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Legal Guide on school food and nutrition

Legislating for a healthy
school food environment

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2

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Legislating for a healthy school food environment

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for the Development Law Service, FAO

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PREFACE

In the context of the United Nations (UN) *2030 Agenda for Sustainable Development*, children are at the centre of the Sustainable Development Goals (SDGs), particularly for: Zero Hunger (SDG2), Good Health and Well-Being (SDG3), Quality Education (SDG4) and Gender Equality (SDG5).

International Human Rights Law sets obligations and standards for countries to implement national policies and legislation that aim to fulfil children's rights to adequate food, education and health. Within this framework, a solid international consensus has emerged on the importance of nutrition for children's development and well-being. At the Second International Conference on Nutrition (ICN2), the Member States of the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO) committed to developing policies, programmes and initiatives to ensure healthy diets throughout the children's life cycle, emphasizing the potential of schools as platforms for integrated action.

To achieve these objectives, a multisectoral approach is needed, that brings together the diverse sectors that can impact food security and nutrition in schools, such as agriculture, health, education, social protection and finance, and that also incorporates a human rights-based approach. Such an approach is vital to support not only the social, economic and cognitive development of future generations, but also for effective action, sustainable results, and for compliance with human rights obligations that are anchored in international law.

FAO proposes a holistic view of school food and nutrition (SFN), where beyond supporting schoolchildren's food security, nutrition and education attainment, there is a meaningful contribution to the improvement of local food systems' capacity to deliver healthy diets and to community development.

Enacting an enabling legal framework for adequate food and nutrition in schools, whether it is through a single law or through legal amendments of different laws and regulations, is key for the proper functioning of public policies and programmes. This is possible for instance, by ensuring legal requirements for the safety, quality and nutritional adequacy of school meals, or by guaranteeing the effective integration of food and nutrition education across the formal curriculum. Legal frameworks are indispensable for accountability and clarity of entitlements as well as in defining institutional mandates and coordination across sectors.

This Legal Guide on SFN aims to explain the importance of legislation and regulatory instruments to achieve the overall school food and nutrition goals set by a country. It provides guidance and examples of state practice that are relevant to a holistic approach in this area, in the hope that it will be useful to FAO Member States that wish to strengthen or establish their legal frameworks for SFN.

This Guide has not considered the implications of pandemics in national legislation. However, the *Interim guidance note: Mitigating the effects of the COVID-19 pandemic on food and nutrition of schoolchildren*, jointly developed by the World Food Programme (WFP), FAO, and the United Nations Children's Fund (UNICEF) aims to provide decision-makers with preliminary guidance on how to support, transform or adapt school feeding (in the short term) to help safeguard schoolchildren's food security and nutrition during the COVID-19 pandemic (WFP, FAO & UNICEF, 2020).

ACRONYMS

ACE	Alimentación Complementaria Escolar (Complementary school feeding)
AMHON	Association of Municipalities of Honduras
BAE	Board of Educational Administration (Sao Tome and Principe)
CAADP	Comprehensive Africa Agriculture Development Programme
CAE	Conselho de Alimentação Escolar (School Feeding Council – Brazil)
CAE	Comités de Alimentación Escolar (School Feeding Council – Peru)
CDF	Conselho Distrital de Fiscalização (District Inspection Council - Sao Tome and Principe)
CED	School Development Councils (Honduras)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CELAC	Community of Latin America and Caribbean States
CESCR	Committee on Economic, Social and Cultural Rights
CFS	Committee on World Food Security
CNSAN	National Council for Food and Nutrition Security (Cabo Verde)
COMDES	Municipal Development Councils (Honduras)
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil society organization
EAN	Nutritional Food Education (Argentina)
FAO	Food and Agriculture Organization of the United Nations
FBD	Foodborne disease
FFRC	Food Safety and Standards Authority of India
FLW	Food Loss and Waste
FNDE	Fundo Nacional de Desenvolvimento da Educação
FSSAI	Food Safety and Standards Authority of India
GAP	Good agricultural practices
GHP	Good hygienic practices
GPA	Government Procurement Agreement (of WTO)
HACCP	Hazards Analysis Critical Control Point
HGSF	Home-grown school feeding
HIV/AIDS	Human immunodeficiency virus/acquired immune deficiency syndrome
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICN2	Second International Conference on Nutrition
IHCP	Institute for Health and Consumer Protection
JRM	Joint Review Missions
JUNAEB	Junta Nacional de Auxilio Escolary Becas (Chile)
NCD	Noncommunicable disease
NEPAD	New Partnership for Africa's Development
NGA	National Government Agency (the Philippines)
NGO	Non-governmental organization
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PAA	Food Purchase Programme (Brazil)
PDS	Public Distribution System (India)
PNAE	School Feeding Programme (Brazil)
PNASE	School Food and Health Programme (various countries)
RTF	Right to Food
SDG	Sustainable Development Goal
SDR	Special Drawing Rights
SECAP	Professional Training Service (Ecuador)
SF	School feeding
SFN	School food and nutrition
SFNE	School food and nutrition education
SFP	School feeding programme
SMC	School Management Committee (India)
SSMC	State Steering cum-Monitoring Committee (India)
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNEP	United Nations Environment Programme
UNHCR	United Nations Human Rights Council
UNSC	United Nations Security Council
USDA	United States Department of Agriculture
UT	Union Territories (India)
UTSAN	Technical Unit of food Security and Nutrition (Honduras)
WFP	World Food Programme
WHO	World Health Organization
WTO	World Trade Organization

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TERMINOLOGY

For the purposes of this publication, the terminologies presented here aim to clarify the differences between the various concepts:

Home-grown school feeding (HGSF)

Home-grown school feeding constitutes a school feeding model that is designed to provide children in schools with safe, diverse and nutritious food, sourced locally from local smallholders (FAO and WFP, 2018).

School feeding (SF)

School feeding is the traditional term for programmes that provide food to children or their households through schools or that are conditional on school attendance. Such programmes provide meals, snacks or conditional household transfers in the form of cash, vouchers or in-kind, take-home rations (FAO and WFP, 2018).

School feeding programme (SFP)

This term refers to the existence of many types of programmes that can be classified into two main groups: 1) in-school feeding, where children are fed at school; and 2) take-home rations, where families are given food if their children attend school. In-school feeding can then be divided into two common categories: 1) programmes that provide meals; and 2) programmes that provide high-energy biscuits or snacks (WFP, 2013).

School feeding programme vs school meals programme

Although each country uses a different name to refer to the programmes that provide food in schools, and while aware of the differences that exist between the terms 'school feeding programme' and 'school meals programme', the term 'school feeding programme' that we use in this Guide captures better in practical terms the evidence that has been collected to date in literature available on this subject.

School food and nutrition (SFN)

The term 'school food and nutrition' in this Legal Guide encompasses key complementary efforts to improve food security and nutrition through schools as well as through local community socioeconomic development. These include interventions to promote a healthy school food environment and adequate and safe school food/meals, to stimulate inclusive food procurement and value chains, and to integrate food and nutrition education throughout the school system. This approach is used by FAO, incorporating the recommendations derived from ICN2 as a basis for the technical assistance provided to countries. The notion of school food and nutrition goes beyond the implementation of a specific or single policy or programme. It encompasses the areas of work in which FAO can support governments and institutions, through a variety of school policies and programmes. For its implementation, this approach advocates for an enabling environment including policies, legal and institutional frameworks that support sustainable school food and nutrition.

School food and nutrition policies and programmes

These are policies and programmes that incorporate some or all of the components of the school food and nutrition approach described above. These can include: school nutrition policies, food environment policies, school procurement policies, school meal programmes, home-grown school feeding programmes, school health programmes, and school fruit and vegetable schemes, among others.

School feeding law vs school food and nutrition law

When this Guide refers to a 'school food and nutrition law' it refers to a law that is intended to promote and achieve a comprehensive approach that is technically based on the FAO school food and nutrition approach (described above), and its application is not limited to a single programme.

In turn, when this Guide refers to a 'school feeding law', it is a general designation of a law that does not necessarily seek to guarantee all the elements mentioned as part of the school food and nutrition approach.

INTRODUCTION



1. INTRODUCTION

Multi-component SFPs have been widely recognized as important instruments for achieving children's human rights to food, education and health. At least 368 million pre-primary, primary, and secondary school children worldwide currently receive food through schools (WFP, 2013). Such programmes can take various forms depending on the needs, priorities and focus of each country. Objectives range from enhancing attendance and enrolment, to obesity prevention and support to local economic development.

The positive impact of SFP on diets and nutrition depends on many factors, including the main objectives of the programme, the baseline nutritional situation of beneficiaries, the surrounding context, and the available resources and capacities, among others. Furthermore, SFP can increase school enrolment and attendance, as well as reduce dropout rates, particularly for girls. They can also improve educational attainments by alleviating the impact of poor nutrition on learning capability, cognitive performance and concentration (Bundy *et al.*, 2009).

Moreover, school feeding programmes can also have positive impacts on local economic development if public policies establish clear linkages with small farmers and small enterprises through local procurement and concrete measures for supporting their professional activity (FAO and WFP, 2018).

Investing in children is not only a human rights issue but also a profitable endeavor for every country: an investment in the most precious of all global public goods – our present and future humanity (Alipui and O'Shea, 2015).

Box 1.1: Quick facts on school feeding worldwide

- School feeding programmes (SFPs) are implemented in 130 countries, benefitting 368 million children worldwide.
- Countries where the coverage of SFPs are the least adequate are those with the greatest need. Current estimates suggest that while nearly 50 percent of schoolchildren receive free meals in middle-income countries, the figure for low-income countries is 18 percent.
- In high-income countries, the school food service is almost universally available to children at a differential cost depending on the level of income of the family – some children pay for their meals and others receive them at subsidized costs or for free.
- In low-income countries, 74 percent of the programmes are geographically targeted, meaning that certain areas are targeted to receive school meals based on a set of criteria, such as the highest poverty rates or the lowest achievement in education.

Source: World Food Programme, 2013.

The success of these programmes depends on a wide variety of elements, including an adequate framework of implementation set out in public policy. School feeding is very often embedded in poverty reduction strategies or in sectoral policies on education, social protection and food security and nutrition. Policies are indispensable instruments to set the objectives and goals of school feeding in a given country. In addition, legislation is essential to ensure an enabling environment to attain those objectives.

Furthermore, in light of modern sustainable development challenges, countries are increasingly adopting complementary strategies and policies that not only benefit schoolchildren's nutrition and well-being, but also the wider school community development and local food systems. Some examples include policies to improve the school food environment and regulate the food available within and beyond the premises, revision of formal curricula to integrate food and nutrition considerations, adoption of school gardens as learning platforms, programmes to generate employment connected to schools, and food safety capacity development for school food service staff.

The linkages between these policies and programmes are sometimes duly acknowledged and strengthened, yet this is not the case in many contexts. Holistic approaches that are based on synergies and complementarity between efforts to improve food security, nutrition and community development through school systems, and identify and address gaps are being increasingly recommended globally. However, the sustainability and scale-up of such approaches is complex, because there are a wide range of sectors involved, including health, education, agriculture, finance, and social protection, among others. Several institutions and a range of actors are also often implicated, both at national and decentralized levels, including governmental institutions, students, teachers, parents, farmers, the private sector, non-governmental organizations (NGOs) and international organizations, particularly in low- and middle-income countries where their roles are significant.

A solid legal framework that regulates in a coherent manner the different areas that are relevant to a school food and nutrition approach is crucial to:

- policy objectives such as providing adequate food and nutrition in schools, and contributing to community development;
- recognize access to adequate and healthy food at school as a legal right;
- define clear entitlements;
- assign institutional responsibilities and hence give coherence to programme implementation;
- establish a solid framework of coordination, monitoring and enforcement;
- establish mechanisms and procedures ensuring transparency, participation and accountability;
- define a concrete budgetary commitment to the implementation of relevant programmes.

However, many countries do not yet have such comprehensive legal frameworks, leading to ineffective implementation, risks of corruption, dependence on shifting policy and budget priorities, and possible serious incidents affecting public health.

1.1 PURPOSE OF THIS GUIDE AND INTENDED AUDIENCE

This Guide has the following aims:

- provide practical information and guidance for developing or revising national legal frameworks related to school food and nutrition;
- identify legal elements and areas that are relevant to school food and nutrition;
- identify international law and standards applicable to the different areas of relevance to school food and nutrition;
- provide a variety of legislative examples and options for regulating school food and nutrition;
- promote a holistic and human rights-based approach to school food and nutrition in national legislation.

The Guide is intended for use by all actors who are involved in the design, implementation or monitoring of school programmes and policies and most particularly, for those interested in taking legislative action (law making or law reform) to develop or strengthen national legislation to improve food security and nutrition in schools as well as community development. In particular, the Guide is meant for:

- policy makers
- parliamentarians
- legal advisers
- law practitioners
- advocates for improved food security and nutrition in schools

1.2 METHODOLOGY

1.2.1 Rationale and background

The need for this Legal Guide has arisen mainly from the groundwork that FAO has already developed in the field – by supporting countries in reviewing their legal frameworks related to food security and nutrition in schools, it became evident that some of the legal gaps encountered created great difficulties for successful programme implementation. These gaps stem largely from the lack of holistic approaches and multisectorial coordination mechanisms that enable due attention to all the substantive factors that affect food security and nutrition in a given country. An example of this is the issue of food safety which, despite being crucial to ensure the health of children in schools, often presents important gaps in the national legislation of many countries. On the other hand, other fundamental aspects of a holistic approach to improve food security and nutrition in schools, such as regulating the food available in school or the linkages with local smallholder farmers, require concrete legislative measures that need to be analysed as a whole and not in isolation.

