

Implementing the Right to Food in Kenya: Lessons from Brazil

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Abstract

Article 43 (1) (c) of the Constitution of Kenya, 2010, on the Social and Economic Rights states that ‘every person has a right to be free from hunger, and to have adequate food of acceptable quality’ thus providing for a human rights based approach to food security in Kenya. In an attempt to contribute to the current debate and dialogue on advancement of the human rights approach to achieving food security in Kenya, this paper discusses the implementation implications of the right to food at the national level using the case of Brazil. Brazil has implemented the right to food since early 2000, with significant improvement to food security. The lessons from Brazil indicate that with good political will, decentralization and citizen’s participation, development of legal frameworks to anchor the right to food in law, coordinated institutions for implementation, advocacy and training, and, monitoring and evaluation, it is possible to progressively move towards the elimination of food insecurity in Kenya through the right to food approach.

Keywords: Right to food, Food security in Kenya, Constitution of Kenya 2010 article 43 (1)(c), Kenya, Brazil

1.0 Introduction

Increasingly, developing countries have adopted a human-rights based approach (the right to food) with respect to the provision of key basic needs including food. Kenya has joined the league of countries adopting the human rights approach through enshrining this right as one of the economic and social rights of the Kenya citizens. The right to adequate food is defined as “when every man, woman, and child, alone or in a community with others, has physical and economic access, at all times, to adequate food or means for its procurement” Economic, Social and Cultural Rights (CESCR, 1999). The right to food implies the availability of food in quantity and quality regarded as satisfying the dietary needs of individuals, without adverse substances, and acceptable within a given culture. The food must be accessible in a way that is sustainable and does not interfere with the enjoyment of other human rights (IFRI, 2004).

The definition of the right to food embraces the five concepts of food security including food availability, food access (economic, physical and social), food safety, nutritional value and sustainability and can therefore be equated to ‘the right to food security’. The right to food can also be viewed as both an objective and an instrument for achieving food security. Since food is a basic need, the attainment of the right to food is important for people to enjoy ‘all the other rights’ whether economic or social, and is a crucial ingredient of every country’s development. The right to food as a human right gives food security the ‘human face’, placing the individual at the centre of food security advancement approaches. ‘Human rights’ provides the framework for analysis, action and accountability (FAO, 2009).

With respect to policy, the right to food implies three obligations for government including: respecting, protecting and fulfilling that right. Realization of this right implies the realization of entitlements, nutrition, government policy and public action including through social welfare and security programmes to achieve access to adequate food especially for the marginalized groups of the population. FAO (2001) defines food security as a situation that exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.

The definition has three concepts including: food availability, food access and food utilization (including food safety and nutritional value). A fourth dimension, food stability cuts across the three concepts of food security, and is critical in ensuring the sustainability of food security. The dimension of food availability is about food being present at the household level or at the market place in sufficient quantity, good quality and good nutritional value. Food availability can be achieved through local or domestic production or from regional and international sources through trade or food aid. Access to food is about physical and financial access.

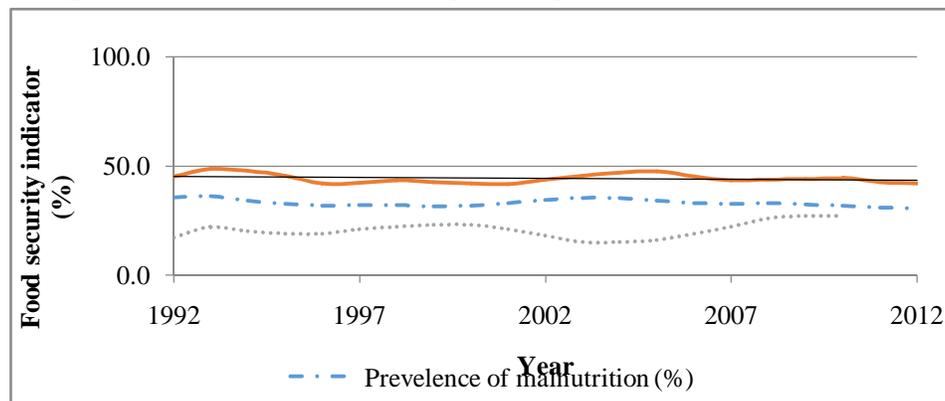
Physical access to food involves the marketing, transport and distribution of food while financial access is about the affordability of food. Utilization of food is about the quality, safety and nutrition values of food for good health. The stability dimension is about the sustainability of the food supplies including the availability, access and utilization of the food consumed. Interruption of food supply and access interferes with food utilization and may lead to food insecurity. Sustainability means that food is grown, made available, accessed and used in ways that are environmentally sound and socially acceptable.

