



TRANSCRIPT

**The Human Right to Food
Part III**

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1. I am Marsha Echols, the Director of the World Food Law Institute in Washington D.C., and a professor at Howard University School of Law, also in Washington. This is the third part of our discussion in the audiovisual series about the right to food, and it has become the discussion of the right to adequate food.

2. For this third part, we will continue to discuss adequacy, we'll go on to accessibility, sustainability, and then discuss the notion of the many actors who are involved in discussing the human right to adequate food. So, with regard to adequacy, one of the elements to be considered is that the food must satisfy dietary needs. Certainly, that takes us to the technical or more standard idea about the right to food, taking us to nutrients and food safety. So, *adequacy* means that the food must satisfy dietary needs, taking into account the individual's age, living conditions, health, occupation, and sex.

3. We discussed this before as we considered diets that are harmful with regard to obesity and the emerging issues that are affecting the health of consumers who are faced with, or given unhealthy foods. In that connection, we talked about food density and the illnesses that can contribute to obesity and developments like high blood pressure.

4. Another issue with regard to the adequacy of food is this notion that food should be sustainable. This is intrinsically linked to the notion of adequate food and food security,

implying food being accessible for both present and future generations. So, the precise meaning of adequacy is to a large extent determined by prevailing social, economic, cultural, climatic, ecological, and other conditions. And it is important for long-term availability and accessibility of food. So, the basic meaning of adequacy is to have accessibility of food for communities. So, as we discuss sustainability in general, the idea is used with regard to food adequacy so that it is important to understand that the adequacy must reach future generations as well as today's consumers.

5. The next precept that we want to point out is the idea that food must be available. So, after adequacy, *availability*. The availability of food must be in a quantity and quality sufficient to satisfy the dietary needs of individuals. The food must be free from adverse substances and acceptable within a given culture.

6. I mentioned the recent dispute between the United States and Mexico concerning cultural acceptability of U.S. exports to Mexico. I'd like to discuss that a little more without going into too much detail. So, as most of us know, the corn is essential in the Mexican diet. The question became whether corn exported from the United States was culturally acceptable corn in Mexico. And certainly this, in addition to our human rights considerations, and paragraph 11.2.b) again leads us to the rules of the World Trade Organization. Mexico refused to allow the import of some corn from the United States, which again, the block or the restriction on imports is a major issue – can raise a major issue – in international trade.

7. In that trade dispute, eventually the trade panel refused to accept Mexico's cultural rationalization for its trade restrictions on imports from the United States. So, under Mexico's law, its article 6 provided that the biosafety authorities within the scope of their competence with the purpose of contributing to food security and sovereignty, and as a special measure to protect native corn, the milpa, to protect biocultural wealth, communities, gastronomic heritage, and human health, may block imports, may revoke and refrain from issuing permits for the release of genetically modified corn seeds into the

environment in Mexico, and shall revoke and refrain from issuing authorizations for the use of genetically modified corn grain for human consumption.

8. Mexico contended that the measures introduced seek to fulfill additional non-SPS, non-food safety objectives related to native corn, such as to protect the milpa, gastronomical heritage, and fulfillment of obligations towards indigenous peoples. Mexico argued that these elements are linked to the history of the first settlers of the current Mexican territory, which is why, according to Mexico, they were central to the cultural identity of Mexicans, and why their protection was considered when issuing the decree.

9. The panel concluded, and Mexico accepted, in principle, that the measures fall within the definition of an SPS or a food safety measure to the extent that they are applied to protect human health, or the life or health of native corn. So, those trade rules apply to human health, to plant safety and health. Accordingly, the panel found that the Article 7-measure is an SPS measure within the meaning of the SPS agreement and meets the first prong of the definition of an SPS measure under the US-Mexico-Canada Trade agreement. In sum, the WTO's SPS agreement and rules have no qualitative exception.

10. So, according to comment no. 12, availability requires, on the one hand, that food should be available from natural resources, or through other ways of obtaining food. So the first, with regard to natural resources, food could be available through the production of food by cultivating land or animal husbandry, or other ways of obtaining food, such as fishing, hunting, or gathering. Another possibility, food could be available for sale in markets – the commercial approach – sales in markets and shops. So, availability refers to the possibilities, either for feeding oneself directly from productive land, or other natural resources. Another option is for well-functioning distribution, processing, and market systems that can move food from the site of production to where it is needed in accordance with demand. And certainly, these options represent different types of food systems and food policies.

11. The third component that we will consider is that food must be accessible, and that accessibility requires economic and physical access to food that should be guaranteed. So, according to General Comment no. 12, again, the accessibility of food must be in ways that are sustainable and that do not interfere with the enjoyment of other human rights, as we've said.

12. But now we will go on to discuss these two aspects of accessibility – economic accessibility and physical accessibility. Economic accessibility refers to affordability. Individuals should be at a level that does not threaten other basic needs. So, economic accessibility applies to any acquisition pattern or entitlement through which people procure their food, and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food.

13. As we discussed a few moments ago, this question of accessibility adds commercial aspects to our consideration of providing adequate food. And again, socially vulnerable groups such as landless persons and others might need special attention through special programs.

14. The Organization of American States' human rights courts and tribunals have paid particular attention to protecting the food rights of landless persons seeking redress for their ancestral lands and indigenous persons. These courts also have addressed indigenous claims from United States claimants. So, another aspect of accessibility is that of physical accessibility. That is the second aspect of accessibility that we would like to highlight.

15. Physical accessibility implies that adequate food must be accessible to everyone – and that means persons regardless of their strengths and weaknesses must have access to adequate food, whether they are physically vulnerable, whether they are infants, whether they are elderly, whether they are ill, foods must provide for their food needs and to consider them.

16. So, that has been a discussion primarily on the right to adequate food and the detailed meanings of what makes food adequate. And some of those considerations are more technical, especially when they are related to safety and nutrition and other aspects are more cultural, which we have considered.

17. As closing features of this part of the discussion, I would like to focus on some of the new actors or added actors who are important for contributing to the consideration and development of the right to food. Certainly, we must mention the World Health Organization. We have talked about FAO; we have talked about UN bodies. But I would like to add consideration that we must have the World Health Organization, which is important for our consideration – our cultural consideration, our global consideration.

18. WHO focuses on health as opposed to food. Its charter concerns principles about health, but certainly in its text, it puts health in the context of happiness, harmonious relations, and security of all peoples. Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. But certainly, separately, pursuant to Articles 55 and 56, so many international, regional, bilateral, national and non-state actors have become involved in the discussion of the right to adequate food.

19. As we have mentioned, the UN Special Rapporteurs have played a special role in the beginning as they considered the meaning of the right to food. And more recently, as the newer Special Rapporteurs have looked at current issues and challenges facing all of us with regard to food and the right to food. I think that as we consider these joint and separate actors and actions mentioned by Articles 55 and 56, we see that perhaps there is a basic grouping who can take into account some of the new challenges that are being debated; and that we must consider the newer challenges with regard to the right to adequate food and how we might take the steps that are referred to for future commitments by the community that is joining to consider the right to adequate food.

20. And certainly, I call attention to the fact that the judiciary in the OAS community but also in Africa and other regions of the world have played and can play an important part as we look forward to developing the right to adequate food. And we hope that some of the financial institutions like the International Monetary Fund and the World Bank – which has already played a part – can be more involved as we consider the future of the right to adequate food.

21. I thank you very much for your attention. And I hope that today's Part III has provided a good foundation for your thinking forward about and understanding the right to adequate food. Thank you.