In parallel, and in response to the international call for transforming food systems to be conducive of better diets and improved nutrition along the lifecycle, in the context of the Sustainable Development Goals (SDGs), the Second International Conference of Nutrition (ICN2) and the UN Decade of Action on Nutrition (2016-2025), FAO has developed a holistic approach to school food and nutrition. This corporate approach has been the result of the technical knowledge of an FAO multidisciplinary team working on this issue from different technical departments, as well as the interaction that this group has had with different actors at the national and global levels.

The methodology used to build this Legal Guide was based on: i) the FAO field experience; and ii) technical exchanges within the FAO School Food and Nutrition Taskforce that acts as a body that routinely discusses FAO-led programmes and projects in this area, and aims to coordinate approaches to ensure quality and integrity of knowledge at different levels. The SFN Taskforce includes representatives from various technical groups and divisions including Nutrition Policies and Programmes, Market Linkages and Value Chains, Nutrition Education and Consumer Awareness, Agro-Food Industries, Food Loss and Waste, Food Safety, Development Law, and Social Protection.

From the legal perspective, it was essential to promote the importance of legal frameworks to guarantee the sustainability of such a holistic approach at country level. Therefore, this Guide responds to the need to build a frame of reference to support countries when legislating on the matter.

This document is not the result of a team of lawyers seeking to provide legal solutions of a theoretical nature in the matter, nor does it attempt to provide a single solution for legislating on school food and nutrition. The Guide seeks to take into consideration the complexity of improving food security and nutrition through schools, as well as the problems we have observed in the field and aims to provide analytical tools that are comprehensible to all actors who want to strengthen the legal frameworks in this area, whether they are lawyers or not.

1.2.2 Key steps for the development of this Guide

The first step in developing this Guide was to identify the main legal areas and legal elements relevant to SFN, using FAO's SFN approach as a technical basis, as well as international law and standards that are relevant for SFN.¹ Those main legal elements refer to key technical issues that might be addressed by national legislation to achieve SFN goals. That analytical process was built on country legal analysis undertaken in the context of various FAO projects implemented in Africa and Latin America.

The second step in developing this Guide was to identify different regulatory options that are available to governments that regulate the various components of SFN and to collect country examples of good practices.

The research and legislative review were based on field work supported by the Development Law Service of the FAO Legal Office through: FAO projects; literature review including reports from international organizations, non-profits and academia; information from the FAOLEX database; and publications on field work and research carried out by the World Food Programme, the World Bank (SABER-Systems Approach for Better Education Results), Partnership for Child Development, Home-Grown School Feeding, the World Cancer Research Fund International NOURISHING framework, and the European Union, among other sources.

Built within the multidisciplinary FAO SFN Taskforce hosted in FAO headquarters, this Legal Guide has benefitted from different perspectives and technical knowledge on the subject, and has gone through a filter of approval by the different FAO technical departments.

The external review from the Imperial College of London contributed with elements of great value to this Legal Guide.

¹ The international legal framework applicable to the substantive issues of school food and nutrition include international human rights law and other legal instruments, as well as authoritative recommendations from UN Treaty bodies including the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child.

1.3 PRESENTATION OF THE VARIOUS SECTIONS

Section 1 contains an overall introduction of the Guide.

Section 2 describes FAO's holistic approach to SFN.

Section 3 of the Guide aims to explain why legislation is an effective tool to make SFN policy objectives sustainable over time. It attempts to describe the legal framework that can support a holistic approach to SFN and explains the importance of a holistic approach to legislation, highlighting the need for harmonized legislative measures that avoid legislative gaps and overlaps. The section also introduces relevant international legal instruments and standards on key legal areas for SFN.

Section 4 offers overall recommendations for legislating on SFN and explores some legislative and regulatory options.

Section 5 of the Guide addresses the substantive legal elements that countries may consider when drafting a specific law – or when improving legislation – for SFN. As mentioned earlier in this Guide, the legal elements that are relevant for SFN can be regulated through a wide variety of legal instruments including a specific law to ensure adequate and healthy food and nutrition at school. In this Guide, the legal elements considered to be most relevant have been analysed as part of a specific law, but this does not mean it is the only option to achieving an appropriate legal framework for SFN, as countries may also decide that it is not necessary to adopt a specific law on the matter if their legal framework is sufficiently comprehensive. The section analyses key legal issues such as the scope and objectives of the law; the definitions and guiding principles; the rights and entitlements; the institutional framework, and key regulatory elements such as the nutrition standards and guidelines applicable to schools; school-based food and nutrition education; food safety aspects; inclusive procurement for school food; monitoring and accountability mechanisms; and budget allocation.

The explanation of those key elements follows a structure that addresses **why** it is important to ground a particular issue or element in legislation. Additionally, there is a reference to **international law and standards**, when applicable, to identify those main instruments to comply with as well as the international standards that are relevant for each topic. The Guide also presents options for **how** to legislate on that specific issue, identifying key legal challenges and main recommendations to be developed through specific legislative measures. Finally, Section 5 of this Legal Guide offers legislative options, illustrated by specific country examples.

At the end of each subsection of Section 5, the Guide introduces a **quick checklist** containing guiding questions and recommendations.

The concluding Section 6 of the Guide displays a list of possible provisions for a school food and nutrition law. Finally, the Annex includes a checklist for legislative analysis and legislative drafting. This checklist is not intended to be a model to be followed strictly, but a guiding tool for lawmakers and legal drafters.

1.4 LIMITATIONS OF THIS LEGAL GUIDE

This Guide does not intend to provide technical guidance on how to regulate specific legislative areas, such as food safety or procurement law. Rather, it aims to raise awareness on the need for legislative completeness and coherence and to highlight key elements of a holistic approach

to SFN that need to be anchored in national legislation. While the Guide presents a possible structure and key elements that could be included in a specific law on SFN, it does not aim to provide a “one size fits all” legislative solution for countries. Instead, the Guide explores the legislative and regulatory options available to countries wishing to establish a comprehensive and coherent legal framework for SFN. The analysis presented across the different legal elements can also be useful for countries wishing to strengthen and revise existing legislation.

The country examples used in the Guide come from surveys conducted by FAO and other partners as well as on legal databases such as FAOLEX containing legislative information on countries around the world. They are not meant to be a comprehensive inventory of laws related to SFN worldwide.

THE FAO SCHOOL FOOD AND NUTRITION APPROACH



2. THE FAO SCHOOL FOOD AND NUTRITION APPROACH

FAO promotes a holistic approach to SFN that leverages on and purposely creates synergies between four main areas of work that are at the heart of the Organization's mandate and capacity (FAO, 2019a).

These four areas include:

1. Promoting a healthy school food environment and adequate and safe school food/meals;
2. Integrating effective food and nutrition education throughout the whole school system;
3. Stimulating inclusive procurement and value chains for school food;
4. Creating an enabling political, legal, financial and institutional environment.



The SFN approach also integrates key cross-cutting themes that are critical for its success (such as gender issues), and/or are critical to advance sustainable development (environmental, social and economic sustainability), depending on the context.

FAO's SFN approach has emerged from country experiences and lessons learned, evidence-based recommendations, FAO expertise in various areas of the food system, and the recommendations derived from ICN2. This approach provides a framework to assist countries in the design and implementation of school-based policies and programmes, and builds on four areas of action (FAO, 2019a). The four core areas of work listed above are described in more detail below.

2.1 MAIN AREAS OF WORK

2.1.1 Healthy school food environment

The school food environment involves all the spaces, infrastructure and conditions within and beyond the school premises where food is available, obtained or purchased and consumed (tuck shops, kiosks, canteens, food vendors, vending machines) and the composition of those foods. It also involves the information available, promotion and pricing of foods and food products (marketing, advertisements, branding, food labels, packages, promotions, etc.). The food environment shapes how accessible, affordable, desirable and convenient specific foods are. A healthy school food environment enables and encourages the school community (for e.g. children, adolescents, families, school staff) to make food choices that contribute to better diets.



Nutrition guidelines and standards and other food environment policies have the potential, when implemented within a coherent and multicomponent approach, to: a) improve the nutritional quality and adequacy of school food and meals; b) support a healthy school food environment; and c) strengthen the linkages with local and smallholder food production.

FAO's approach promotes policies and strategies that aim to improve the school food environment (focusing on both urban and rural contexts), and its linkages with the other components, particularly alignment with food procurement, school meal standards and food and nutrition education.

Emphasis is placed on exploring the most effective synergies between food environment policies and the other areas of work so as to address malnutrition in all its forms (including overweight and obesity prevention).

2.1.2 Food and nutrition education

School-based food and nutrition education (SFNE) aims to foster long-lasting food outlooks, skills, practices and habits that promote resilience and are conducive to better health and well-being in children and their families.

To be effective SFNE should comprise a combination of evidence-based and behaviourally-focused educational strategies that are context-specific; involve the active participation of the most relevant influencers of food practices (i.e. schoolchildren, parents, school staff, local smallholder farmers and rural enterprises, community leaders, etc.); and are reinforced by an enabling school food environment. Furthermore, SFNE interventions should also be developmentally and culturally appropriate, have an adequate duration and intensity, and a practical focus.



FAO's approach promotes a transformative vision for SFNE, where the school community fosters healthier and more sustainable food practices in their different contexts and work together to promote positive changes in their local food system from their different entry points and areas of influence (not only through the curriculum). This means that: a) SFNE is not targeted only to children, adolescents and families, but in parallel to the broader school community; b) children and their communities are not passive actors, but rather take ownership of their food learning processes and can become agents of change in their local food systems; and c) the scope of SFNE goes beyond the transmission of generic and basic nutrition information.²

The main areas of FAO support includes integrating SFNE into national school curricula and relevant policies; revisiting school gardens as learning platforms for SFNE; designing, implementing and evaluating SFNE programmes and projects; developing school communication and awareness campaigns, using different media, including social media; strengthening SFNE capacity development for educators and other actors (including curriculum developers and learning material writers); and other areas of support.

The SFNE model promoted by FAO is not meant to be implemented in isolation, but rather designed to support all other areas, particularly the effects of school meal nutrition standards, food environment policies and to strengthen the connection with local procurement and smallholder actors.

² Scope in terms of traditional educational (top-down, classroom-based) strategies and media, competencies promoted (e.g. for adolescents as future caregivers) and subject matter (e.g. environmental sustainability considerations).

2.1.3 Inclusive procurement and value chains

Linking schools' demand for safe, diverse and nutritious food to local production (prioritizing available supply from smallholders at local or national levels), has the potential to increase the benefits and beneficiaries of school meal initiatives, including not only those who receive and consume the food, but also those who produce the food and the local communities. This strategy, also known as Home-grown school feeding (FAO and WFP, 2018), provides an opportunity to improve the livelihoods of smallholder farmers and local communities and to strengthen the connections between nutrition, agriculture and social protection.



In particular, it has the potential to: a) foster smallholders' increased production and diversification; b) stimulate the adoption of nutrition-sensitive and/or environmentally friendly agriculture practices; and c) promote the value of local dietary habits and traditional nutritious foods (particularly when combined with food and nutrition education). This, in turn, can contribute to the strengthening of local and national food systems and to the promotion of better-quality diets.

The SFN approach encourages inclusive procurement practices, where possible, so that school meals can create meaningful market opportunities for local smallholder producers, including small-scale food enterprises managed by youth and women, and contribute to community involvement and economic development, in both urban and rural contexts. Inclusive procurement can be understood as a "deliberate way for governments to purchase goods or services from specific unfavoured or vulnerable supplier categories in order to advance social and economic development" (Brooks, Commandeur and Vera, 2014).

FAO's work in this area supports the design and implementation of nutrition-sensitive value chains for schools – that ensure the nutritional quality and safety of school meals along the entire food chain – as well as the development of smallholder-friendly procurement mechanisms. It can also build on support provided to farmers and their organizations to enhance production, post-harvest activities, storage, processing, and improve managerial, organizational and marketing skills, to meet the standards set by local governments.

Through this approach, FAO also explores the potential of urban and peri-urban agriculture initiatives, transformation of urban-rural market linkages, and school/community gardens to supply fresh produce and support the diversification of school meals and diets of schoolchildren and adolescents in cities.

2.1.4 Enabling policy, legal and institutional environments

The design and implementation of sustainable holistic school-based programmes require political commitment, multi-stakeholder collaboration, accountability and regular funding. This is often underpinned by how education systems work (as schools are hosts of these programmes), and how the different sectors and stakeholders share the vision, roles and responsibilities of these programmes.



Although approaches and adopted policy instruments vary from country to country, the benefits of such programmes are maximized if closely linked and aligned with other related programmes and policies in the area of social protection, nutrition,

health, education, agriculture, rural development and urban food planning. Institutional capacity is also highly important for appropriate implementation and coordination and for achieving the desired impact(s).

Legislation is at the center of sustainable policies for SFN. Appropriately designed legislation for adequate food and nutrition in schools will define precise rights and entitlements of schoolchildren, determine clear institutional responsibilities, establish inclusive participation, and improve coordination mechanisms among the different stakeholders involved, as well as encourage adequate budget allocation, and a framework for monitoring and enforcement (FAO, 2019a).

A human rights-focus recognizing children's right to adequate food, and providing for accountability, non-discrimination, transparency, human dignity, empowerment and rule of law, will provide a solid ground for protecting the rights of the child, and support countries' compliance with international human rights instruments (FAO, 2019a).

