The Importance of the Right to Food for Achieving Global Health

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The Framework Convention on Global Health (FCGH) represents a significant opportunity to realize the right to health globally. However, in order to succeed the FCGH must be carefully considered: it must take a new evidence-based approach that departs meaningfully from past shortcomings in realizing the right to health. Central to this approach is recognizing, formally incorporating, and operationalizing the right to adequate food. This right should be correctly interpreted as a right to a standard of nutritional quality and not as a right to a minimum number of calories. Because nutrition is critical to the achievement and maintenance of good health, particularly for the most deprived populations, this right is an indispensable substantive condition of achieving the right to health. In addition to helping the FCGH to be effective, the right to adequate food will help it achieve comprehensiveness, legitimacy, and efficiency. There are several ways the right to adequate food can be operationalized in tandem with the right to health, including through formal enshrinement in health and other policies, and through the enactment of several types of measures to improve dietary behaviors and health outcomes. Incorporating a broadly conceived right to adequate food into the FCGH acknowledges and formally takes steps to address nutrition's critical role in realizing the right to health, particularly for the most deprived populations. It will strengthen the FCGH and improve its chances of success.

INTRODUCTION

Great advances have been made in global health over the past several decades. In 1947, for example, about half of the world's population was malnourished, a figure that has remarkably declined to about 12.5 percent currently.[1] However, much work still remains to be done. Nearly one billion people remain undernourished, two billion suffer from micronutrient deficiencies, and 1.4 billion are now overweight with 500 million of those obese.[2] These conditions can lead to serious negative—and preventable—health outcomes, including stunting, infectious diseases, and noncommunicable diseases.[3] In nutrition and in all other areas of health, the proposed Framework Convention on Global Health (FCGH) presents a significant opportunity to realize the right to health globally. However, in order to do so, it must take a thoughtful and measured approach—one that builds on previous successes and identifies and deliberately departs from past shortcomings.

One crucial element of the FCGH approach, which will diverge meaningfully from past approaches, is incorporating the right to adequate food into the Framework, and formally recognizing the indispensability of the right to adequate food to realizing the right to health. This paper will show through a three-part analysis how without the right to adequate food the FCGH cannot succeed in realizing the right to health. In Section II, the paper argues as a threshold matter that the right to food should be properly interpreted as a right to a standard of nutritional quality and not as a right to subsistence or a minimum number of calories. Section III demonstrates, perhaps

uncontroversially, the significance of nutrition to attaining and maintaining good health. Building on these two premises, this paper argues that the right to food is a necessary substantive condition of achieving the right to health and should therefore be explicitly accounted for in the FCGH. Section IV bolsters this substantive argument by offering legitimacy and efficiency reasons for incorporating the right to adequate food in the FCGH. Finally, Section V discusses preliminary ways to operationalize the right to adequate food in tandem with the right to health.

THE MEANING OF ADEQUACY: THE RIGHT TO FOOD AS A RIGHT TO NUTRITIONAL QUALITY

The right to food is codified in several basic human rights instruments. Adopted in 1948, the Universal Declaration of Human Rights (UDHR) is the first document to refer to a right to a standard of living adequate for achieving health, including food.[4] Twenty years later, the UN General Assembly specifically and formally codified a right to adequate food in the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The ICESCR, which has 164 party States, is dedicated to the progressive realization of a set of eight categories of economic, social, and cultural rights: the rights to self-determination, work, family life, an adequate standard of living, the highest attainable standard of physical and mental health, education, and cultural life.[5] The right to adequate food is included under the right to an adequate standard of living.[6] Enforcement of this agreement is primarily the responsibility of each State,[7] though there are also some regional human rights courts such as the Inter-American Court of Human Rights that have enforcement capabilities in this area (though not of ICESCR specifically).[8] The ICESCR also created a Committee on Economic, Social and Cultural Rights (CESCR) responsible for making general recommendations on realizing the rights in ICESCR.[9] CESCR's General Comment 12 interprets the right to adequate food to mean having "physical and economic access at all times to adequate food or means for its procurement."[10] It also notes "the concept of adequacy is particularly significant in relation to the right to food."[11]

Most recently in 2014, the former Special Rapporteur on the Right to Food—an independent expert appointed by the UN Human Rights Council to investigate and report on the realization of this right[12] —Olivier De Schutter defined the right as the having "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."[13] (emphasis added) Today's broad definition can thus be distilled into four basic tenets: availability, accessibility, adequacy, and sustainability.[14] Though the right to adequate food has broadened since the enactment of the UDHR over seventy years ago, the concept of adequacy is common to all of these definitions and indeed remains one of its core tenets today, illustrating the concept's centrality to the right. As the ensuing discussion will show, the concept of adequacy also inextricably links the right to adequate food to the right to health.

The presence of the modifier "adequate" is critical to the proper interpretation of the right to adequate food. It signals that the right is to a standard of nutritional quality and not just to a minimum quantity of calories.[15] Calorie intake alone reflects little about nutritional or health status.[16] Consensus within the right to food literature supports this interpretation. According to CESCR, for a diet to be adequate, it must "as a whole

contain a mix of nutrients for physical and mental growth, development and maintenance, and physical activity, that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation."[17] The Right to Food Guidelines—a document developed by an Intergovernmental Working Group established by the Food and Agriculture Organization of the UN (FAO)—provides practical guidance to States on the realization of the right to food.[18] Guideline 10 is entirely devoted to incorporating nutrition into practical implementations of the right to adequate food. Guideline 10 advocates strengthening dietary diversity and healthy eating habits to prevent malnutrition, including overconsumption and unbalanced diets that lead to obesity and many noncommunicable diseases.[19] The FAO recently published a Working Paper on promoting nutrition in the right to adequate food, explicitly acknowledging that "nutrition constitutes an inherent element of adequacy that is at the core of the right to food" and that "the two themes cannot be separated."[20] The Ten-Year Retrospective on the Right to Food Guidelines Working Paper also recognizes that nutritional well-being is "an integral part" of realizing the right to adequate food.[21] Importantly for this discussion, correctly framing the right to food as inherently including adequacy (and therefore nutrition) inextricably links this right to the right to health. Throughout the remainder of this article, references to "adequate food" should be read to encompass proper nutrition.

