land in the United States’ The agricultural sector in the USA not only ensures food security for the USA but through exports and food aid also contributes significantly to the world food supply. The supply of arable land in the US, however, is under pressure from competing uses like urbanisation and infrastructure. The use for food production is under pressure from demand for alternative use production like feed and bio fuels. The paper analyses policies to protect farmland from irreversible removal from agricultural application.

Melanie Wiber

Workshop 2

Melanie Wiber addresses the appropriation of plant genetic resources, in particular with regard to genetically modified varieties. The debate at the global level (WTO, TRIPs) may generate devastating outcomes on food security at grass root level.

Michiel Köhne

In his paper ‘Food security in a Bolivian indigenous territory. Reciprocal relations of subsistence farming reproduced in indigenous governance’, Michiel Köhne analyses the role of brokerage in the governance of labour force as a critical resource in agricultural production. Brokerage is compared to but at the same time fundamentally distinguished from clientalism.

International trade

Annelies Freriks

Forthcoming

In her paper ‘The WTO and ‘non trade concerns’, Annelies Freriks analyses the impact of WTO agreements on non-trade concerns like food security and animal welfare.

In 1994, the agreements that led to the creation of the World Trade Organisation (WTO) made specific provisions for the management of sanitary and phytosanitary problems (SPS agreement). The SPS-agreement sets out the legal framework for international trade, that is safe for the health of the public, animals and plants. Issues such as animal welfare and food security are regarded as so-called ‘no trade concerns’ and are up till now not taken into account in the implementation of the SPS-agreement and other agreements. In the WTO-negotiations within the Doha Development Round (DDA) a declaration has been adopted in which it was stated that non trade concerns need to be taken into consideration in particular in the context of the Agricultural Agreement. Proposals to widen the reach of the agreements have met opposition, although the EU and other countries have raised concerns about the impact of international trade on e.g. development efforts. This paper will focus on the current

state of affairs concerning the role of non trade issues in WTO-negotiations and will go into the legal aspects of efforts widening the scope of these agreements.

Otto Hospes

Workshop 1

Feed security contested: soy expansion in the Amazon. Hospes analyses the discourse in Brazil and the Netherlands between businesses in the international soy chain, NGOs and governments on the social, economic and ecological impact of deforestation in the Amazon to provide the EU feed sector with soy.

Gerard Breeman and Katrien Termeer

Forthcoming

After the Second World War most European agricultural policies were aimed to secure food supply. In that time, the logic of *food production chains* was brought up as a means to establish food security (although other concepts were used to refer to production chains). This meant that predominately actors who were able to produce bulk food were included in the policy sub-community and production network. One may observe that this logic for establishing cooperative production networks and policy communities is still in place in developing countries. However, since the 1980's the aims of food production chains are changing in Western Europe. Chain management is now used more as a tool to safeguard food quality rather than to secure food supply. Our paper deals with the consequences of this change.

A first consequence may be that actors who used to be essential to secure our food supply will be excluded from the policy community or production network (That is, if preserving food quality requires other (policy) actors than securing food supply). We posit that through chain management only part of a policy community and production network will be activated, and, consequently, only some goals will be achieved and other will not. A second consequence of chain management may be that actors will increasingly formalize their relations through some kind of regulatory system and use legal instruments to secure their relationships. Our hypothesis is that these systems of rule will damage interpersonal trust within the sub-community or networks. The rules will make trust-relations redundant. Following from this hypothesis the result may be that chain coordination leads to consumer trust in the short run, but affects interpersonal trust between policy actors and primary producers in the long run.

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