2.2 CROSS-CUTTING THEMES

FAO has several themes that are considered as 'cross-cutting' to the SFN approach.

2.2.1 Social protection

Social protection interventions commonly target poor and food-insecure families that depend primarily on agriculture and partly on non-farm income and private transfers, for their livelihoods. Stronger coherence between agriculture, education, nutrition, health and social protection interventions can assist in improving the welfare of the most vulnerable, while enabling rural-based families to gradually move out of poverty and hunger.

If properly designed and adequately linked to other sectoral policies and programmes, school-based programmes (and school meal programmes in particular) can not only function as part of social assistance safety nets, but also provide a good opportunity to promote local economic development. Through its SFN approach, FAO seeks to work within school-relevant social protection programmes to integrate priority food and nutrition outcomes and create relevant synergies. For instance, combining accessible school market opportunities with predictable and timely cash transfers may allow vulnerable farmers to enter a virtuous cycle of economic development. Similarly, combining social assistance with community and SFNE could support food-insecure households in accessing, purchasing, preparing and consuming nutritious foods that meet the specific nutritional needs of each member of the household.

In contexts of protracted crises and post-crisis situations, FAO explores how to support the recovery, economic rehabilitation and productive inclusion of smallholder farmers and value-chain actors (including displaced people) through local procurement support and job generation relevant to schools. FAO also explores how to promote resilience and inclusion of displaced children in formal education systems and enhance the quality and adequacy of food available in those schools.

2.2.2 Gender

Gender inequalities are an important deterrent of optimal nutrition. Biologically, women are particularly vulnerable to malnutrition due to increased physiological needs, especially during pregnancy and lactation. However, social gender roles in many countries can further affect

women's nutrition, in that, they have less access to education, income and resources, and limited decision-making power, while having important burdens from child care, housekeeping activities and agriculture.

Gender inequalities also have a direct impact on women's production capacity and limit their ability to access and benefit from market opportunities. Although women have increased their role in the rural sector in recent years, they continue to be under-represented and disadvantaged in their participation in formal markets, facing severe constraints associated with their lack of access to productive resources and power.

Knowledge of gender dynamics and roles is key to understanding potential inequalities that affect nutrition, food security and community development. To this end, FAO's approach supports gender assessments in order to identify constraints and potential pathways to minimize these constraints. It also promotes gender-sensitive strategies, based on the context, for local procurement and inclusive value chains, to help actors to understand and take into account gender differences in roles and access to resources, or to address structural constraints to women's empowerment. FAO also seeks to provide opportunities for further support of women's entrepreneurship and employment.

Other areas of support include the promotion of nutrition education to foster healthy food practices for both girls and boys, and for future caregivers. Biological needs are also prioritized when supporting the development or revision of nutrition guidelines and standards for school meals.

2.2.3 Food safety

As food safety and nutrition are inextricably linked, nutritional benefits cannot be obtained if the food is not safe. Foodborne diseases can limit nutrient availability, and likewise foodborne illnesses are more serious in those who are undernourished, creating a dangerous downward health spiral.

The production, transport, storage and preparation of school food, in particular if sourced through decentralized "home-grown" supply chains, is associated with certain food safety risks that need to be controlled. These include various kinds of microbiological contamination like mycotoxins in staple foods such as maize, and chemical contamination (e.g. pesticides and herbicides). Such food borne hazards may be introduced at various stages along the supply chain. In order to protect schoolchildren and adolescents from foodborne disease, it is necessary to identify, assess and manage the risks, and communicate information about these food safety issues to all stakeholders along the supply chain.

FAO's SFN approach promotes a risk-based framework to the school food supply chain that is embedded in a conducive food control environment. Support focuses on: a) developing functional food control systems at different levels; b) promoting enabling policies and legal landscapes for food safety; c) capacity development introducing good practices for producers and food handlers along the school food chain; and d) the integration of food safety as a key part of school food standards and food and nutrition education.

2.2.4 Prevention and reduction of food losses and waste

Food Loss and Waste (FLW) is a manifestation of the inefficiency, unsustainability and inequality in current food systems, and is a significant issue that hampers sustainable development. School-based programmes and policies should tackle FLW in different ways.

FAO's approach promotes the integration of food waste reduction as a theme in school education projects and in national curricula, to raise awareness and engage children, adolescents and the school community in the global endeavour to reduce food waste and alleviate its associated economic, environmental and social impacts.

Moreover, understanding the range of reasons behind: a) food losses throughout the school supply chain; and/or b) food waste in schools (e.g. acceptability assessments, knowledge, attitudes and practices studies); as well as identifying interventions to address these issues are integrated within the four main areas of the school food and nutrition approach.

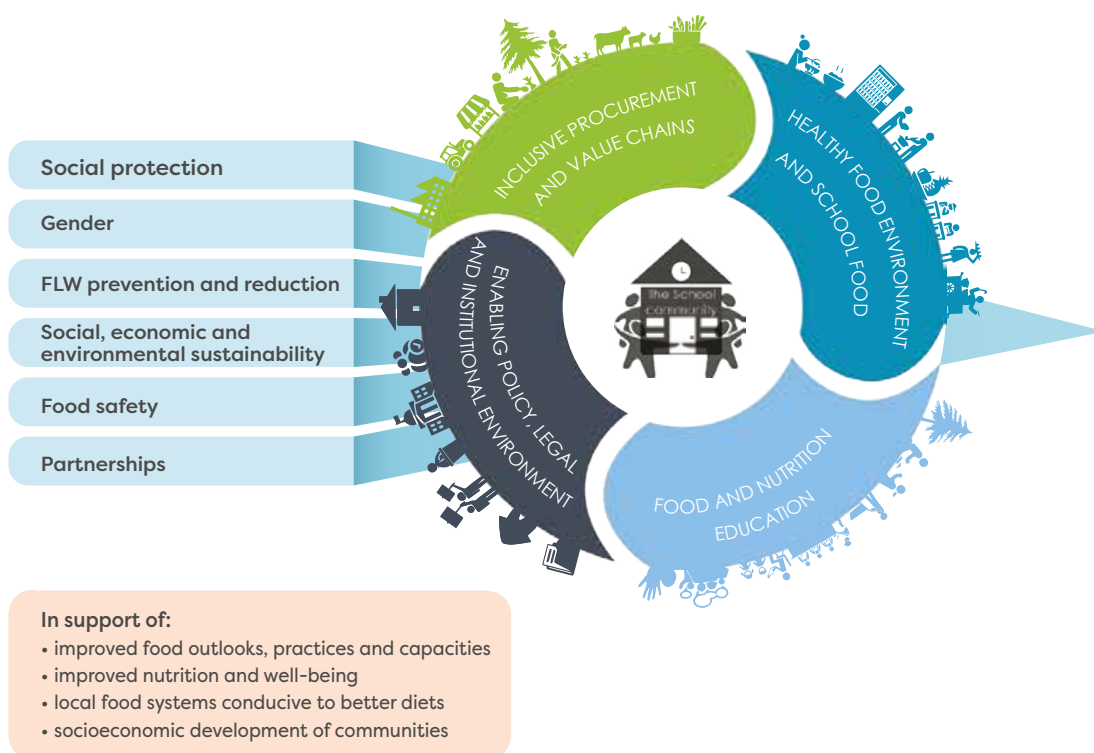
2.2.5 Social, economic and environmental sustainability

Food systems have considerable impacts on social, economic and environmental sustainability. School-based policies and programmes can be an opportune platform to integrate sustainability considerations.

School procurement, for instance, can use its purchase power to support and promote local forms of supply that consider environmental sustainability (e.g. low-impact production methods with reduced carbon inputs and greenhouse gas emissions, use or prioritization of organic or agroecological products, enhanced animal welfare, reduced food packaging, etc.); as well as fair labour conditions.

Beyond providing food in schools to all children in equal terms, the promotion of equity and social justice through schools depends on approaches that purposely assess and address issues of inequality and promote inclusion throughout food procurement, preparation and consumption. The success of these approaches also depends on the meaningful involvement of local governments, civil society and the wider school community.

Figure 2.1: FAO areas of work in school food and nutrition



The FAO approach considers initiatives for incorporating sustainability considerations and sustainability criteria into school-based programmes, including support for local smallholders, and development of standards and guidelines for inclusive and sustainable institutional food procurement and food environment policies. Furthermore, FAO explores how it can support considerations of other dimensions of sustainability as part of the SFN approach, including for example revaluing traditional diets, or tailoring food and nutrition education to support equity objectives.

LAW AND SCHOOL FOOD AND NUTRITION



3. LAW AND SCHOOL FOOD AND NUTRITION

In this Section, the Guide addresses why legislation is important to achieve improved food security and nutrition at school, and provides an overview of the different type of legislative measures that might be adopted at national level. This Section also attempts to define the legal framework that can support a holistic approach to SFN, identifying the main areas of law that are relevant and introducing key international instruments and standards that are applicable.

3.1 WHY LEGISLATION MATTERS TO SCHOOL FOOD AND NUTRITION

3.1.1 The scope of legislation in the context of school food and nutrition

SFN objectives may be addressed by a wide variety of public policy documents including sectoral policies, programmes, laws, and regulations in different fields such as education, health, food security and nutrition, agriculture and social protection. In addition, some countries may decide to adopt specific policies and laws that regulate SFN.

In general, legislation has many purposes including to regulate, to authorize, to create institutions, to sanction, and to restrict. In the context of SFN, legislation can define the institutional framework responsible for achieving SFN goals in the country, assign legal mandates, and establish the rules and procedures that are required to ensure a healthy school food environment, – including adequate and safe school foods/meals. To achieve this aim, legislation may seek, for instance, to regulate foods at public and private schools through a ban on foods and beverages not compliant with mandatory nutritional standards. Legislation can also include provisions to guarantee food and nutrition education at school, and it can establish and define the rights and entitlements of school children regarding access to food at school. Legislation may also seek to prohibit or restrict child-targeted advertisements for high-calorie, nutrient-poor food at schools. Such measures can be taken only through legislation.

While policies, programmes and laws are all instruments of public policy, laws translate political intentions into legal obligations and give permanence to a society's norms by making policy objectives enforceable and sustainable in time.

A comprehensive legal framework for school food and nutrition can also encourage inclusive procurement so that school meals can create an opportunity to improve the livelihoods of smallholder farmers and the socio-economic development of local communities.

Furthermore, legislation can institutionalize and establish the procedures for the implementation of school-based programmes, including school feeding programmes. Only through a law can a government allocate the resources that are necessary to implement a programme (a specific line on the public budget; specific taxes). A school feeding programme that is grounded in law:

- has an assured programmatic continuity;
- has a competent authority and assigned institutions with responsibilities clearly defined by law;
- mobilizes public resources and institutions in support of the programme;
- fulfils a right contained in national legislation (adequate food at school as a right and not as a government option).

Legislative measures for school food and nutrition can affect a wide range of actors including public officials and private actors. Public officials refer to staff in public institutions involved – directly or indirectly – in the planning, implementation and control of SFN policies and programmes (ministries, national agencies, decentralized authorities and public schools). Likewise, private actors refer to non-governmental agents who intervene in the implementation of such programmes and policies (food suppliers including farmers, food companies and any other food vendors, food handlers, NGO's, parents and caterers).

3.1.2 Differences between policies and laws

Very often, confusion might exist between the implications of legislation versus that of policy, and the need for legislation is not always well understood.

A policy outlines what the government wants to achieve during the term of office. It states the objectives and specific measures of a government ministry in a particular sector, but a policy document is not a law.

In order for the objectives and measures set out in the policy document to be enforceable, it may be necessary to adopt a law to put in place the institutional and legal procedures to achieve its purposes.

Laws set out rules and procedures to be followed and contain enforcement mechanisms to encourage compliance. Enforcement can be achieved through incentives or other means to encourage compliance in a positive way, but it can also refer to punitive measures such as sanctions, civil or criminal penalties or other enforcement mechanisms to address non-compliance. This is not the case for a policy document, which is not enforceable without a law (Table 3.1).

In addition, while policies are subject to change according to government priorities, laws are adopted with longer-term commitment.

Policy	Law
An instrument that sets out the goals of government and the planned activities and methods to achieve those objectives.	A mandatory framework that sets standards, principles, institutional responsibilities, rights and entitlements, procedures, and sanctions.
Adopted by the government through the President or its ministries.	Adopted by the legislature.
Not judicially enforceable.	Enforceable.
Do not include specific accountability mechanisms.	Sanctions and remedies are foreseen in case of breaches.

3.1.3 The importance of the 'rule of law'

Just as important as the law is the concept of the 'rule of law', adopted in 2012 under the *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, which is described as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, enforced equally and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency" (S/2004/616). According to this principle, laws should be clear, fair and accessible to provide certainty and stability.


3.2 WHAT IS THE LEGAL FRAMEWORK FOR SCHOOL FOOD AND NUTRITION?

In this Guide, a legal framework for SFN is made up of the set of international instruments, laws and regulations that govern the various components of a holistic SFN approach.

The legal and regulatory framework for SFN will encompass international obligations (particularly international human rights treaties), constitutional provisions, and laws and regulations of a wide variety of sectors that are relevant for SFN (health, education, nutrition, social protection, agriculture, rural development and urban planning, food safety, trade, finance, and public procurement).