Adequacy's inherency to the right to food admittedly makes it more difficult to realize than would a right to a mere quantity of calories. However, there also lies a potential benefit to this difficulty. By centralizing nutrition, adequacy moves the right to food beyond subsistence and into the realm of promoting a healthful existence, making the right more compelling and easier to advocate and strengthening the right in its own right. Incorporating adequacy also extrinsically strengthens this right by linking it conceptually with the right to health. The right to health—officially the right to the "highest attainable standard of physical and mental health"—necessarily includes a healthy diet.[22] The two rights thus share a common core component in nutrition; this shared component fortifies both rights and increases their potential basis for rights advocacy and also widens the pool of potential advocates.

In addition, to categorize a right to food as a right to sufficient calories would devalue the marginalized populations most in need of the right's protection. This narrow interpretation would mean an entitlement not to the nutrition that adequacy affords but only to the survival that sufficient calories would provide. It would institutionalize the notion that the poor are entitled only to survival and not to nutrition and health, which are reserved only for those who can afford them, undermining the realization of the right to health for deprived populations. Making this distinction between nutrition and survival is a key component to reducing the nutritional and health inequalities—the "inequitable distributions of disease and early death between the rich and poor"—that "represent perhaps the most enduring and consequential global health challenge" today.[23] Accounting for the needs of the most deprived is another way that adequacy helps to conceptually deepen and legitimize the right to food and ties the right to food more robustly to the right to health.

Thus far, the analysis of adequacy—again, meaning a standard of nutritional quality—in the right to food has squared closely with the interpretations in the ICESCR and FAO literature. This section expands on traditional interpretations of adequacy,

extending the analysis to the over-nutrition and obesity context. The meaning of adequacy in the right to food does not, or should not, apply exclusively under-nutrition; it must also apply to obesity and over-nutrition.[24] Although movement has begun in this direction—for example the FAO now defines "malnutrition" broadly to include under-nutrition, micronutrient deficiencies, and overweight and obesity[25]—this area remains underdeveloped.

Perhaps puzzlingly, the current global food system simultaneously fosters both over-nutrition and under-nutrition, enabling obesity and hunger to co-exist in almost equal numbers. Macro-level policies, especially in trade and agriculture, create an obesogenic (that is, obesity-producing) environment while at the same time reinforcing the distribution, availability and accessibility problems that lead to under-nutrition.[26] A sufficient number of calories is produced to feed the world's population on a daily basis. The problem lies in the policies and practices that determine which food is grown (i.e. nutritional concerns) and how it is distributed. Furthermore, similar to under-nutrition, obesity and poor diet disproportionately affect the poorest and most marginalized members of society.[27] Although there are certainly other factors at play, one logical conclusion is that the food available and accessible to the poorest in society is either largely non-existent (leading to under-nutrition) or untenably unhealthy (leading to over-nutrition and its attendant negative health outcomes, which are many and varied).[28] These two problems—over- and under-nutrition—are two sides of the same coin: they are manifestations of an inequitable food system that takes its toll in the form of large-scale poor nutrition and negative health outcomes. To recognize the significance of adequacy to the right to food vis-à-vis under-nutrition without also extending it to obesity would miss the other half of the issue and exacerbate already growing social inequalities. Ignoring the importance of nutritional quality to over-nutrition could simply result in solving one problem (hunger and under-nutrition) by replacing it with another (obesity and over-nutrition).

Reframing the right to adequate food to apply in both the under-nutrition and over-nutrition contexts also highlights the inextricable relationship between the food system, diet, and health outcomes, which further strengthens the link between the right to adequate food and the right to health. It helps illuminate why obesity now frequently exists alongside under-nutrition among the poorest populations in most if not all countries[29] and it begins to illustrate why realizing the right to adequate food means in many ways also realizing the right to health and vice versa.

THE RIGHT TO ADEQUATE FOOD AS SUBSTANTIVE CONDITION OF THE RIGHT TO HEALTH

It is well established in scientific, social scientific, and human rights literature that food and nutrition are both instrumental *and* vital to achieving full physical and cognitive health.[30] According to the Lancet global burden of disease reports, poor diet is now responsible for more disease than physical inactivity, smoking, and alcohol combined.[31] Fewer children are dying each year now than twenty years ago, but more young and middle-aged adults are dying and suffering from noncommunicable diseases such as cancers and cardiovascular disease, which have been linked to poor diet.[32] In fact, noncommunicable diseases are now the leading cause of death, accounting for sixty-three percent of all deaths worldwide.[33] Noncommunicable diseases also contribute to

growing disability rates: although life expectancy for both men and women has increased slightly more than ten years overall since 1970, more of these years are now spent living with injury and illness, many diet-related.[34] In addition to the impact on physical health, over-nutrition and obesity frequently negatively impact mental health and wellbeing,[35] further threatening the realization of the right to health from a cognitive perspective. Improving dietary behavior is critical to improving these mental and physical health outcomes and to reducing the growing rates of noncommunicable disease, disabilities, and death.