2.0 The food security problem in Kenya

Among the key areas of vulnerability in Africa today is the access to adequate and quality food. Food insecurity or the lack of access to adequate food of acceptable quality, by all and at all times), has been one of the challenges facing many developing countries, particularly in the Sub-Saharan Africa region, mainly due to the high incidences of poverty. Regional food insecurity has continued to persist while there has been surplus production at the global level.

Food insecurity has remained one of the development challenges nations have to grapple with. FAO (2012) indicates that almost 870 million people in the world currently are chronically undernourished, a majority of whom are living in developing countries, 235million in Africa. In Kenya, it is estimated that 13 million out of the population of 43.5 million persons or about 30 per cent of the country's population, are undernourished (FAO, 2012). Although some slight improvements towards food security in Kenya can be observed (Figure 1), the achievement of food security has remained largely an unmet objective and a key challenge to the government of Kenya. Several food security related policies developed in the country have been met with limited implementation, and had limited outcomes.

Figure 1: Trends in Food Security in Kenya (Some Selected Indicators)



FAO (2012)

From Figure 1, it is clear that the key indicators of food security for Kenya reveal that food insecurity is an issue of concern: the prevalence of malnutrition, though on a slight decreasing trend since the 1990s, is still high, standing at about 30 percent of the population and indicating that on average, three of every ten Kenyan's is food insecure. Food inadequacy is high in the country, standing at over 43 percent, meaning that over 43 per cent of the Kenya population takes in less than the recommended 2,250 kilocalories per day.

During the same period, food imports have been on the increase, currently accounting for about 28 per cent of goods imported in the country, indicating that the country's domestic food availability is being eroded. Sen (1981) identified the main causes of hunger and malnutrition as poverty, and the result of a lack of accountability and social inequalities that go unnoticed or unremedied. In Kenya, poverty and inequality are prevalent: slightly below a half of the country's population is considered to be poor.

The Kenya Integrated Household Survey (KNBS, 2006) , shows that 47.2 per cent of the rural population is food poor meaning that they cannot afford to purchase the daily dietary requirements, with the food poverty line for the country being estimated as the cost of consuming 2,250 kilocalories, per adult equivalent , per day. Wide disparities are hidden in this national average as the food poverty ranged from 31.4 to 66.0 per cent in the Central and North Eastern regions of the country, respectively. The very poor and poor households, in the rural areas and in urban slums are the most affected by food insecurity.

Recent demonstrations such as those experienced in April 2011, riots and protests triggered by high food prices in Kenya are a pointer to the increasing public awareness that the government has a responsibility and needs to take actions towards enhancing access to food. The current approach to achieving food security as a human right as stated in the Constitution of Kenya 2010, provides a new impetus towards the country improving her food security status. As the country moves towards implementation of social security programmes, in line with Article 43 (1)(c), it is important to reflect on some of the approaches that have been used to implement the rights approach to food. Part of such reflection would be to consider what the human rights to food approach implies for Kenya and what Kenya can learn from countries that have successfully implemented this approach.

This is the main issue addressed in this paper. The paper will contribute to current debate and dialogue on the advancement of the human rights approach to achieving food security in Kenya in line with the article 43 (1)(c) of the Constitution of Kenya, 2010. Descriptive analysis and the case study of Brazil's implementation of the right to food have been used in order to draw up lessons for Kenya in her march towards meeting the requirements on the right to food.

3.0 The Concept of a rights based approach

The human rights based approach gives a claim to poor and vulnerable groups, this claim is enforceable. The purpose of a human rights approach to food security is to establish the procedural and legal means necessary for providing remedies against the authorities when they fail in the commitment to guarantee access to food. This could take the form of interventions through social policy, to protect vulnerable groups, by guaranteeing basic economic and social conditions, overcoming structural deficiencies in the distribution of wealth and productive assets, creating greater equality for all, and rectifying market failures.