At national level, state obligations are enshrined in different types of laws: the Constitution (at the top of the hierarchy of norms), organic laws and ordinary laws. Primary legislation is the general term used to describe the main laws passed by the legislative branch of the state. Primary legislation sets out broad outlines and principles, and delegates specific authority to an executive branch or administrative body to make more specific laws to implement the principal act. A more detailed explanation of primary vs secondary legislation is included in the next section of the Guide.

These legal instruments at international, national and local level make SFN policies compulsory and enforceable.

 More than a single law, a legal and regulatory framework for SFN is a comprehensive package of harmonized legal instruments conducive to achieving the SFN objectives set by government. The ultimate goal of a legal and regulatory framework is to provide the means for achieving stated policy objectives.

3.3 A HOLISTIC APPROACH TO SCHOOL FOOD AND NUTRITION LEGISLATION

Adopting a holistic approach entails harmonizing the different laws and regulations that are relevant for SFN to facilitate the attainment of the set policy objectives (see Figure 3.1).

Within this focus, there may or may not be a specific law on SFN. A holistic approach to legislation for SFN entails:

- considering the whole legal framework of the country;
- identifying the areas of law that are relevant to SFN;
- considering that any legislation that may have a direct or indirect impact on SFN is relevant;
- identifying the elements that are relevant for SFN which need legal underpinnings;
- assessing and identifying whether the country has these rules in place or not;
- addressing legislative gaps, and avoiding legislative overlaps and contradictions;
- building a comprehensive legal framework for SFN.

Figure 3.1: Areas of law that are relevant for school food and nutrition



This figure represents the school food and nutrition approach (SFN) at the centre, circled by a wide range of areas of law that may have a direct or indirect impact on SFN. All of them regulate to some extent, key elements of the SFN approach. In such a legal and regulatory framework for SFN, there may or may not be a dedicated SFN law.

Knowing that there are countries that may choose to adopt a specific law on SFN and others may not, this Legal Guide nevertheless recommends considering the adoption of a specific SFN law that will most likely contribute to enforcing the SFN goals in a country in a comprehensive manner. This applies in particular to countries with fragmented and scattered legislation.

Considering passing a law on the subject can also serve to review whether or not existing legislation allows SFN public policy objectives to be achieved. If this is not the case, this process allows reforms to be made to instruments that need to be updated, to fill legislative gaps and to correct possible legislative conflicts. For countries with fragmented and outdated legislation, envisaging the adoption of an SFN law can help to gather together in a single instrument, basic relevant provisions that will enable the achievement of SFN goals. However, attention should be paid to the whole legal and regulatory framework for SFN and the need for harmonization of the different laws in a comprehensive approach.

As expanded on in the following sections, maintaining coherence among the different regulatory areas that are relevant for SFN is not an easy task and ensuring the comprehensiveness of the legal framework might be challenging.

3.4 INTERNATIONAL LAW AND STANDARDS APPLICABLE TO SCHOOL FOOD AND NUTRITION

When legislating at national level, it is fundamental to take into account the international treaties that the country has ratified. In some legal systems, the provisions of ratified treaties constitute hierarchically superior norms to which national legislation must be compatible. Moreover, there are a number of non-legally binding international instruments, which constitute an essential source of recommendations, objectives and standards. These include the *Sustainable Development Goals (SDGs)*, the *Right to Food (RTF) Guidelines*, and the standards of *Codex Alimentarius*, among others. They can serve as a reference or source of inspiration when drafting national legislation. Although it is beneficial to be aware of the various legal areas that are relevant to SFN, in this Guide it was decided to highlight four areas of law that are of primary relevance to the above-described SFN approach. For these four specific areas of law, this section provides a non-exhaustive list of international instruments and a brief analysis of their respective relevance. Other relevant areas, that are not described here, include health and education law.

3.4.1 Human Rights

Coherent policies and programmes for SFN can contribute to the realization of a wide variety of human rights, but it is particularly relevant for the human right to adequate food. They can also support the right to education and the right to health.

Throughout this Guide, human rights are considered as a major area of law that is relevant for SFN, but at the same time, it is an approach that underpins SFN. Applying the legal language of human rights to SFN reinforces the understanding that all actors involved have concrete legal obligations and responsibilities.

3.4.1.1 A human rights-based approach to school food and nutrition

A human rights-based approach is a conceptual framework that is normatively based on international human rights law and standards, and operationally directed to promoting and

protecting human rights. Under this approach, policies and legislation are anchored in a system of rights and corresponding obligations established by international law, and legislative action is strongly recommended to give legal protection through entitlements and responsibilities against which governments can be held accountable for their action or inaction (OHCHR, 2006).

Building on the principles of universality, non-discrimination, equality and participatory decision-making, a human rights-based approach aims to empower people – especially the most vulnerable and marginalized – to participate in the formulation, implementation and monitoring of policies and legal frameworks that affect SFN and hold accountable those who have a duty to act.

Acknowledging the importance of all human rights principles for development, and for the guarantee of children’s rights to adequate food, to health and to education, this Guide focuses on four principles that are considered fundamental in the context of SFN. Those four principles are: i) equality and non-discrimination; ii) participation; iii) accountability; and iv) best interest of the child. Their relevance, and specific guidance on how to incorporate them into specific legal provisions of an SFN law are analysed and illustrated through concrete examples in Section 5 of this Guide.

3.4.1.2 Human rights instruments

Several human rights instruments recognizing the right to adequate food, the right to education and the right to health (among others) are applicable to SFN. Among these, it is worth noting the *Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR)*. The ICESCR reaffirmed the right to food (Article 11), as well as the right to the highest attainable standard of physical and mental health (Article 12), and the right to education (Article 13). Specifically, in Article 11 on the right to food, the ICESCR establishes that “States Parties (...) recognize the right of everyone to an adequate standard of living for himself and his family, including **adequate food**, clothing, and housing...” and also recognize “**the fundamental right of everyone to be free from hunger...**”.

The most prominent legal instrument to protect and fulfil children’s rights is the *Convention on the Rights of the Child (CRC)*. The CRC incorporates the full range of human rights – civil, cultural, economic, political and social – and creates the international foundation for the protection and promotion of human rights and fundamental freedoms of all persons under the age of 18. The CRC recognizes human rights that are of particular importance for SFN, as follows:

- the right to life, survival and development (art. 6);
- the right to special protection of children with disabilities (art. 23);
- the right to health and health services (art. 24);
- the right to social security and child-care services and facilities (art. 26 and art. 18[3]);
- the right to an adequate standard of living (art. 27[1–3]); and
- the right to education (art. 28).

Box 3.1: Do human rights treaties specifically deal with school food and nutrition?

While human rights treaties do not specifically refer to food and nutrition at school, the Convention on the Rights of the Child (CRC) states that:

For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children. (Article 18.2.2).

The CRC further states that “institutions, services and facilities responsible for the care or protection of children”, such as schools, “shall conform with the standards established by competent authorities, particularly in the areas of safety and health” to promote children’s health and nutrition (Article 3.3). In relation to ensuring the child’s physical development, the role of the state is to “take appropriate measures to assist parents and others responsible for the child” such as schools, “particularly with regard to i.e. nutrition”.

Source: Article 27.3 of the CRC. See also Mikkelsen et al., 2015.

The *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* also contains child-protective provisions that are relevant for SFN, such as Article 10 which establishes that “States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and to ensure”... “f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely” (CEDAW, 1979, p. 13).

The *Convention on the Rights of Persons with Disabilities*, which establishes the principle of respect for the evolving capacities of children with disabilities, is also relevant in the context of SFN. This is further discussed in Section 5.

The *Voluntary Guidelines to Support the Progressive Realisation of the Right to Food in the Context of National Food Security*, adopted by the FAO Council in November 2004, is also a normative instrument that is relevant for SFN. The RTF Guidelines address, among other key aspects, nutrition and education in respect to human rights in schools, food safety aspects, the important role of safety nets for the protection of the most vulnerable sectors, and the importance of strengthening local markets and supporting local small farmers through nutritious and sustainable food systems.

Although it is not a legally binding instrument, the RTF Guidelines establish useful recommendations for countries with regard to the realization of the right to food, of which some provisions are directly applicable to SFN.

3.4.1.3 Legal obligations under human rights law

Countries that have ratified international human rights treaties (like the CRC, the ICESCR, and the *International Covenant on Civil and Political Rights [ICCPR]*) have binding obligations to fulfil human rights through the adoption and implementation of national policies, programmes and legislation.

According to Article 2.1 of the ICESCR, governments have the obligation to “take steps (...) to the maximum of [their] available resources, with a view to achieving progressively the full

realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” Legislation that contributes to SFN should follow and reflect those international obligations.

According to international human rights law, the state – represented by public authorities and public servants at all levels (local, regional, and national) – has the primary responsibility with respect to the realization of children’s right to adequate food at school. To this end, Article 4 of the CRC establishes that state parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the Convention. As an interpretation of the legal provisions of the CRC, the Committee on the Rights of the Child has provided specific recommendations addressed to state parties to the CRC to ensure adequate nutrition at school, and in particular to prevent children’s obesity (see Box 3.2).³

Box 3.2: General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health

Adequate nutrition in schools is specifically addressed in General Comment 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24 of CRC), which establishes that:

School feeding is desirable to ensure all pupils have access to a full meal every day, which can also enhance children’s attention for learning and increase school enrolment. The Committee recommends that this be combined with nutrition and health education, including setting up school gardens and training teachers to improve children’s nutrition and healthy eating habits.

The issue of children’s obesity is also addressed. The Committee on the Rights of the Child considers that:

Children’s exposure to “fast foods” that are high in fat, sugar or salt, energy-dense and micronutrient-poor, and drinks containing high levels of caffeine or other potentially harmful substances should be limited. The marketing of these substances – especially when such marketing is focused on children – should be regulated and their availability in schools and other places controlled.

In relation to discriminatory infant and young child feeding practices, the CRC highlights that attention should be given to the differing needs of girls and boys, and the impact of gender-related social norms and values on the health and development of boys and girls, gender stereotyping and access to services.

Source: CRC, 2013.

While school feeding programmes are not equally implemented worldwide, a gradual transfer of responsibility for ensuring adequate food at school is taking place, pushing the responsibility for food and nutrition at school towards the public sphere (Mikkelsen *et al.*, 2015). Indeed, schools are increasingly being recognized as “protected places” in which a certain normativity regarding nutritional practices is agreed upon among a broad range of concerned stakeholders. Beyond the food provision dimension, schools are also expected to play a more active role in the teaching of good and healthy eating habits. (Mikkelsen *et al.*, 2015).

³ The Committee on the Rights of the Child is the body of 18 independent experts that monitors implementation of the CRC by its state parties. It also monitors implementation of the *Optional Protocols to the Convention*.

According to international law, there are some general legal obligations that apply to all human rights, including the right to food at school (Table 3.2).

Table 3.2: International human rights obligations in the context of school food and nutrition	
International human rights law obligations	Examples of concrete measures to comply with international human rights obligations in the context of school food and nutrition
Obligation to respect	States should not diminish the total budget allocated to school feeding programmes as the consequence would negatively impact the extent of coverage, or the quality of the food service delivered at schools, unless exceptionally justified.
Obligation to protect	When there are cases of discrimination in access to food in schools, states must guarantee mechanisms of complaint and access to justice, to stop inappropriate behaviours and protect equal access to food at school. Similarly, in cases of corruption or mismanagement of resources allocated to school feeding programmes, the state must investigate and punish those responsible.
Obligation to fulfil (facilitate)	States should take legislative measures to ensure that nutritional standards and guidelines are mandatory for school meals. Public authorities should ensure that those standards are applied in the preparation and delivery of school meals. In addition, legal and regulatory instruments should also be developed and applied at school to ensure compliance with food safety standards.
Obligation to fulfil (provide)	States should ensure protection measures for the most vulnerable sectors of society. Specific measures include free school meals for families who do not have the means to secure that access by themselves. According to Articles 22, 30, 32–36, 37(b)–(d), 38, 39 and 40 of the CRC, special protection measures should be particularly aimed towards: <ul style="list-style-type: none"> i) children in situations of emergency; ii) refugee children; iii) children in armed conflicts, including physical and psychological recovery and social reintegration; iv) children in conflict with the law with regard to the administration of juvenile justice; v) children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings; vi) children in situations of exploitation, including child labour; vii) children with a disability; and viii) children belonging to minority or indigenous groups.

3.4.2 Nutrition

In May 2010, at the Sixty-third World Health Assembly, the WHO Member States endorsed the *Recommendations on the Marketing of Food and Non-alcoholic Beverages to Children (Resolution WHA63.14)* to guide efforts by Member States in designing new and/or strengthening existing policies on food marketing communications to children in order to reduce the impact on children of the marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt (see Table 3.3).

To strengthen national efforts to address the burden of Noncommunicable diseases (NCDs), the Sixty-sixth World Health Assembly endorsed the *WHO Global Action Plan for the Prevention and Control of NCDs 2013-2020 (Resolution WHA66.10)* on the 27 May 2013.

More recently, the ICN2 in 2014 brought together representatives from governments, civil society and the private sector to discuss the pressing issue of malnutrition in all its forms. The two main outcome documents – the *Rome Declaration on Nutrition*, and the *Framework for Action* – were endorsed by participating governments, whereby world leaders from over 170 countries committed to establish national enabling frameworks to eradicate malnutrition and transform food systems to make nutritious diets available to all.

Some of the most relevant international recommendations for SFN contained in these international instruments are reflected in the Table 3.3. Although some of them are not specific to SFN, they are still very relevant for an enabling environment conducive to healthy food systems.