For many vulnerable populations, adequate food is acutely important. For example, there is growing consensus among regulatory, practitioner, and academic circles that for the chronically and acutely ill, food is medicine.[36] For pregnant women and children in the first two years of life, the long-term, often irreversible, negative impact of both under- and over-nutrition—and conversely the long-term benefits of adequate food—are well-documented across low-, middle- and high-income countries.[37] According to the FAO, child and maternal malnutrition "impose by far the largest nutrition-related health burden at the global level."[38] For these populations, adequate food is especially important to improving health and reducing socioeconomic inequalities because of the long-term effects of inadequate nutrition at these life stages, which include physical and cognitive deficiencies, lower earnings over the life course, greater likelihood of living below the poverty line, worse school performance, and greater likelihood of childhood and lifelong obesity.[39] In contrast, having access to healthy food over the life course can entirely prevent certain incapacitating illnesses and other serious health conditions.[40] Given the link between healthy diets and positive health outcomes, laws, policies, and public health interventions must be enacted to ensure the physical and economic availability of nutritious food for all with special attention to the least advantaged populations, which are disproportionately affected.[41]

The WHO conservatively estimates that twenty to forty percent of the world's "health spending is consumed in ways that do little to improve people's health."[42] Without detracting from the considerable progress that has been made in global health over the past several decades,[43] these figures suggest the need for new, more efficient approaches. A key problem in the approaches to date is the gap that exists between commitments and realities.[44] Although diet has long been recognized as vital to health, and although it is frequently mentioned alongside health in scientific, social scientific, and human rights literature, in many ways this recognition has yet to be put into practice concretely. The right to health movement must move beyond recognizing diet to integrate and then operationalize the right to adequate food. Doing so will appropriately centralize the role adequate food must play in achieving the right to health globally and help provide pathways to implementation.

It is important to note that the right to adequate food is both separate from and constituent of the right to health. Indeed, ICESCR actually codifies the right to adequate food as part of the right to an adequate standard of living. However, the unification of food and health is highly precedented in both human rights and health literature. UDHR, the founding UN human rights document from 1948, bundles food and health together within the right to an adequate standard of living.[45] CESCR calls for fusing the rights to adequate food and health, asserting in its interpretation of the right to health in General Comment 14 that this right extends beyond timely and appropriate healthcare, and also includes underlying determinants of health, including specifically food and

nutrition.[46] FAO working papers on the right to adequate food affirm nutrition's role in achieving full physical and cognitive health and stress the interdependence, indivisibility, and interrelation of food and health.[47] The FCGH movement echoes these interpretations. The Platform for a Framework Convention on Global Health (FCGH Platform), a document delineating the fundamental principles of the FCGH, already envisions incorporating nutrition and specifically enumerates nutritious food as one component of the "robust version of universal health coverage" it seeks to realize.[48] It reiterates that nutritious food is necessary to achieve equitable and effective health systems and asserts that the financing framework must provide for this.[49] FCGH proponents have further substantiated their recognition of food's special place in the FCGH by identifying the importance of agriculture to global governance for health.[50]

Yet despite recognizing the importance of food and nutrition to the right to health, the FCGH does not yet integrate these concepts as rights. Indeed, Gable and Meier have decried human rights' limited incorporation into the FCGH in general, advocating "moving beyond the mere mention of human rights toward the holistic incorporation of human rights as a basis for the development and implementation of the FCGH."[51] They point out that the limited incorporation of human rights hinders the ability of the FCGH to "provide the grand reform to global health that its proponents seek."[52] Shifting from recognition to rights-based integration of the right to adequate food would be one pathway toward this grand reform: it would better legitimize adequate food, appropriately centralize its role in the right to health, and begin to take steps to operationalize its fulfillment.

The FCGH aims to provide "the conditions essential for a healthy life," which are "a well-functioning health system, a full range of public health services, such as nutritious food; and broader economic and social conditions conducive to good health, such as employment, housing, income support, etc."[53] The FCGH recognizes the need for nutritious food to achieve health. However, the broader economic and social conditions it delineates are far too narrow. Chief among these conditions—but conspicuously absent here—is the unhealthy and inequitable food system. As discussed above, the modern food system is simultaneously obesogenic and under-nutritious, disproportionately affecting the least advantaged, largely as a result of macro-level legal and regulatory mechanisms including agriculture, trade, and corporate policies, among others.[54] It contributes to worse health outcomes and exacerbates health inequalities between rich and poor.[55] Integrating the right to adequate food will begin to address the problematic food system and its role in worsening health outcomes and, if targeted appropriately, help begin reducing socioeconomic health inequalities. In a world where obesity and under-nutrition exist side-by-side, predominantly in the most marginalized communities; where enough food is produced to feed all healthfully yet preventable health conditions and deaths continue to occur from both under- and over-nutrition; where sixty-three percent of all deaths stem from noncommunicable diseases, many if not most caused or exacerbated by poor diet; and where the poorest populations suffer disproportionately from these conditions, food, nutrition and the skewed food system must be systematically addressed. Including the right to adequate food in the right to health and the FCGH will draw these issues to the center of global health discourse, highlighting their importance to health and health inequalities in an unprecedented but critical way. It can help direct focus at enacting structural change to the food system to effect population-level improvements in health.

One counter-argument to incorporating the right to adequate food into the right to health may be a concern that including an ancillary right could dilute or detract from the right to health. However, integrating the right to adequate food may actually help mutually strengthen both rights. In many ways the form of the claim of the right to adequate food remains "vague, if not unclear," in spite of the fact that the right has now been enshrined in many domestic constitutions and legal frameworks, because few have actually then operationalized the right or translated it into specific legal obligations.[56] To a lesser extent, similar criticisms may be lodged at the right to health, particularly in light of the WHO estimate that twenty to forty percent of global health spending does little to improve people's health.[57] This ineffective spending suggests that past approaches to realize this right have fallen short. However, bundling the right to adequate food with the right to health will provide a new paradigm for the right to health. It will provide an additional concrete pathway to implementing the right to health and will simultaneously help address each right's operational vagueness.

THE RIGHT TO ADEQUATE FOOD AND FCGH LEGITIMACY AND EFFICIENCY

Thus far, the analysis has focused on the substantive importance of the right to adequate food to realizing the right to health. The right to adequate food is also important to the FCGH for legitimacy and efficiency reasons: it will help the FCGH maintain internal consistency and may also represent a cost effective way of realizing the right to health.