The basis of a rights-based approach to ensuring adequate food is empowering poor people and those who are food insecure in the area of concern (IFRI, 2010). Empowerment is an integral part of the strategies to be implemented, and should focus on enabling people to feed themselves and avoid dependence on their governments. It requires the early identification of the areas affected by hunger and more importantly, of why people are food insecure. More specifically, this approach requires a perspective that addresses not only the consequences of food insecurity but also its root causes, empowering the vulnerable to develop sustainable ways of accessing food.

The right to food places three obligations on the part of the government including obligations to: respect, protect and fulfill each person's access to food. The breach of a state's obligations leads to the destruction of a person's access to food or keeps a person in a situation of food deprivation. Respect here implies a duty on governments not to destroy the access to food by individuals. The obligation on protection binds governments to protect people's access to food against destruction by a third party such as their neighbors, employers or business enterprises.

The obligation to fulfill places a duty on governments to facilitate access to and to provide food to the vulnerable and those affected (FAO, 2013). The facilitation duty also requires governments to implement and engage in activities that improve people's access to food. These include the programmes and measures taken by governments to improve food access especially to the marginalized. The duty on provision implies that the government directs interventions, for example, through providing money or food whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to food through the means at their disposal.

This applies when individuals are the victims of natural or human-incurred disasters and conflicts. It is a measure of last resort, when all other interventions to respect, protect and facilitate have failed. Examples of such provision include the distribution of food aid.

4.0 Evolution and Adoption of the Right to Food

The 'right to food' was first recognized at the international level by the United Nations. The Universal Declaration of Human Rights of 1948, stated that everyone has the right to a standard of living adequate for the health and well-being of themselves and of that of their 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 (UN, 1949).

Since then, several efforts have been taken at various levels including international, regional and national level, towards achieving a rights based, adequate and quality food entitlement.

Currently, 158 country members of the UN are signatories to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), initially signed in 1966 and which entered into force in 1976. Kenya is party to this convention.

Through this Convention (ICESCR, 1966), State parties agree to co-operate in various ways towards improving the availability and access to food and therefore the achievement of the right to food. This implies a duty bearer role for national governments. Although there has been some cooperation at the global level in addressing hunger especially in emergency situations, a lot remains to be done especially to facilitate trade in food and agricultural products. Trade in agriculture and food products remains the most protected globally, at regional level and national level, with countries or regional blocks designating the main food products as sensitive products and protecting them through high tariffs. High tariffs lead to higher food prices and therefore reduced food affordability and access, therefore aggravating the issue of food insecurity.

This is also true for some regional economic communities, which are Kenya's important trading partners including the East African Community (EAC) and the Common Market for Eastern and Southern African - COMESA (Mbithi, Karugia and Guthiga, 2012). In 1996, during the FAO World Food Summit, the heads of State and Governments signed the declaration on World Food Security, reaffirming the right of everyone to access safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger (FAO, 1996). Following this, FAO developed guidelines for implementing the right to food at the national level.

At the international level, the UN in particular has been in the forefront with various conventions and declarations on the right to food aimed at eradicating hunger. Adoption of the Millennium Development Goals (in 2000), including Goal 1: to reduce by half extreme poverty and hunger by 2015, and the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, making the right to food justifiable in 2009, are some of those efforts that among others are well documented by De Schutter (2010).

There has been some progress with respect to implementation of the 'right to food approach' at regional and national levels. At the Pan-African level for example, the African Union's Social Policy Framework seeks to promote human rights, dignity and food and nutrition as one of the key 18 thematic issues of this policy focus (AU, 2008). Over the years, Kenya has developed policies and programmes towards the promotion of food security mainly through pursuing food self-sufficiency.

Indeed, past agricultural policies have attempted to promote increased domestic food production. Currently, in addition to the provision of the right to food, the government has also developed the National Food and Nutrition Policy (Republic of Kenya, 2011). This policy aims at achieving good nutrition for the optimum health of all Kenyans; increasing the quantity and quality of food that is available, accessible and affordable to all Kenyans at all times; and; protecting vulnerable populations using innovative and cost-effective safety nets linked to long-term development. The policy has been framed inline with the Constitutional right to food for all. The policy further observes that Kenya supports the progressive realization of the right to adequate food, in the context of national food security.