Table 3.3: International recommendations to improve nutrition at school	
Second International Conference on Nutrition (ICN2, 2014)	<p>Establish food or nutrient-based standards to make healthy diets and safe drinking water accessible in public facilities such as hospitals, childcare facilities, workplaces, universities, schools, food and catering services, government offices and prisons, and encourage the establishment of facilities for breastfeeding (Recommendation 16).</p> <p>Implement nutrition education and information interventions based on national dietary guidelines and coherent policies related to food and diets, through improved school curricula, nutrition education in the health, agriculture and social protection services, community interventions and point-of-sale information, including labelling (Recommendation 19).</p> <p>Build nutrition skills and capacity to undertake nutrition education activities, particularly for front line workers, social workers, agricultural extension personnel, teachers and health professionals (Recommendation 20).</p> <p>Use cash and food transfers, including school feeding programmes and other forms of social protection for vulnerable populations to improve diets through better access to food which conforms with the beliefs, culture, traditions, dietary habits and preferences of individuals in accordance with national and international laws and obligations, and which is nutritionally adequate for healthy diets (Recommendation 23).</p>

../cont.

<p>Global Action Plan for the Prevention and Control of Non Communicable Diseases 2013-2020</p>	<p>Develop guidelines, recommendations or policy measures to:</p> <ul style="list-style-type: none"> • Reduce the level of salt/sodium added to food (prepared or processed). • Increase availability, affordability and consumption of fruit and vegetables. • Reduce saturated fatty acids in food and replace them with unsaturated fatty acids. • Replace trans-fats with unsaturated fats. • Reduce the content of free and added sugars in food and non-alcoholic beverages. • Limit excess calorie intake, reduce portion size and energy density of foods. <p>Develop policy measures that engage food retailers and caterers to improve the availability, affordability and acceptability of healthier food products.</p> <p>Develop policy measures in cooperation with the agricultural sector to reinforce the measures directed at food processors, retailers, caterers and public institutions, and provide greater opportunities for utilization of healthy agricultural products and foods.</p> <p>Promote the provision and availability of healthy food in all public institutions including schools, other educational institutions and the workplace. For example, through nutrition standards for public sector catering establishments and use of government contracts for food purchasing.</p> <p>Create health- and nutrition-promoting environments, including through nutrition education, in schools, childcare centres and other educational institutions, workplaces, clinics and hospitals, and other public and private institutions.</p>
<p>Recommendations on the Marketing of Food and Non-alcoholic Beverages to Children, 2010⁴</p>	<p>Policies' aim should be to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt (Recommendation 1).</p> <p>The overall policy objective should be to reduce both the exposure of children to, and power of, marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt (Recommendation 2).</p> <p>To achieve the policy aim and objective, Member States should consider different approaches, i.e. stepwise or comprehensive, to reduce marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt, to children (Recommendation 3).</p> <p>Settings where children gather should be free from all forms of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt. Such settings include, but are not limited to, nurseries, schools, school grounds and pre-school centres, playgrounds, family and child clinics and paediatric services and during any sporting and cultural activities that are held on these premises (Recommendation 5).</p>

⁴ This table includes only some of the twelve Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children. The full set of recommendations can be consulted at https://apps.who.int/iris/bitstream/handle/10665/44416/9789241500210_eng.pdf;jsessionid=33C676F27A8A5F9E8D30D5BA38D4A025?sequence=1

3.4.3 Food safety and quality

As mentioned in Section 2, guaranteeing the right to adequate food at school implies not only providing food that is sufficient in quantity but also ensuring its safety and nutritional quality and adequacy. Many factors can contribute to making food unsafe for consumption: poor food production (including inappropriate use of agricultural chemicals); processing; handling and hygiene practices; absence of adequate cooking equipment and food storage infrastructures; and the use of unsafe water for cleaning and processing.

The provision of safe food for school children and adolescents is of great concern to governments and other stakeholders as it affects health, growth and development of beneficiaries and encourages continued education (Ababio *et al.*, 2016). However, good intentions are challenged by increasing foodborne infection reports from schools (see Box 3.3 on foodborne hazards).

Foodborne diseases (FBDs) can seriously affect the health of young children and it can also interrupt education outcomes when incidents are persistent (Ababio *et al.*, 2016).

Box 3.3: Foodborne hazards

Foodborne hazards are various substances potentially contained in food that can pose a threat to health. They are classified in three categories according to their nature.

- Biological hazards – which include pathogenic bacteria, viruses, parasitic worms and certain toxic products they may produce.
- Chemical hazards – which include natural and manufactured chemicals such as pesticides and drugs residues, food additives, cleaning/sanitizing agents, heavy metals, mycotoxins.
- Physical hazards – which are foreign matters unintentionally introduced into food or naturally present objects which could cause illness or injury, they include, glass, wood or metal fragments, stones, flaking paint, etc.

All types of hazards have the potential to cause significant foodborne illnesses but biological and chemical contaminants (parasitic and enteric diseases, chemical and toxins) in particular have been found to be responsible of the greater part of the world foodborne diseases burden. Moreover, foodborne illness caused by micro-organisms infections and diarrhoea deaths represent the larger part of the global foodborne disease burden. Children being the most seriously affected population highlights the need for attention on improved food safety.

Sources: FAO and WHO, 2009; WHO, 2015.

Numerous instances of school food poisoning have been reported in scientific publications and in the media. In the Republic of Korea, 47 percent of the cases of FBDs were from schools. In Japan, in the first seven months of 1996, 11 826 cases were reported in schools, with 12 deaths from *Escherichia coli* O157:H7 infection, whilst in Brazil in 2005, 11.6 percent of documented FBDs were from school catering services. In South Wales, Great Britain, 157 schoolchildren experienced *E. coli* outbreak in 2005 that was epidemiologically linked to cooked sliced meats supplied to schools. In 2010, 544 adolescents had *Salmonella* food poisoning in France, whilst 11 200 students from several hundred schools in Germany were affected with norovirus in 2012 (Ababio *et al.*, 2016)). In Egypt, 2 262 children fell ill in suspected food poisoning (Associated

Press [AP], March 15, 2017), in Cambodia, hundreds of pupils suffered from food poisoning (AP, March 28, 2015), and nearly one hundred Indian pupils were hospitalized after eating a school meal (AP, February 25, 2016).

In a school food chain, increased food handling and risk of cross contamination of food, poor monitoring of cooking and holding temperature, might significantly expose schoolchildren to hazards. An illustrative research in Ghana has evidenced that a high number of surveyed students complained of physical contaminants in school meals, followed by chemical contaminants and mould (Ababio *et al.*, 2016).

The FAO/WHO Codex Alimentarius Commission develops and approves a collection of internationally recognized food standards, codes of practice and maximum residue limits of pesticides and veterinary drugs in food, which are useful to consider in the context of SFN.⁵ The objectives of the Codex are to protect the health of consumers, to ensure fair practices in food trade, and to promote the coordination of all food standards work undertaken by national governments (FAO, 2005a).

The *Codex Alimentarius General Principles of Food Hygiene* (complemented by specific Codes of Practice), and the Hazards Analysis Critical Control Point (HACCP)-based approach, endorsed by the Codex, are part of the Codex standards and can provide a solid basis for the development of national legislation on food safety (see Table 3.4 on *Codex Alimentarius*).

According to the *General Principles of Food Hygiene*:

Governments should:

- protect consumers adequately from illness or injury caused by food; policies need to consider the vulnerability of the population, or of different groups within the population;
- provide assurance that food is suitable for human consumption;
- maintain confidence in internationally traded food; and
- provide health education programmes, which effectively communicate the principles of food hygiene to industry and consumers.

Industry should:

- provide food which is safe and suitable for consumption;
- ensure that consumers have clear and easily-understood information, by way of labelling and other appropriate means, to enable them to protect their food from contamination and growth/survival of foodborne pathogens by storing, handling and preparing it correctly; and
- maintain confidence in internationally traded food.

Consumers should:

- recognize their role by following relevant instructions and applying appropriate food hygiene measures.

(FAO and WHO, 2009)

⁵ Information on the Codex Alimentarius and the Commission can be found at <http://www.fao.org/fao-who-codexalimentarius/en/>

The Codex *General Principles of Food Hygiene* and other Codex standards mentioned previously, lay a firm foundation for ensuring food hygiene. They follow the food chain from primary production to the final consumer, highlighting the key hygiene controls at each stage, and recommend a HACCP-based approach, whenever possible, to enhance food safety.

Table 3.4: Codex Alimentarius / General Principles of Food Hygiene

During handling, storage and transport, care should be taken to prevent, as far as reasonably practicable, deterioration and spoilage through appropriate measures, including controlling temperature and humidity.
The design and layout of food establishments should allow good food hygiene practices, including protecting against cross-contamination of foodstuff.
The equipment used to cook, heat treat, cool, store or freeze food should be able to achieve the required food temperatures rapidly, maintain them effectively and monitor them accurately.
An adequate supply of potable water with appropriate facilities for its storage, distribution and temperature control should be available to ensure the safety and suitability of food.
Facilities with an adequate supply of potable water for cleaning food, utensils and equipment should be provided.
Personnel hygiene facilities should be available and include adequate means of hygienically washing and drying hands, including washbasins and a supply of hot and cold water, as well as hygienically designed lavatories.
Adequate facilities should be available for heating, cooling, cooking, refrigerating and freezing food, storing refrigerated or frozen foods, monitoring food temperatures, and controlling ambient temperatures to ensure the safety and suitability of food.
Food storage facilities should be designed and constructed to permit adequate maintenance and cleaning, avoid pest access and harbourage, protect food from contamination during storage, and minimize the deterioration of food.

The RTF Guidelines also require states to ensure that all food, both locally produced and imported, is safe and consistent with national food safety standards (Guideline 9.1). The Guidelines also invite countries to establish comprehensive and rational food-control systems that reduce the risk of FBDs, using risk analysis and supervisory mechanisms to ensure food safety in the entire food chain including animal feed (Guideline 9.2). Other relevant recommendations provided by the RTF Guidelines for a food safety enabling legal environment are contained in Table 3.5. Although the RTF Guidelines do not specifically address food safety at school, they are still relevant recommendations for policy makers and legal drafters.

3.4.3.1 Impact of food quality on nutrition


Food safety refers to the assurance that food will not cause harm to the consumer when it is prepared and/or eaten according to its intended use (FAO and WHO, 2009). Food quality includes other attributes that influence a product's value to the consumer such as the origin, colour, flavour, fat or sugar contents or texture, as well as negative attributes such as spoilage, discoloration, off-odours (FAO and WHO, 2003). It also refers to the nutritional content of a food.

Food safety is crucial to safeguard the health of consumers by preventing FBDs. However, certain quality attributes of food, in particular its nutritional content, is also of utmost importance to ensuring balanced diets that result in good nutritional outcomes. The nutritional quality is therefore a very important element in the context of SFN programmes. Indeed, guaranteeing the right to food at school implies that food is not only safe but also nutritionally adequate and in conformity with individual nutritional needs according to age, sex, health, and occupation (FAO, 2009b).

3.4.3.2 Food safety and quality standards in the context of locally procured food

Decentralized models for food purchasing tend to provide greater opportunities to include fresh products and to benefit local small producers through public procurement. On the other hand, they may introduce additional challenges to ensure a uniform level of food safety control, particularly in systems that lack a functioning food safety control system at the local level, to monitor the safety of the food products purchased and prepared by schools.

Small producers may not necessarily have the capacities to fully meet food safety standards that apply to all stages of the school production-supply chain, including food purchases, and this may compromise their ability to sell products directly to the schools. Depending on the commodity/value chain and local circumstances, capacity development can help overcome these challenges and better link smallholder farmers to SFPs.

 For the proper development and implementation of the linkages between school demand for food and local smallholder production, it is critical that School Food Programmes are supported by an adequate food safety and quality control system and regulatory frameworks, which not only monitor smallholders' compliance with food safety and quality standards, but also has provisions to build their capacity to do so.

In this regard, the Committee on World Food Security (CFS) recommended that states:

Promote rigorous protection of food safety through effective risk assessment leading to control systems that are appropriate for different scales, contexts and modes of production and marketing, while providing information and capacity building [for smallholders] to meet these requirements (CFS, 2016).

Table 3.5: The Right to Food Guidelines – Guideline 9 on food safety

9.3 States are encouraged to take action to streamline institutional procedures for food control and food safety at national level and eliminate gaps and overlaps in inspection systems and in the legislative and regulatory framework for food.

States are encouraged to adopt scientifically based food safety standards, including standards for additives, contaminants, residues of veterinary drugs and pesticides, and microbiological hazards, and to establish standards for the packaging, labelling and advertising of food. These standards should take into consideration internationally accepted food standards (Codex Alimentarius) in accordance with the World Trade Organization (WTO) Sanitary and Phytosanitary Agreement. States should take action to prevent contamination from industrial and other pollutants in the production, processing, storage, transport, distribution, handling and sale of food.

../cont.

9.4 States may wish to establish a national coordinating committee for food to bring together both governmental and non-governmental actors involved in the food system and to act as liaison with the FAO/WHO Codex Alimentarius Commission. States should consider collaborating with private stakeholders in the food system, both by assisting them in exercising controls on their own production and handling practices, and by auditing those controls.

9.5 States (both central and decentralized authorities) should guarantee coordinated regulatory control over all stages of the school food chain, from production and purchase to preparation within the school. States should assist farmers and other primary producers to follow good agricultural practices, food processors to follow good manufacturing practices, and food handlers to follow good hygiene practices. States are also encouraged to consider establishing food safety systems and supervisory mechanisms to ensure the provision of safe food to consumers.