The right to adequate food should be incorporated into the FCGH to help ensure the Framework's coherence. The right to health can be thought of as consisting of a bundle of constituent rights, each of which must be met in order for the umbrella right to health to be realized. A threshold step when devising the FCGH is to identify and codify these constituent rights. Because the right to adequate food is a necessary condition for realizing the right to health, any rights-based approach to health must include a right to adequate food to remain consistent.[58] It should be noted that this process does not detract from the right to food's separate status as a significant standalone right; it is to point out that in addition to being its own discrete right, the right to food is also a constituent of the right to health. The breadth and depth of consensus on the importance of adequate food to health indicates it is a constituent right and warrants its explicit incorporation.[59] At present, the Platform on FCGH acknowledges nutrition's indispensability to achieving the right to health but does not explicitly mention (let alone incorporate) the right to adequate food.[60] It is logically incoherent to acknowledge nutrition's indispensability to health, but not incorporate it as a right—that is, to assert individuals are entitled to an overall state of being (i.e. health), but not to the elements essential to achieving and maintaining that state of being (e.g. nutritious food). Conditions essential to achieving the right to health must also be integrated as rights or their absence will undermine the FCGH. Integrating the right to adequate food strengthens FCGH consistency and its commitment to its mission to achieve the highest attainable standard of health by formally recognizing that these two rights are indivisible.

Even more specifically, the right to adequate food is important to FCGH legitimacy vis-à-vis its special concern for marginalized populations. In virtually all countries, marginalized populations suffer disproportionately from worse diet quality, including both under- and over-nutrition, and from worse health outcomes in general,

including diet-related noncommunicable diseases such as type 2 diabetes and cardiovascular disease.[61] These populations also often include the critically and chronically ill, for whom food is a particularly important component of health and medical care, as evidenced by the previously mentioned growing consensus that for these groups food is medicine.[62] Other vulnerable populations such as pregnant women and children in the first two years of life are also particularly susceptible to inadequate nutrition. Because adequate food is so important for improving the health of marginalized populations, as discussed in greater detail in Section III, in order for the FCGH to remain consistent with its claims for its special concerns in this area, it should incorporate the right to adequate food.

Finally, the right to adequate food may also represent a more efficient and cost effective pathway to achieve the right to health. Financing the FCGH is a key consideration, commanding an entire section in the FCGH Platform.[63] The success or failure of a FCGH seeking large-scale realization of the right to health will hinge on an adequate financing framework. Modern healthcare systems face the difficult task of improving health outcomes while simultaneously reducing the cost of care. Going forward, cost effective innovations and novel approaches to health will become increasingly important as the cost of care reaches unsustainable levels.[64] For example, in 2013 U.S. spending on healthcare totaled $2.7 trillion or seventeen percent of gross domestic product.[65] The bulk of this cost ($936.9 billion) was attributable to hospital care, a figure which grows about five percent each year.[66] Properly targeted preventive medicine has been shown to significantly lower these costs and also has been shown to have other added values, including improved patient mental health and avoided lost earnings and productivity.[67] Because adequate food results in improved health outcomes and is a key component of preventive medicine, incorporating the right to adequate food into FCGH could help ease the significant financial constraints of realizing the right to health globally. Furthermore, looking beyond preventive care, the combined global social and economic costs of malnutrition and over-nutrition are staggering, resulting in hundreds of millions of disability-adjusted life years lost and costing up to an estimated five percent of global gross domestic product (or $3.5 trillion) yearly.[68] Integrating the right to adequate food could also help alleviate some of these costs.

The financial benefits of integrating the right to adequate food are particularly relevant for high-cost care groups, for many vulnerable population groups, and for preventing chronic disease. These three groups often overlap. For high-risk, high-need, and frequently high-cost patient populations, food and nutrition interventions "have been proven to dramatically reduce monthly and overall healthcare costs,"[69] to lower frequency and length of hospital stays, and to improve the likelihood that patients will be discharged to their homes rather than to acute care facilities.[70] Malnourished patients with chronic or acute illnesses are twice as likely to be readmitted to the hospital within fifteen days of discharge, have a significantly higher risk of death, respond worse to medication, and have decreased recovery rates compared to their well-nourished counterparts.[71] Given that the bulk of healthcare spending, at least in the U.S., is attributable to hospital care, reducing hospital stays for high-cost care groups could have significant financial benefits. As discussed above, adequate food is critical for child and maternal health, with these populations particularly vulnerable to inadequate nutrition and the potential lifelong consequences thereof both in the under-nutrition and the over-nutrition contexts. Even the private sector has recognized the significance,

cost effectiveness, and major growth opportunity in creating a new role for nutrition in disease management and prevention to help relieve the significant cost burden of chronic disease.[72] Because it results in lower ameliorative healthcare costs and better overall health outcomes with progressive benefits for the most marginalized populations, adequate food embodies the elusive modern health goal of improving outcomes while reducing expenses. For these legitimacy and efficiency reasons the right to adequate food should be integrated into the FCGH.

OPERATIONALIZING THE RIGHT TO ADEQUATE FOOD

Formally enshrining the right to adequate food is critical, but FCGH will also need to provide some guidance on operationalizing this right and implementing it in practice. There are several steps to be taken at the international, national, state, and local levels, in conjunction with the private and academic sectors, to begin to realize the right to adequate food as part of the right to health.

First and foremost, the importance of adequate food to health should be formally recognized in health legislation at every level of government. Relatedly, governments must align policies across sectors with food and health goals, adopting a "food-and-health-in-all-policies" approach, which the FCGH already advocates.[73] Many seemingly unrelated policies significantly impact dietary behaviors and health outcomes, whether directly or indirectly. These include for example agriculture, trade, labor, business, and environmental policies, to name only a few. However, these policies tend to be siloed and do not account for, or even acknowledge, their impact on dietary behaviors and health outcomes. There should be full and meaningful health impact assessments for these seemingly non-health-related policies, perhaps beginning with agriculture because of its position at the top of the production chain and because it commands a massive budget in both the U.S. and Europe. Health impact assessments are challenging tasks to undertake, but successful examples of integrating health into policy in other sectors (for example, integrating health into transport decision-making) suggest they are achievable in the long-term.