5.0 Implementing the human rights approach to food at the national level

Although international agreements and instruments on the right to food have been in existence for some time, only a few countries have legalized this right at the domestic level.

Progress in the implementation of the rights based approach to food has been experienced in several countries in Africa, Asia and Latin America entrench the right to food in their constitutions. Indeed, 25 countries have enshrined the right to food in their constitutions (Nierenberg, 2011).

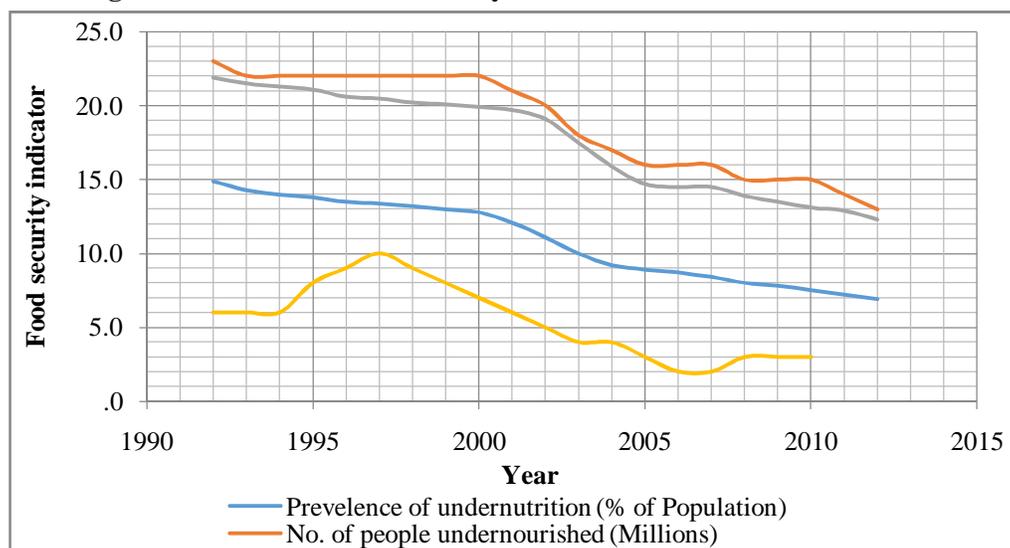
Making the 'right to food' a part of a country's constitution provides the highest-level of political commitment for a government to ensure access to adequate food for the citizenry. It also provides a point of continuity when there is a change in government and therefore implies the sustainability of the programmes. Constitutional recognition is also important because it provides the legal basis for obligations in relation to the implementation of national programmes and strategies on the right to adequate food. It is also an important empowering tool for people as it provides the basis of enforcement for people to realize their right to food.

FAO (2006) recommends five areas of action for the successful implementation of the right to food at the national level: (i) Advocacy and training with the aim of strengthening the capacity of duty-bearers (governments) to meet their obligations and empower the rights-holders to demand accountability, (ii) Providing information and undertaking an assessment to enable the government to accurately identify the people who are food needy, (iii) Legislation and accountability, with the purpose of ensuring enforceability, trusted institutions and a legal system which is oriented towards the human right to food (iv) Strategy and coordination to ensure that the right- to- food strategies are implemented in a coordinated manner.(v) Monitoring to ensure and track performance and the processes, to find out whether they are consistent with the rights-based approach, and whether the implemented programmes successfully target those in need and those who are vulnerable. Monitoring also seeks to identify the challenges towards realization of the right to food.

6.0 Experience in implementing the right to food: The case of Brazil

Brazil has been quoted (De Schutter, 2010, and FAO, 2007), as one of the countries that have embraced the right to food approach with great success, improving the food security situation of the country. The success of this approach has been observed in its relation to reductions in child mortality, levels of malnutrition, poverty and inequality. Figure 2 indicates trends in some selected food security indicators for Brazil, thereby summarizing the success story of the country's march towards improved food security.