9.7 States should adopt measures to protect consumers from deception and misrepresentation in the packaging, labelling, advertising and sale of food and facilitate consumers' choice by ensuring appropriate information on marketed food, and provide recourse for any harm caused by unsafe or adulterated food, including food offered by street sellers. Such measures should not be used as unjustified barriers to trade; they should be in conformity with the WTO agreements (in particular the Sanitary and Phytosanitary Agreement and the Technical Barriers to Trade Agreement).

Source: FAO, 2005b, pp. 19-20.

3.4.4 Public procurement

Different regional and international initiatives provide the policy and regulatory frameworks for building the linkage between schools' institutional demand for food and local smallholder production to support local sustainable development.

On the African Continent, the New Partnership for Africa's Development (NEPAD) recognizes the linkages between SFPs and local smallholder production as a 'win-win' initiative – for both children and farmers – able to promote food security and rural development. Since 2003, the 'Home-grown school feeding (HGSF) programme', based on the purchase and use of locally and domestically produced food, is a flagship programme of the Comprehensive Africa Agriculture Development Programme (CAADP), Pillar 3.

Similarly, in Latin America, smallholder-sourced SFPs are part of the regional agenda for achieving food and nutrition security. The Community of Latin America and Caribbean States (CELAC) promotes the linkages between SFPs and local and smallholder production (i.e. family farming) as a key intervention of its Plan for Food Security, Nutrition and Hunger Eradication 2025.

At global level, the *2005 World Summit Outcome* document (UN, 2005) recognized and recommended the "expansion of local school meal programmes, using home-grown foods where possible" as one of the four "quick-impact initiatives" that should be implemented to achieve the Millennium Development Goals (De Schutter, 2014). In addition, ICN2 recognized within its *Framework for Action* the important role of family farmers and smallholders in reducing malnutrition and recommended that they should be supported by integrated and multisectoral public policies (such as school food and nutrition policies) that raise their productive capacity and incomes and strengthen their resilience (Recommendation n. 9, ICN2, 2014). Similarly, the CFS provided recommendations through its Open-Ended Working Group under the title *Connecting Smallholders to Markets - recommendations* (CFS, 2016).

From a legal perspective, different international instruments support the use of public procurement as a policy tool to achieve economic, social and/or environmental goals, including the support of local smallholder producers and their access to markets.

The *Model Law on Public Procurement* by the United Nations Commission on International Trade Law (UNCITRAL) recognizes the pursuit of social and economic goals (such as the support of social local development and of specific groups within the economy, including smallholder producers) as one of the objectives of public procurement systems. The Model Law accommodates the pursuit and implementation of those policy goals through different measures, including preferencing and reservation schemes (UNCITRAL, 2014).

Figure 3.2: International law and standards that apply to school food and nutrition in specific legal areas of relevance

Human Rights	Nutrition	Food Safety	Public Procurement
<ul style="list-style-type: none"> Universal Declaration of Human Rights International Covenant on Economic Social and Cultural Rights International Covenant on Civil and Political Rights Convention on the Rights of the Child Convention on the Elimination of All Forms of Discrimination Against Women 	<ul style="list-style-type: none"> The Rome Declaration and the Framework of Action (Second International Conference on Nutrition, ICN 2) WHO Global Action Plan for the Prevention and Control of Non Communicable Diseases 2013-2020 WHO Recommendations on the Marketing of Food and Non Alcoholic Beverages to Children, 2010 	<ul style="list-style-type: none"> Codex Standards Codex Alimentarius General Principles of Food Hygiene 	<ul style="list-style-type: none"> UNCITRAL Model Law on Public Procurement WTO Government Procurement Agreement (GPA)

The 2014 European Union (EU) Directives on public procurement also explicitly recognize that public procurement should be used strategically as a “market-based instrument to achieve smart, sustainable and inclusive growth”. The Directives provide different instruments (based on preferential procurement schemes, awarding criteria, simplification of procurement rules and procedures and contract-lotting, etc.) with the objective of, among others, to “enable procurers to make better use of public procurement in support of common societal goal” (Directive 2014/24/EU).

The Government Procurement Agreement (GPA) – a legally binding plurilateral agreement of the WTO – is another key international instrument for public procurement. Although its main objective is to facilitate market access by suppliers from GPA member countries in other GPA member countries, relying heavily on the principles of non-discrimination and equal treatment,

it also allows the inclusion of sustainable development concerns in public procurement (De Schutter, 2014; Quinot and Arrowsmith, 2013). As affirmed by the former United Nations Special Rapporteur on the Right to Food, "As long as selective procurement schemes do not constitute an unnecessary obstacle to international trade and the inclusion of "secondary objectives" does not lead to discrimination, there is nothing in the GPA preventing signatories from establishing food procurement schemes that stipulate that the food must have been produced in a manner that does not cause excessive environmental damage, that complies with basic minimum labour standards, that ensures that small-scale food producers are not gradually pushed out of food supply chains because they alone must bear the cost of compliance with private standards on health, safety and traceability, etc." (De Schutter, 2014). However, it is of limited relevance to SFPs because any rule of the GPA that could be seen as restrictive, would not apply to most SFPs in developing countries, as this international agreement applies only to: i) contracts above specific thresholds, negotiated by each party, which range from approximately USD 180 000 to USD 20 million,⁶ thereby not including SFN contracts that have lower value and; ii) states party to the Agreement, mostly Organisation for Economic Co-operation and Development (OECD) countries.

⁶ Representing 130 000 SDR (Special Drawing Rights) and 15 million SDR, using July 2019 exchange rate.

LEGISLATING FOR ADEQUATE FOOD AND NUTRITION IN SCHOOLS



4. LEGISLATING FOR ADEQUATE FOOD AND NUTRITION IN SCHOOLS

This section aims to provide some key general considerations when it comes to legislating for adequate food and nutrition in schools. These considerations apply to the legislative drafting process and to the contents of the legislation itself.

4.1 GENERAL CONSIDERATIONS FOR A SOUND LEGISLATIVE PROCESS

When initiating a process of reform or development of legislation, it is essential to have a precise idea of what the legal reform is intended to achieve, as well as a clear knowledge of the policies and laws that are already in place. As a prerequisite for legislating on SFN, an assessment of the policy and legal frameworks aim at reviewing SFN-related policies, laws and regulations so as to identify those that have an impact on SFN, and to determine whether the policy and legal frameworks are conducive or not.

Therefore, the considerations below can provide useful guidance to policy-makers and legal drafters who are initiating a legislative drafting (or reform) process related to SFN. Is legal reform needed to achieve the predetermined public policy objectives? What instruments should be considered before regulating key issues of SFN? How can a solid legislative drafting process be built? How can participation from key stakeholders be ensured?

4.1.1 Undertaking an overall assessment

4.1.1.1 A policy assessment

Because SFN is a cross-sectoral issue, a number of technical areas and public policy instruments come into play.

Before initiating a legislative drafting process for adequate food and nutrition in schools, lawmakers should ideally assess first the existing policies that are relevant to SFN and identify whether a specific school feeding policy already exists or not. It is important to have a clear understanding of the objectives that the relevant policies want to attain and the main issues they want to address. In general, it is recommended to have a good understanding of the intended impacts of those relevant policies because the future law should contribute to those objectives (see Figure 2.1 in Section 2.2.5).

Identifying firstly the existing national policies and strategies that are related to SFN is a key step during the legislative drafting process because it enables the alignment of the contents of the law with policy priorities.

4.1.1.2 A legal assessment

Undertaking a legal assessment is crucial to getting a clear picture of the current laws and regulations directly or indirectly related to SFN.

A legal assessment is an analysis of the national legal and institutional frameworks, and it allows to identify, collect and analyse applicable laws in order to determine possible gaps,

overlaps and conflicting provisions. Legislative assessments may lead to wider improvements in legal frameworks. For example, a legal assessment may help to identify laws that are obsolete, ambiguous, complicated or inconsistent. An assessment may also help to identify aspects of the legal framework that are not being properly implemented, provide an opportunity for understanding impediments to implementation, and pave the way to administrative as well as legislative reform (FAO, 2016).

Some of the key elements of an enabling legal environment for SFN may be included within health legislation, food security legislation, agricultural legislation, education legislation, social protection legislation, rural development and urban planning, trade, marketing and advertising; depending on the legislative system of each country. In addition, some countries may have, or not, a specific law on school feeding.

The legal assessment should take into consideration the whole legal framework including the wide range of laws mentioned above, and many sources of law such as international instruments (international law, international standards and recommendations), constitutional provisions, primary legislation and subsidiary instruments of a wide variety of sectors (see Figure 3.1). In the case of SFN, a large portion of these international instruments were mentioned in Section 3 of this Guide. Although many of them are not binding, they do constitute authoritative guidance for countries and a path to follow when formulating laws that comply with international law and international standards.

Undertaking an SFN legal assessment is an opportunity to analyse the extent to which an existing legal framework is conducive, or not, to the implementation of sustainable policies for SFN. The conclusions of a legal assessment should inform the formulation of SFN-related policies and should also constitute evidence for immediate and future legislative action. The process for developing a legal assessment also helps to raise awareness and generate national dialogue on the legal issues related to SFN. When combined with a participatory process, it provides adequate space for stakeholders' ownership and active involvement in SFN legislative action. Finally, a legal review of SFN-related instruments is required to provide effective legislative responses and to determine whether: i) legislation should be amended or not; and ii) whether a specific law on SFN is needed.

The process for conducting a legal assessment can be structured in a series of steps, in which legal drafters will play a key role. Some of the key steps to undertake an SFN legal assessment include:

1 Identification of relevant stakeholders

The identification of stakeholders of relevance to SFN is essential in order to have a mapping of those who have a particular interest in participating in the public debate about SFN policies and legal frameworks. Stakeholders may include a wide range of actors, from representatives of government institutions, programme implementers, parliamentarians, networks of people working on SFN-related issues, specific groups (small producers, cooperatives, associations, indigenous communities and community leaders), representatives of the educational community, academia, the private sector (food industry and catering services), experts in technical areas such as nutrition, public procurement, food safety, human rights, UN agencies and other international organizations. A consultation workshop can be very useful at the beginning, to inform the general public about the development of the legal assessment and its objectives, gather inputs from different actors, identify priority areas for legal analysis, and raise awareness about the importance of legislation in the SFN area.

2 Set up a multidisciplinary technical working group

It is very useful for legal drafters to be able to refer to a multidisciplinary group, covering the different technical areas of fundamental importance for SFN. Such a group will inform the legal assessment and will eventually support the legal drafters during the drafting process. Therefore, it is recommended that the group is not too large, but sufficiently representative to include members of government institutions including those from the different ministries related to SFN such as health, education, social affairs, agriculture, trade, finance, labour/employment and Gender, also parliamentarians, representatives of civil society and the private sector, and technical experts including lawyers in the various technical areas related to SFN.

3 Identification of legal areas and key issues affecting School Food and Nutrition

Since the legal assessment aims at providing a clear picture of the national instruments affecting SFN, it is necessary to define what are the key legal and human rights issues related to SFN and how they are addressed by laws, regulations and policies. Some of the legal areas and issues of concern to SFN include:

- Children's rights including the right to adequate food, the right to health, and the right to education, among other human rights
- Governance and human rights issues related to SFN (institutional responsibilities and coordination mechanisms, monitoring, accountability, access to justice, budget and legal enforcement)
- Food security and nutrition
- Food safety and quality
- School food and nutrition education
- Advertising and marketing of foods in schools
- Gender equality and gender-specific considerations in access to food at school
- Inclusive value chains
- Public procurement
- Support to local production and rural organizations
- Civil society participation
- Economic, social and environmental sustainability
- Food loss and waste

4 Desk review and draft of the legal report

An important part of the preparation of the legal assessment is done through desk work. At this stage of the work, the collection and review of all policies, laws and regulations related to SFN is carried out. Once the information has been identified and organized, a legal assessment report is prepared containing a general description of the relevant areas, as well as an analysis of the legislation to highlight possible gaps, overlaps and conflicting provisions (see Figure 4.2 and Table 4.1). The legal assessment report should also contain conclusions and recommendations for legal reform. During the preparation of the legal assessment report, interviews and discussion groups should be undertaken to enrich the content of the legal report, including the perspective of the different stakeholders and in particular those who implement school-based programmes, including perspectives from the field and the knowledge of technical and legal experts on the matter.

5 Validation of the legal assessment report

The validation of the legal assessment report implies a participatory process. In this step, legal drafters should present the findings and conclusions of the assessment to a wide range of stakeholders, including legal recommendations. Legal drafters will gather inputs from the relevant actors in relation to the assessment report and will then amend and expand its contents. In addition, a zero draft law/regulation can also be presented for comments and suggestions from participants.

6 Adoption and dissemination of the legal assessment report

At this step, the institution in charge of the bill will approve the legal assessment and disseminate its content. It is recommended that the legal assessment report be widely disseminated in accordance with the principles of transparency and participation. In addition, the contents of the legal assessment report are highly relevant for informing the debate on draft laws for SFN and future legislative initiatives in this area of work.

4.1.1.3 Impact analysis of legislation and regulations

Adopting a new law and further associated regulations is just one of several ways of achieving governmental policy objectives. Therefore, a law should be used only when it is the most appropriate instrument. It is advisable for policy makers and legal drafters to analyse alternative solutions before initiating legislative drafting, and to engage in consultation with relevant stakeholders, including national and decentralized authorities, that may be affected by the proposed legal instrument. This is also applicable to private sector and civil society representatives.