Governments can also implement measures to improve the health of the food supply and encourage healthier consumption as a means of operationalizing this right. One important measure is to invest in agricultural research and development of healthier crops. It is estimated that over one-third of all food in the world is lost or wasted on a yearly basis, highlighting among other things the profound need for improving harvest, transport, and storage technologies, particularly for the most perishable foods, which often happen to be among the healthiest.[74] Improving the yields and the postharvest technologies for the healthiest crops can improve their market availability and pricing, which could help boost consumption. Governments may also consider requiring reformulations of processed products to improve their nutrient profiles, either by law or by taxing products which are below a certain quantitative nutrient profile threshold. In addition, they could legislate fortifying certain foods with under-consumed vitamins and minerals, as many countries do already.

Healthier diets have consistently been shown to be costlier than less healthy foods. This cost gap continues to widen, in many cases making health outcomes contingent on the ability to pay for healthier foods.[75] However, a small but growing body of research suggests the potential effectiveness of healthy food financial incentives

including discounts, vouchers, and other individual-level subsidies to increase healthy food purchasing for middle and lower socioeconomic groups alike.[76] Subsidizing healthy purchases in various ways could thus help to realize the right to adequate food. One option, for example, is the creation of healthy food savings accounts. These accounts, which would be akin to health savings accounts (HSAs) in the US, would enable individuals to spend pre-tax dollars on a set list of healthy foods meeting a certain nutrient profile threshold. Governments could also subsidize fruit and vegetable purchasing, particularly for the poor, through social and food assistance programs as some cities have already begun to do with positive effect.[77]

In order to enact these policies, it is important that governments maintain and enhance their monitoring of food prices, diet, and health to understand the policies' effects on the cost and availability of foods, the different types of foods in the food supply, and the impact on diet and health, particularly among different socioeconomic groups. Only through comprehensive data collection and analysis can we more adequately understand the effects different, seemingly unrelated policies have on diet, health, and socioeconomic inequalities. In addition, these data can and should inform policy responses to ensure measures are appropriately and effectively targeted. It is recognized that one challenge to this recommendation is the costliness and time-intensiveness of in-depth surveillance. To help mitigate this challenge, in countries where these or similar data are already collected for another purpose, there could be additional collaboration to determine whether the collection process can be altered to also accommodate health analysis (without impeding the original purpose for collection).

Finally, education is an important element of realizing the rights to adequate food and health. Improving knowledge and attitudes toward healthy diets is an important (though not sufficient) factor in improving nutrition.[78] Studies have advocated for increased nutrition education in schools, though they have also expressed efficacy concerns and doubt at the marginal benefit of additional investment into nutrition education in its current form.[79] One challenge to implementing education, then, is that it will first require additional investment to improve its efficacy, followed by wider dissemination in primary, secondary, and tertiary schools. This research is necessarily somewhat time- and resource-intensive as the data will likely vary across countries and localities. However, the fact that a platform and impetus for nutrition education already exists highlights this recommendation's potential feasibility. Countries may also consider integrating nutrition education into existing social assistance programs as some US programs currently do. For example, the US federally funded Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) mandates nutrition education as a prerequisite to enrollment.[80] Assessments of the program have found it to be cost effective at improving nutritional and health outcomes among deprived and vulnerable populations.[81] Given these positive results, governments should consider incorporating nutrition education programs into existing similar social assistance programs (such as, for example, the UK Healthy Start Program)[82] or launching separate nutrition education programs targeting the populations most in need of nutritional interventions according to dietary surveillance data. As with nutrition education in schools, these programs will need to be locally tailored and extensively researched to optimize effectiveness.

CONCLUSION

FCGH claims to be "committed to the highest attainable standard of physical and mental health as a universal human right."[83] Any commitment to the highest attainable standard of physical health must incorporate adequate food. It is first important to establish the meaning and centrality of the concept of adequacy to the right to adequate food. "Adequacy" denotes a standard of nutritional quality and not a minimum quantity of calories. It should be broadly construed to apply in both the under-nutrition context, as traditionally conceived, and the over-nutrition context, which encompasses a more novel approach. Construing adequacy in this way centers health in the food discourse (and vice versa) and highlights the inextricability of food and health and their accompanying rights. It recognizes the vital role of adequate food in achieving good health in all contexts. In addition, this conception of adequacy places appropriate focus on the fact that the least advantaged populations are disproportionately both under- and over-nourished and consequently also suffer disproportionately from the serious health outcomes of each. Finally, properly conceptualizing adequacy and the right to adequate food lays the foundation for conceiving of this right as both constituent *and* partner of the right to health.[84]

It is important when devising the FCGH to question how this Framework—yet another binding international treaty—can help where countless international treaties, institutions, constitutions, framework laws and sectoral legislations have thus far failed to realize the right to health globally. Critics have expressed concern over the FCGH potential to be just another source of superfluous, or possibly even detrimental, international law in health.[85] This critique highlights the importance to the FCGH of building on and meaningfully diverging from past approaches if it is to succeed where its predecessors have not. The FCGH must not duplicate previously unsuccessful efforts and must thoughtfully consider the novelty and the added value of its approach.