Figure 2: Trends in Food Security in Brazil: Some Selected Indicators



Source: FAO, 2012

From Figure 2, it is clear that the proportion of the population considered to be food insecure as indicated by the under nutrition, prevalence of food inadequacy and proportion of food imports indicators of food security, has been on the decrease.

The country's proportion of the population considered undernourished has, been on the decline from 23 million persons to about 13 million persons (or less than 7 percent of the country's population) in 1992 and 2012, respectively. The clear decline in food insecurity as indicated by the indicators is more pronounced from the start of 2000, a period coinciding with the start of the implementation of the right to food process. The process of Brazil's implementation of the right to food, involved the implementation of strategies towards: creating awareness and commitments at the highest level, generating and broadening the widest support, taking action not only in agriculture and production, but also implementing a partnership between government and civil society in a rights based participatory process (FAO, 2007).

Implementation of the right to food, in Brazil, started with the country's goal of 'Fome Zero (Zero Hunger)', here, the government committed to eradicate food and nutritional insecurity, a goal which also was embraced by the civil society and endorsed by development partners. The country also developed a Standing Commission on the Right to Food in 2005, to advise the government on how to incorporate the right to food into public policies.

This Commission, assessed the laws, regulations, and programmes towards food security to ensure that they were rights based, to ensure that, they clearly defined the rights holders and duty bearers; provided empowerment and informed the participation of the rights holders; provided accountability by the government to respect, protect, and fulfill the right to food; created and strengthened the claim mechanisms for rights holders; defined monitoring goals, benchmarks and deadlines; provided strategies for information dissemination and provided building capacity for both duty bearers and rights holders.

Further, laws, regulations and the programmes were aligned to human rights based approaches (FAO, 2007). The country also developed a food security strategy providing an implementation roadmap. The strategy was coordinated by the government and aimed at addressing all the dimensions of food insecurity including increased physical and economic access to food, promoting family agriculture, income generation activities and social mobilization and education. The strategy clearly defined the targets and output indicators. The programme had both short term and long term measures. Funding was from government, private firms and corporations.

A legal framework known as the Brazil food security policy framework focusing on how the country could achieve economic, social and cultural human rights was also created. The law recognizes food as a basic right, spells out the role of the government, identifies the composition of the Commission implementing the right to food as a third by government and two thirds by civil society representatives. The Commission also monitors progress towards the realization of the right to food, using agreed upon guidelines. The monitoring guidelines have twenty six indicators, captured in seven dimensions including food production, availability, income, access, health and access to health services, education and public policies that promote food security.

They also developed a legal and administrative recourse mechanism with the aim of providing an enforcement mechanism for the rights holders. This provided an administrative, quasi-judicial or judicial claim and recourse systems to address claims and to remedy any violations of the right to food. The Committee also developed and implemented a capacity building programme to empower the right holders and duty bearers. Capacity building was achieved through training, workshops, public hearings and through dialogue meetings.

Initiatives implemented towards improved access to food for all can be classified into four dimensions: emergency actions, increase of basic food supply, improvement of incomes, and the provision of cheap food. Implementation is on a structural (government) level at the regional and local levels including the popular restaurants and the food banks.

7.0 Lessons for Kenya

Implementation of the right to food in Brazil has followed the FAO recommended guidelines on the implementation of the right to food at the national level, namely: implementation of an advocacy and training programme, undertaking food security assessment and providing information, undertaking enabling legislation and accountability, development of a food security strategy taking into account the right to food, undertaking coordinated implementation of the strategy and undertaking monitoring to ensure the realization of the expected outcome. There are certain factors which contributed to the successful implementation of the right to food in Brazil, which Kenya could learn from, as it seeks to realize the progressive realization of the right to food. These include:

7.1 Strong Government Commitment and Promotion of the Right to Food

Brazil adopted a legal framework on the Zero hunger programme giving the programme the highest-level of political commitment. This, accompanied by political-will, gave the implementation of the right to food a big boost. The current, Kenya National Food and Nutrition Policy (Republic of Kenya, 2011) is observed to be in conformity with several provisions of the Constitution including: subject to the availability of requisite resources.