Figure 4.1: Legislative drafting process towards legislating for school food and nutrition



When deciding if an SFN law is needed, it is relevant to analyse the impact and the resources that would be required for its implementation and enforcement. Although this Guide does not provide tools for a regulatory impact assessment,⁷ it recommends developing a thorough analysis of the costs and benefits of the different legislative options before undertaking a

⁷ The OECD has developed useful and practical guidance materials for developing regulatory impact assessments at country level. For more information: <http://www.oecd.org/regreform/regulatory-policy/ria.htm>

legislative drafting process. The results of the analysis will provide evidence-based information for informed policy and law-making, and at the same time will anticipate potential effects (positive or negative) of the different regulatory options.

Considering that in the context of SFN, one of the most frequent problems is the insufficiency of resources and the absence of continuity of budget allocation, this stage is essential to ensure the necessary resources for the proper implementation of the law.

Figure 4.2: Policy, legal and institutional assessments of school food and nutrition

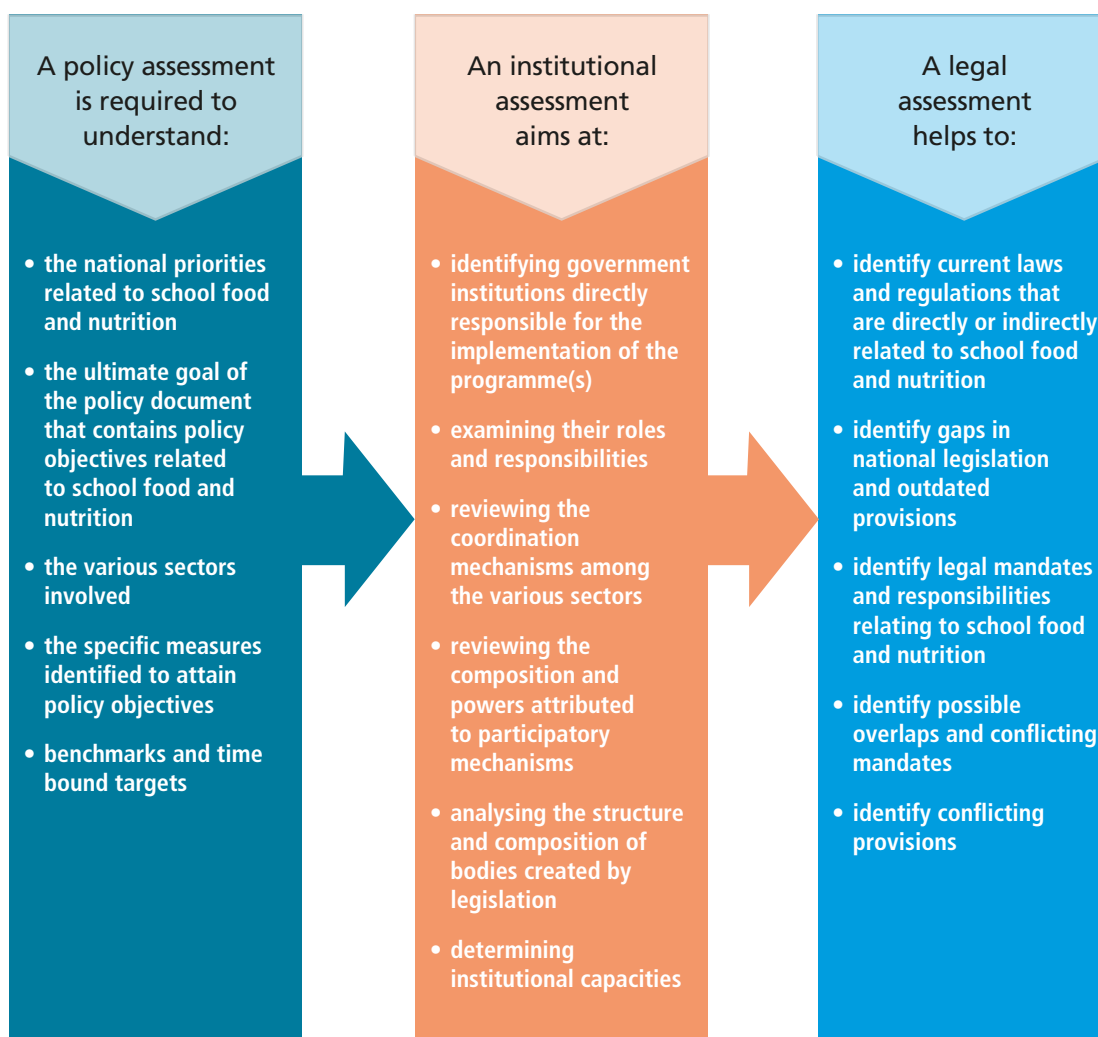


Table 4.1: Key issues to consider when conducting a policy and legal assessment on school food and nutrition	
1. Public policies and programmes that may have a direct or indirect impact on school food and nutrition in the country	
Type of instrument	Substantive information to consider
<p>Public policies in the areas of:</p> <ul style="list-style-type: none"> • Food security and nutrition • Social protection • Agricultural development • Education • Health • School feeding 	<ul style="list-style-type: none"> • Government’s commitment with the protection of children’s right to adequate food, right to health and right to education through school food and nutrition as a main policy priority • Preamble • Priorities • Objectives • Policy implementation strategies and related actions • Identification and targeting of vulnerable groups • Principles for policy implementation • Time bound targets and benchmarks
<p>School-based programmes (such as school feeding programmes, among other SFN related programmes)</p>	<ul style="list-style-type: none"> • Objectives • Principles for programme implementation • Legal entitlements (legal recognition for access to goods and services) • Organization and management of the programme • Institutional framework and responsibilities • Execution and monitoring of the programme • Mechanisms for participation of civil society • Accountability mechanisms • Budget and financing sources
2. International law	
Type of instrument	Substantive information to consider
<p>International human rights treaties:</p> <ul style="list-style-type: none"> • International Covenant on Civil and Political Rights (ICCPR) (1966) • International Covenant on Economic Social and Cultural Rights (ICESCR) (1966) • Convention on the Rights of the Child (1989) 	<ul style="list-style-type: none"> • Status of ratification of international human rights treaties <p>The status of ratification refers to the expression by the State of its consent to be bound by a human rights treaty under international law. A “State party” to a treaty is a State that has expressed its consent, by an act of ratification, accession or succession, and where the treaty has entered into force (or a State about to become a party after formal reception by the United Nations Secretariat of the State’s decision to be a party). When a State ratifies one of the international human rights treaties, it assumes a legal obligation to implement the rights recognized in that treaty. Through ratification, States undertake to put in place domestic measures and legislation compatible with their treaty obligations.</p> <p>A “signatory” to a treaty is a State that provided a preliminary endorsement of the instrument and its intent to examine the treaty domestically and consider ratifying it.</p>

../cont.

<ul style="list-style-type: none"> • Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) <p>Regional human rights instruments</p>	<ul style="list-style-type: none"> • Date of signature, ratification/accession and entry into force⁸ <p>Typically, the provisions of the treaty determine the date on which the treaty enters into force. Where the treaty does not specify a date, there is a presumption that the treaty is intended to come into force as soon as all the negotiating states have consented to be bound by the treaty.</p> <p>In cases where multilateral treaties are involved, it is common to provide for a fixed number of states to express their consent for entry into force. Some treaties provide for additional conditions to be satisfied, e.g., by specifying that a certain category of states must be among the consenters. The treaty may also provide for an additional time period to elapse after the required number of countries have expressed their consent or the conditions have been satisfied. A treaty enters into force for those states which gave the required consent. A treaty may also provide that, upon certain conditions having been met, it shall come into force provisionally [Art.24, Vienna Convention on the Law of Treaties 1969].</p> <p>For an update of ratifications see Status of Ratifications of the Principal International Human Rights Treaties at the following UN web site: https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=_en</p> <ul style="list-style-type: none"> • Reservations: States parties can enter “reservations” on a treaty <p>A reservation is a declaration made by a State by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that State. A reservation enables a State to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply. Reservations can be made when the treaty is signed, ratified, accepted, approved or acceded to.</p>
3. National legal framework	
Type of instrument	Substantive information to consider
Constitution	<ul style="list-style-type: none"> • Constitutional protection of the right to food • Constitutional protection of the rights of the child
Laws and regulations governing:	
Type of instrument	Substantive information to consider
Food security and nutrition and the right to adequate food	<ul style="list-style-type: none"> • Goals and objectives of those laws • Institutions with specific mandates or responsibilities for food security and nutrition • Bodies and/or mechanisms for institutional coordination • Composition of the coordinating body • Mechanisms for civil society participation • Institutions responsible for protecting the right to food

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⁸ See glossary of terms relating to treaty actions, available at: https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml#entry

Nutrition	<ul style="list-style-type: none"> • Nutritional standards for foods distributed and sold in schools • Fortification of food products intended for children • Food and nutrition education • Rules on nutrition labelling (easily understood symbols) providing children with the information necessary to make healthy nutrition choices
Advertising and marketing of foods in schools	<ul style="list-style-type: none"> • Rules to promote healthy kiosks in schools • Restrictions on what kinds of food can be sold and/or advertised within and around school premises • Rules specifying how food products can be sold and advertised within schools • Zoning or public planning laws restricting the development of hot food take-away outlets or fast food outlets within a certain perimeter of school grounds
Food safety and quality	<ul style="list-style-type: none"> • General principles and general requirements • Authority in charge of food safety • Food safety rules for the production, trade, storage, handling and transport of food • Rules relating to the handling of animal products • Control procedures and sanctions
Producer organizations	<ul style="list-style-type: none"> • Rules for the establishment and registry of local producer organizations (cooperatives, associations, etc.) • Institutional framework
Legislation and specific support measures to boost local production	<ul style="list-style-type: none"> • Subsidies • Credit support measures • Tax measures • Measures to improve transport and the functioning of local markets
Public procurement legislation	<ul style="list-style-type: none"> • Principles and objectives of the public procurement system • Procurement procedures (i.e. methods) available for the procurement of goods, and conditions for applicability
Public procurement of goods	<ul style="list-style-type: none"> • Participation requirements and exceptions available to the support of the access of small-scale suppliers (or other type of target beneficiaries) • Awarding criteria • Advertisement of procurement opportunities • Payment time-frame and conditions • Rules on contract size
Preferential procurement schemes	<ul style="list-style-type: none"> • Reservations • Preferencing • Indirect • Other legal instruments recognized by the regulatory framework to implement socio-economic goals (i.e. horizontal policy goals) through public procurement (e.g. contract lotting)
School food procurement administrative practices	<ul style="list-style-type: none"> • Current school food procurement implementation modalities • Standard procurement procedure • Standard procurement practices (payment time-lags and conditions; advertisement of procurement opportunities, participation requirements, contract size, etc.)
Monitoring, accountability, enforcement and access to justice	<ul style="list-style-type: none"> • Institutional responsibilities • Incentives for legal compliance • Specific administrative and judicial procedures • Sanctions and penalties

4.1.2 Multidisciplinary expertise

As mentioned earlier in relation to the preparation of the legal assessment, it is recommended that legal drafters work in collaboration with a multidisciplinary group involving technical experts on the different technical areas that are relevant for the implementation of a holistic SFN approach such as food security and nutrition, social protection, agriculture, public procurement, food safety, finance, etc.

During the legislative drafting stage, legislative drafting committees are a powerful tool for bringing together technical experts and lawyers from different ministries and government agencies that are relevant to SFN. A drafting committee for an SFN law can include lawyers and technical experts from ministries, departments and agencies of education, health, agriculture, finance, social protection, and local and regional authorities. The drafting committee can also invite representatives from international agencies, the private sector and civil society organizations (CSOs), and SFN advocates like parents, teachers and youth organizations, in order to guarantee open consultation and to benefit from a participatory legislative process. For this purpose, the ministry or agency driving the law-making process often has primary responsibility for identifying and facilitating the involvement of relevant stakeholders at the local regional and national levels (FAO, 2016).

4.1.3 Participatory legislative drafting

The participation of the different stakeholders involved in SFN – those affected by the policy and those involved in its implementation – is beneficial to the contents of legislation because it builds on evidence-based knowledge (this applies from central government to rural communities).

A participatory approach to law-making can take many forms and can be applied at different stages of the process (see Table 4.2). Very often, national legislation recognizes different levels of participation in law-making processes.