With an eye toward meaningful divergence, there are several necessary conditions for the FCGH to succeed in achieving the right to health globally. For one, several commentators and the Platform itself have repeatedly stressed the importance of comprehensiveness.[86] The Framework must also be credible and consistent in order to remain legitimate. It must prioritize efficiency, particularly fiscal, if it is to achieve the right to health on such a large scale. And it must identify and formally incorporate the constituent rights that are necessary conditions for achieving the right to health. That is, in the same spirit as the "health-in-all-policies" approach that the FCGH champions,[87] but conversely to that approach, the Framework should adopt an "all-policies-in-health" approach to help ensure it is comprehensive, legitimate, efficient, and effective. Integrating the right to adequate food, appropriately conceptualized, helps to meet these conditions. It addresses in part the need for comprehensiveness and it reinforces Framework legitimacy and efficiency. Perhaps most importantly, however, this right is an indispensable substantive condition of achieving the right to health. Incorporating a broadly conceived right to adequate food into the FCGH acknowledges and formally takes steps to address nutrition's critical role in realizing the right to health, particularly for the most marginalized populations. The right to adequate food will deeply strengthen the FCGH and its chances of success.

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[5] International Covenant on Economic, Social and Cultural Rights [hereinafter ICESCR] arts. 1, 6–15, Dec. 16, 1966, 993 U.N.T.S. 3; United Nations Treaty Collection, "Chapter 4: Human Rights, 3. International Covenant on Economic, Social and Cultural Rights," (2015), accessed April 21, 2015, https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty
[6] *Ibid.* art. 11.
[7] ICESCR Arts. 1, 16–7.
[8] American Convention on Human Rights, art. 62, Nov. 22, 1969, 1144 UNTS 123. It should be noted that the Inter-American Court of Human Rights enforces the American Convention on Human Rights (ACHR), and not the ICESCR, but that the ACHR also contains a provision protecting economic, social, and cultural rights.
[9] *Ibid.* Art. 21.
[10] Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 12: The Right to Adequate Food (Art. 11)*, ¶¶ 6-7, U.N. Doc. E/C.12/1999/5 (Dec. 5, 1999).
[11] CESCR, General Comment 12, ¶ 7.
[12] Office of the High Commissioner for Human Rights, "Special Rapporteur on the Right to Food," (2015), accessed April 21, 2015, www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx.
[13] Human Rights Council, *Report of the Special Rapporteur on the right to food, Final report: The transformative potential of the right to food* [hereinafter *Final Report*], U.N. Doc. A/HRC/25/57 (Jan. 24, 2014) (by Olivier De Schutter), 3 (citing CESCR, General Comment 12, ¶ 6) (emphasis added).
[14] *Ibid.*
[15] Serena Pepino, "Nutrition, Education and Awareness Raising for the Right to Adequate Food Thematic Study 6," [hereinafter FAO, "Nutrition, Education and Awareness Raising"], *FAO Right to Food Team, Agricultural Development Economics Division* (2014): 1, 4, accessed April 22, 2015, http://www.fao.org/3/a-i3895e.pdf..
[16] De Schutter, *Final report*, 4.
[17] CESCR, General Comment 12, ¶ 9.
[18] Food and Agriculture Organization of the United Nations, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food*, 127th Session of the FAO Council (November 2004): iii.
[19] *Ibid.,* p. 21; FAO, "Nutrition, Education and Awareness Raising," 1-2.
[20] FAO, "Nutrition, Education and Awareness Raising," 3.
[21] Food and Agriculture Organization of the United Nations, "The Right to Food: Past commitment, current obligation, further action for the future. A Ten-Year Retrospective on the Right to Food Guidelines" (2014): 13, accessed September 8, 2014, http://www.fao.org/fsnforum/sites/default/files/files/106_RightToFood/RTF_Synthesis_Report.pdf.
[22] ICESCR Arts. 12.