Key areas observed by the policy are: the Government shall ensure that every Kenyan has a right to be free from hunger, to have adequate food of acceptable quality, uninterrupted supply of clean, safe drinking water in adequate quantities; every child has a right to basic nutrition, shelter and health care; the right of older persons to receive reasonable care and assistance from their families and the State; obligation to take legislative, policy and other measures including the setting of standards to achieve the progressive realization of the rights guaranteed under article 43; constitutional reference can be filed in Court by any person claiming denial, violation or infringement of the same; and consumers have a right to goods and services of reasonable quality, to the protection of their health, safety and economic interests, among other constitutional rights.

Although these observations are made about the policy, the proposed actions towards the implementation of the policy do not mention the right to food, and there remains to be seen, a strong political will for implementation coupled with significant budget allocations. Specific programmes will need to ensure that the principles of the right to food are taken into account.

7.2 Decentralized Implementation and Peoples' Participation

Peoples' participation in implementing policy was very crucial in Brazil. Decentralization enabled political commitment from the top, combined with social pressure from below. In Kenya, decentralization in the form of devolution and citizens' participation in the policy process is a part of the Constitution of Kenya, 2010. The agriculture sector, including most of the activities related to food security, is a function of the county government, while the Central government is concerned with the general agricultural and food policy. The participation of citizens in the process can easily be realized in this context. Informing people about the food security process will lead to ownership of the food security programs and initiatives, and is likely to improve the implementation and outcomes of these programmes.

7.3 Coordinated Institutions for Implementation

Brazil's institutional structure for coordinated implementation included both public sector and civil society representation, through the Right to Food implementation Committee. The Kenya Food and Nutrition Security Policy recognizes the importance of coordinated, institutional structures for the realization of the Food and Nutrition Security Policy objectives. An oversight institution comprising representatives of all stakeholders in food security including the public sector, private sector, academia and researchers, and civil society could be established. Like Brazil, Kenya may need to appoint a committee to oversee the implementation and spearhead the right to food. Furthermore, the current policy needs to clearly define how the central and the county governments will be coordinated in the realization of the right to food.

7.4 Participation of Civil Society

The civil society exerted pressure towards introduction and improvement of the programmes towards achieving the right to food in Brazil. Civil society organizations have played a key role in introducing the programmes and in pressing governments to promote the right to food. In Kenya, the food policy mentions the government and partners at the national and county levels as the key participants. There is need to deliberately include the civil society, as key partners, in the right to food process.

7.5 Legal Frameworks for Implementation of the Right to Food

For the implementation of the Food and Nutrition Policy, the policy observes that an efficient and effective institutional and legal frameworks will be developed. Like the case for Brazil, it will be important that these frameworks are developed in the context of the right to food. More particularly, they should spell out the roles, obligations and responsibilities of the government and the citizens. Legal frameworks should also seek to provide the citizens with the right to recourse, for example, through courts of law, with respect to violations of an individual's right to food.

7.6 Advocacy and Training on the Right to Food

Capacity building and advocacy will be needed to inform the government and the citizens of their rights, obligations and responsibilities with respect to the realization of the right to food. The objectives will be to motivate the government to take the necessary responsibility in line with its obligation to respect, protect and fulfill the right to food. Advocacy will also empower the public, with respect to the rights to food including access to both food and recourse mechanism if their rights are not met.

7.7 Monitoring

Monitoring is crucial in order to track performance and the processes, in order to find out whether they are consistent with the rights-based approach, and whether the implemented programmes successfully target those in need. Monitoring will also seek to identify challenges towards the realization of the right to food. Like in the case of Brazil, Kenya should consider undertaking monitoring separately, preferably by an institution independent of the government.

8.0 Conclusions and Recommendations

With the entrenchment of the ‘right to food’ in the Kenya Constitution, 2010, it is important that Kenya takes steps towards implementing a ‘rights to food’ approach to food security. The lessons from Brazil reveal that with good political will, decentralization and citizen’s participation, development of relevant legal frameworks to anchor the right to food in law, coordinated institutions for implementation, advocacy and training, and, monitoring and evaluation, it is possible to progressively move towards elimination of food insecurity in Kenya, within a reasonable period of 10 years. Kenya needs to learn from Brazil and to take step by step measures towards the implementation of the right to food for achieving food security for all.

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