[23] Lawrence O. Gostin, "A Framework Convention on Global Health: Health for All, Justice for All," *Journal of the American Medical Association* 307 (2012): 2087, accessed September 7, 2014, http://ssrn.com/abstract=2072457.
[24] See Krista Nadakavukaren Schefer, "The International Law of Overweight and Obesity," *Asian Journal of WTO & International Health Law and Policy* 9 (2014): 33-34, accessed September 7, 2014, http://ssrn.com/abstract=2434994. 33-34.
[25] FAO, "The State of Food and Agriculture," 3.
[26] See generally, Emilie Aguirre, "Sickeningly Sweet: Analysis and Solutions for the Adverse Dietary Consequences of European Agricultural Law," *Journal of Food Law and Policy* 11 (2015) (in press).).
[27] See, e.g., Charles L. Baum II and Christopher J. Ruhm, "Age, Socioeconomic Status and Obesity Growth," *National Bureau of Economic Research Working Paper Series*, Working Paper 13289 (2007): 2, 3, accessed April 22, 2015, http://www.nber.org/papers/w13289.pdf; "Health Survey for England 2011 Vol. 1: Health, Social Care and Lifestyles," *NHS*, (2011): Chapters 2, 4, 10, accessed April 22, 2015, http://www.hscic.gov.uk/catalogue/PUB09300/HSE2011-All-Chapters.pdf; Eva R. Maguire & Pablo Monsivais, "Socio-economic Dietary Inequalities in UK Adults: An Updated Picture of Key Food Groups and Nutrients from National Surveillance Data," British Journal of Nutrition 113(2015): 181; FAO, "The State of Food and Agriculture," 3.
[28] FAO, "The State of Food and Agriculture," 8-10.
[29] For example, Mexico just surpassed the United States as the world's most obese country. Obesity rates are rapidly rising in many developing countries that have traditionally had high malnutrition rates. FAO, "The State of Food and Agriculture," 18, 73-79. See also Schefer, "The International Law of Overweight and Obesity," 8. Likewise, food insecurity and under-nutrition occur in rich, industrialized countries. Elizabeth A. Dowler and Deirdre O'Connor, "Rights-based Approaches to Addressing Food Poverty and Food Insecurity in Ireland and UK," *Social Science and Medicine* 74 (2012): 44, accessed September 7, 2014 doi:10.1016/j.socscimed.2011.08.036.
[30] Dowler and O'Connor, "Rights-Based Approaches," 44; Malinda Ellwood et al., "Food is Medicine: Opportunities in Public and Private Health Care for Supporting Nutritional Counseling and Medically-Tailored, Home-Delivered Meals," Center for Health Law and Policy Innovation, Harvard Law School (2014): 1, accessed September 8, 2014, http://www.chlpi.org/wp-content/uploads/2013/12/6.5.2014-Food-is-Medicine-Report-FINAL.pdf; FAO, "Nutrition, Education and Awareness Raising," 1.
[31] A Malhotra, T Noakes, S Phinney, "It is time to bust the myth of physical inactivity and obesity: you cannot outrun a bad diet," British Journal of Sports Medicine (2015).
[32] Executive Summary, "Global Burden of Disease Study 2010," *The Lancet* 380 (2012).
[33] Gostin, "A Framework Convention on Global Health," 2090 (citing World Health Organization, *Global Status Report on Noncommunicable Diseases 2010* (2011)).
[34] *Ibid.*
[35] *See* Anna Kirkland, *Fat Rights: Dilemmas of Difference and Personhood* (2008); Schefer, "The International Law of Overweight and Obesity," 9-10;
[36] Ellwood et al., "Food is Medicine," 3 (asserting that food is medicine for the critically and chronically ill because, for example, it improves response rates to medication, contributes to maintaining and gaining strength, and improves recovery chances). For example, in the United States, the federal Ryan White HIV/AIDS program has long recognized and funded "Medical Nutrition Therapy" as a core medical service.
[37] De Schutter, *Final report*, 4; Pelletier et al., "The Effects of Malnutrition," 443.
[38] FAO, "The State of Food and Agriculture," ix.
[39] Douglas Bereuter and Dan Glickman, "Healthy Food for a Healthy World: Leveraging Agriculture and Food to Improve Global Nutrition," *The Chicago Council on Global Affairs* (2015): 31, accessed April 27, 2015, http://www.thechicagocouncil.org/sites/default/files/GlobalAg-HealthyFood_FINAL.pdf; Siân M Robinson et al, "Modifiable early-life risk factors for childhood adiposity and overweight: an analysis of their combined impact and potential for prevention," American Journal of Clinical Nutrition 101 (2015), doi: 10.3945/ajcn.114.094268.
[40] Ellwood et al., "Food is Medicine," 5.
[41] Gostin, "A Framework Convention on Global Health," 2090.
[42] Eric A. Friedman and Lawrence O. Gostin, "Pillars for Progress on the Right to Health: Harnessing the Potential of Human Rights Through a Framework Convention on Global Health," *Health and Human Rights Journal* 14 (2012): 7, accessed September 8, 2014, http://ssrn.com/abstract=2086456 (citing World Health Organization, "The World Health Report – Health Systems Financing: The Path to

Universal Coverage" (2010): 71-72, accessed September 7, 2014, http://www.who.int/whr/2010/en/index.html).
[43] FAO, "The State of Food and Agriculture," 73-79.
[44] "Platform for a Framework Convention on Global Health: Realizing the Universal Right to Health," (2014): 4, accessed September 8, 2014, http://www.globalhealthtreaty.org/docs/platform-for-an-fcgh-full.pdf.
[1] Ellwood et al., "Food is Medicine," 2.
[45] Universal Declaration of Human Rights, Art. 25 ("the right to a standard of living adequate for the health and well-being of himself and of his family, including food…and medical care," among other factors).
[46] Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, ¶ 4, U.N. Doc. E/C.12/2000/4 (2000). See also ¶ 11.
[47] See, e.g. FAO, "Nutrition, Education and Awareness Raising," 1.
[48] "Platform for a Framework Convention," 2, 4.
[49] *Ibid.*
[50] Gostin, "A Framework Convention on Global Health," 2090.
[51] Lance Gable and Benjamin Mason Meier, "Global Health Rights: Employing Human Rights to Develop and Implement the Framework Convention on Global Health," *Health and Human Rights* 15 (2013): 23, 27, accessed September 7, 2014, http://ssrn.com/abstract=2263421.
[52] Gable and Meier, "Global Health Rights," 23.
[53] Gostin et al., "Towards a Framework convention on global health," *Bulletin of the World Health Organization* 91 (2013): 790-93, accessed September 7, 2014, doi: http://dx.doi.org/10.2471/BLT.12.114447.
[54] Christopher Birt, "A CAP on Health? The Impact of the EU Common Agricultural Policy on Public Health," A report by the Faculty of Public Health (2007), accessed September 7, 2014, http://www.fph.org.uk/uploads/r_CAP.pdf.
[55] Dowler and O'Connor, "Rights-Based Approaches," 44, 45.
[56] Raghav Gaiha, "Does the Right to Food Matter?," *Economic and Political Weekly* 38 (2003): 4270, 4273 accessed September 7, 2014, http://www.jstor.org/stable/4414110.
[57] Friedman and Gostin, "Pillars for Progress on the Right to Health," 7, (citing WHO, "The World Health Report," 71–72).
[58] See CESCR, General Comment 14; FAO, "Nutrition, Education and Awareness Raising," 1.
[59] See e.g. Gable and Meier, "Global Health Rights," 24 (citing Lawrence O. Gostin, "Meeting basic survival needs of the world's least healthy people: Toward a framework convention on global health," *Georgetown Law Journal* 96 (2008): 331–392); Friedman and Gostin, "Pillars for Progress," 10; Gostin, "A Framework Convention on Global Health." It is important to note that although the right to adequate food is certainly a constituent of the right to health, it is also a separate, independent, partner right. To call it a constituent is not to take away from its significant standalone status or to subordinate it to the right to health; it is simply to recognize the two rights' inextricability. See e.g. Dowler and O'Connor, "Rights-Based Approaches"; ICESCR art. 11.
[60] See "Platform for a Framework Convention"; see also Gable and Meier, "Global Health Rights," 23.
[61] See Baum and Ruhm, "Age, Socioeconomic Status and Obesity Growth," 2, 3; "Health Survey for England 2011 Vol. 1: Health, Social Care and Lifestyles," *NHS* (2011): Chapters 2, 4, 10, accessed April 24, 2015, http://www.hscic.gov.uk/catalogue/PUB09300/HSE2011-All-Chapters.pdf; Eva R. Maguire and Pablo Monsivais, "Socio-economic Dietary Inequalities in UK Adults: An Updated Picture of Key Food Groups and Nutrients from National Surveillance Data," British Journal of Nutrition 113 (2015): 181.
[62] Ellwood et al., "Food is Medicine," 3, 39. Indeed, the US federal government agrees and, for example, has long recognized and funded nutritious meals as a core medical service for those with HIV/AIDS.
[63] "Platform for a Framework Convention," 38.
[64] Ellwood et al., "Food is Medicine," 38.
[65] "National Health Expenditures 2013 Highlights," *Centers for Medicare and Medicaid Services* (2013): 1, accessed April 24, 2015, http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/downloads/highlights.pdf.
[66] *Ibid.*
[67] See PL Yong, RS Saunders, and LA Olsen, eds., "The Healthcare Imperative: Lowering Costs and Improving Outcomes: Workshop Series Summary," *National Academies Press* (2010), accessed April 24, 2015, http://www.ncbi.nlm.nih.gov/books/NBK53914/.

[68] FAO, "The State of Food and Agriculture," ix, 15-16.
[69] Ellwood et al., "Food is Medicine," 3; Jill Gurvey et al., "Examining Health Care Costs Among MANNA Clients and a Comparison Group," *Journal of Primary Care & Community Health* 4 (2013): 4-5, accessed September 7, 2014, doi: 10.1177/2150131913490737).
[70] *Ibid.*
[71] *Ibid.*, p. 3,4; Su Lin Kim et al., "Malnutrition and its impact on cost of hospitalization, length of stay, readmission, and 3-year mortality," *Clinical Nutrition* 31 (2012): 345-50, accessed September 7, 2014, doi:10.1016/j.clnu.2011.11.001).
[72] "About Us," Nestlé Health Science, accessed September 6, 2014, https://www.nestlehealthscience.com/about.
[73] See Gostin, "A Framework Convention on Global Health," 2090; see generally "Platform for a Framework Convention."
[74] These include, for example, fruits and vegetables.
[75] See Nicholas R.V. Jones et al., "The Growing Price Gap Between More and Less Healthy Foods: Analysis of a Novel Longitudinal UK Dataset," *PLoS One* 9 (2014).
[76] See, e.g., Ruopeng An, "Effectiveness of Subsidies in Promoting Healthy Food Purchases and Consumption: A Review of Field Experiments," *Public Health Nutrition* 16 (2012); Candace R. Young et al., "Improving Fruit and Vegetable Consumption Among Low-Income Customers at Farmers Markets: Philly Food Bucks, Philadelphia, Pennsylvania, 2011," *Preventing Chronic Disease* 10:120356 (2013); Wilma E. Waterlander et al., "Price Discounts Significantly Enhance Fruit and Vegetable Purchases when Combined with Nutrition Education: A Randomized Controlled Supermarket Trial," *American Journal of Clinical Nutrition* 97 (2013); Cliona Ni Mhurchu et al., "Effects of Price Discounts and Tailored Nutrition Education on Supermarket Purchases: A Randomized Controlled Trial," *American Journal of Clinical Nutrition* 91 (2010); Roland Sturm et al., "A Cash-Back Rebate Program for Healthy Food Purchases in South Africa," *American Journal of Preventive Medicine* 44 (2013).
[77] Young et al., "Improving Fruit and Vegetable Consumption Among Low-Income Customers at Farmers Markets;"
[78] See Wardle et al., "Nutrition Knowledge and Food Intake, *Appetite* 34 (2000); McKinnon et al., "The Contribution of Three Components of Nutrition Knowledge to Socio-Economic Differences in Food Purchasing Choices," *Public Health Nutrition* 17 (2014); Aggarwal et al., "Positive Attitude toward Healthy Eating Predicts Higher Diet Quality at All Cost Levels of Supermarkets," *Journal of Academy of Nutrition and Dietetics* 114 (2014).
[79] "Effectiveness of Policy Interventions to Promote Healthy Eating and Recommendations for Future Action: Evidence from the EATWELL Project," *EATWELL Project* (2013): 27–29, accessed April 28, 2015, http://eatwellproject.eu/en/upload/Reports/Deliverable%205_1.pdf.
[80] 42 U.S.C. § 1786 (b)(7), (f)(1)(C)(x), 17(j) (2010). "Women, Infants, and Children (WIC)," *Food and Nutrition Service, United States Department of Agriculture*, accessed April 9, 2015, http://www.fns.usda.gov/wic/women-infants-and-children-wic; WIC provides federal funding to states to support nutrition among low-income nutritionally at-risk pregnant and postpartum women and their children up to age five.
[81] See "EATWELL Project," 43.
[82] "Healthy Start," *NHS*, accessed April 28, 2015, https://www.healthystart.nhs.uk/.
[83] "Platform for a Framework Convention," 1.
[84] Dowler and O'Connor, "Rights-Based Approaches," 50.
[85] See Steven J. Hoffman and John-Arne Røttingen, "Dark Sides of the Proposed Framework Convention on Global Health's Many Virtues: A Systematic Review and Critical Analysis," *Health and Human Rights* 15 (2013): 117-134, accessed September 7, 2014, http://www.hhrjournal.org/wp-content/uploads/sites/13/2013/06/Hoffman.pdf.
[86] Friedman and Gostin, "Pillars for Progress," 15.
[87] See Gostin, "A Framework Convention on Global Health," 2090; see generally "Platform for a Framework Convention."