Access to information	<ul style="list-style-type: none"> • The government informs the public about its plans and the types of documents it wants to adopt at the beginning of the process. • It highlights the right of the public to have access to all information (e.g., drafts, comments and reasoning) throughout the process. • It is a right regulated in specific laws. • The government should not apply measures which would prevent the public from receiving the information crucial for the process. 	<ul style="list-style-type: none"> • Online central portals (registers) publish information on the government and its bodies' web sites transmit information in media (TV, newspapers). • Official gazettes, CSO portals, CSO newspapers, etc.
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<p>Consultation</p>	<ul style="list-style-type: none"> • The government invites the public to provide its opinion, comments, views and feed-back on a specific document. • Whilst the issues on which the public is consulted are defined by the government, this process should also allow for the public to express opinion on other issues contained in the draft. • Consultation can be organized with a broader group of participants from the public. 	<ul style="list-style-type: none"> • Publishing call for consultation on online central portals or on the government and its bodies' web sites • media (TV, newspapers), • CSO portals or newspapers • public hearings • conferences • roundtable discussions • citizen advisory groups • focus groups • online chat events • email lists • written comments • experts panels • public debates
<p>Active engagement through dialogue and partnership</p>	<ul style="list-style-type: none"> • Active involvement (partnership) in law-making means collaboration and jointly undertaken responsibilities at all stages of the decision-making process (agenda setting, issue identification, drafting, decision and implementation). • It is the highest form of participation; it may be described as a situation where the representatives of the public share a seat at the table with government representatives. • Dialogue involving an exchange of opinions and direct and indirect involvement in the preparation of the law (e.g. working groups). 	<ul style="list-style-type: none"> • Cross-sector working groups • experts meetings • email lists • online chat forums

Source: Adapted from OSCE, 2010

4.2 GENERAL CONSIDERATIONS FOR PREPARING A SCHOOL FOOD AND NUTRITION LAW

4.2.1 Relationship to sector-specific legislation

School food and nutrition involves a wide array of sectors such as health, agriculture, education, food security and nutrition, public procurement, food safety, finance, etc. A single law on SFN is not enough to regulate all aspects of SFN, and therefore, a holistic approach is necessary to build a complete and harmonized legal framework that enables the achievement of the goals set by public policy.


Legal drafters may want to consider whether a specific law on SFN is required or not, depending on the existing legislation. In the case of opting for a specific law it is necessary to foresee how such an instrument will relate to existing laws. In order to avoid conflict or overlap in specific domains, the SFN law should include a specific provision stating which legal instrument should prevail in case of conflict. Existing national laws may need to be amended or repealed.

In addition, ensuring the coherence of the national legal framework is of great importance. This implies that:

- A school food and nutrition law should build on, and explicitly refer to – when needed – existing national and international legal instruments and standards.
- A school food and nutrition law should avoid creating regulatory overlaps with specific regulatory areas that have separate existing legislation (food safety legislation, public procurement, health, etc.).

4.2.2 Primary vs secondary legislation

Attention should be paid to the level of detail to be included in primary legislation, to avoid outdated provisions requiring frequent amendments. If countries decide to adopt a law on SFN, amendments will be more frequent if the provisions of the law are too detailed.

 An SFN law should be broad enough to leave space for rules that will implement and expand it (see Table 8 for details). An SFN law should set a framework to be developed through substantive and procedural regulations that will define 'how' to implement the mandatory provisions included in the Act. From a procedural point of view, secondary legislation can be more easily and frequently amended compared to primary legislation.

If countries opt for adopting an SFN law, lawmakers should consider: i) the delegated authority to make the regulations; and ii) which aspects are to be dealt with in the law, and which aspects will be included in the regulations.

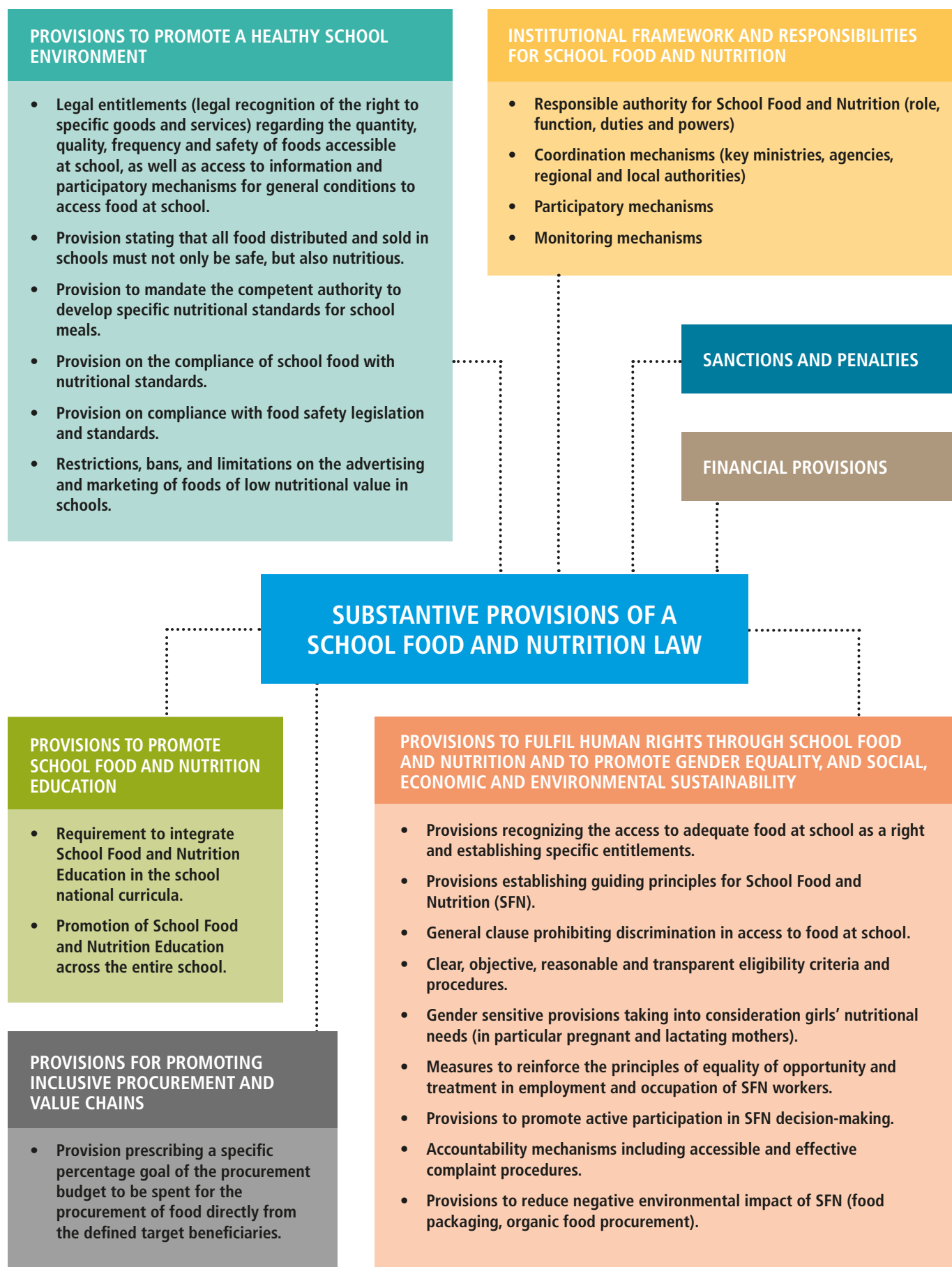
Table 4.3: Primary vs subsidiary legislation	
Primary legislation	Secondary legislation
Provides a broad framework including regulatory objectives as well as broad provisions regulating legal mandates and institutional responsibilities, and guiding principles.	Provides further detail to implement the law. Contains substantive and procedural regulations.
Refers to a law approved and enacted by the legislature such as Parliament or Congress.	Refers to legislation made by a lawful authority under the powers conferred by the legislature.
Delegates the authority to the executive branch (administrative authorities) to issue secondary legislation.	Is generally made by the executive branch of power within the boundaries laid down by an Act of Parliament.
Most common forms: <ul style="list-style-type: none"> • Law • Act of Parliament • Statute • Code 	Most common forms: <ul style="list-style-type: none"> • Regulations • Rules • Ministerial Orders • Resolutions • Bylaws • Other instruments with legislative effects which are made by a lawful authority under the powers conferred by an Act of Parliament

4.2.3 Substantive provisions

Depending on government objectives relating to SFN, the legislation will substantively differ. What to include in a SFN law will depend on the national legal system and national priorities. In this Guide, the substantive provisions of an SFN law seek to contribute directly to ensuring the main objectives of a holistic SFN approach, namely:

1. Fulfilling the right to adequate food at school
2. Promoting a healthy school food environment (safe and nutritious foods/meals)
3. Promoting school-based food and nutrition education
4. Promoting inclusive food procurement and value chains
5. Promoting a human rights-based approach to SFN
6. Promoting gender equality and social, economic and environmental sustainability through SFN.

Figure 4.3: Main substantive legal provisions of a school food and nutrition law



4.2.4 Legislative and regulatory options for school food and nutrition

Countries can decide to regulate SFN in a variety of ways.

Some countries may choose to adopt specific laws on SFN, while other countries do not see the need to adopt a specific legal instrument. Regardless of the legal strategy of each country, SFN is always regulated by a variety of legal instruments with different purposes (from international instruments to constitutional provisions, national legislation, and regulatory decrees, that implement primary legislation).

4.2.4.1 Elements of school food and nutrition regulated in sectoral laws

In national legislation, provisions related to SFN may appear in different types of laws. For instance, some elements of SFN can be regulated through food security laws. This is the case of Spain, where *Law 17 of 2011 on Food Security and Nutrition*, includes a whole section with special measures to fight obesity at school. Also, in India, the *National Food Security Act* establishes concrete legal entitlements for school meals.

Sectoral laws on education and social protection may also regulate some elements of SFN, depending on the approach adopted by the country. In the United Kingdom of Great Britain and Northern Ireland, the *School Standards and Framework Act of 1998* regulates school meals extensively and mandates secondary legislation to expand the regulation of key issues, for e.g. the nutritional requirements for school food.

4.2.4.2 Specific laws on school food and nutrition

The type of instrument that is appropriate to each context depends on a variety of factors, including existing national legislation, the legal tradition of the country, the institutions and resources available for implementation and enforcement, the policy priorities and the country's international obligations.

However, a specific law on SFN may help to avoid scattered institutional responsibilities, to improve coordination, and to ensure coherence among the various areas of intervention under a common regulatory goal, specific objectives and guiding principles. It can also establish concrete rights and obligations, and specific entitlements to claim SFN as a right for which public authorities are held accountable through administrative and judicial recourse mechanisms.⁹

Government or parliament may also consider bringing forward a specific law on SFN so as to establish access to food at school as a right, give greater visibility to SFN as a state priority, and secure funds from the national budget.

Increasingly, countries are adopting specific legislation for SFN. The Netherlands was the first country to introduce national legislation concerning school meals in 1900. Finland and Sweden inaugurated the first legislation recognizing the right of all public students to receive free hot school meals in 1940. Since then, many other governments have adopted and funded public SFPs in their policies (Viana and Bellows, 2014).

In addition, countries in Latin America have adopted specific laws on school feeding including Argentina, Bolivia (Plurinational State of), Brazil, Ecuador, Guatemala, Honduras, Paraguay and

⁹ In this Guide, "legal entitlements" refers to the legal recognition to determined services and goods in the context of school food and nutrition.

Uruguay. Other countries are discussing legislative proposals in parliament including Colombia, the Dominican Republic, Haiti and Peru.

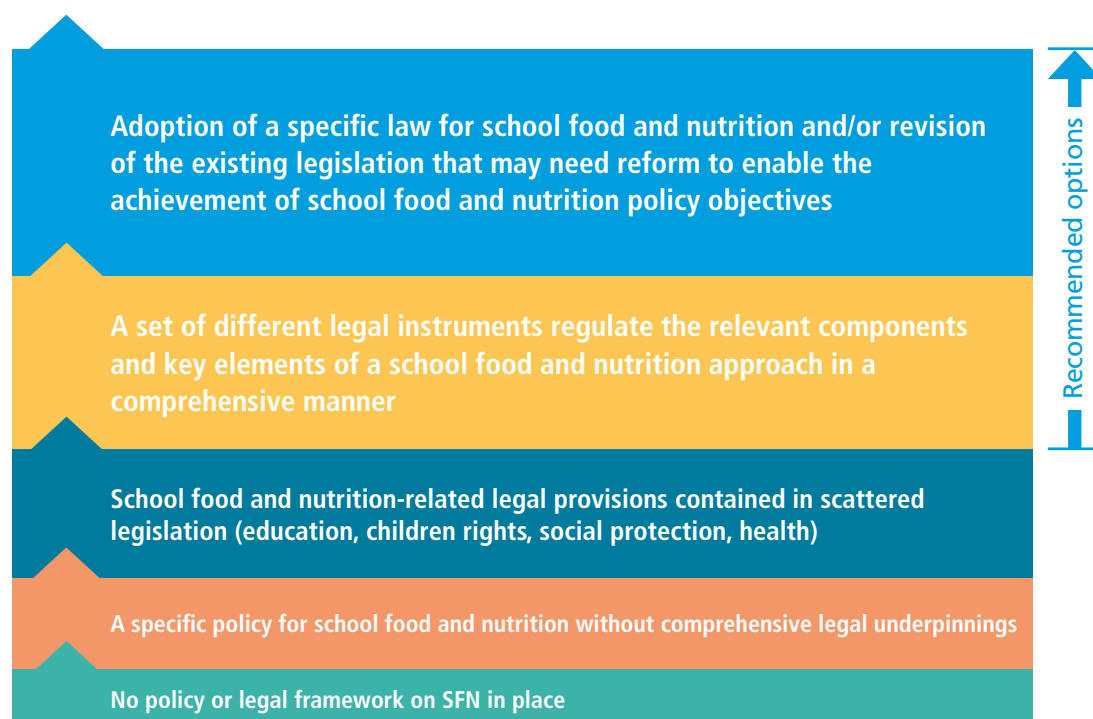
In Africa, some countries have adopted laws on school feeding including Cabo Verde and Sao Tome and Principe, while others are interested in pursuing the same direction. Countries in other regions worldwide have also adopted specific laws including Japan, the Republic of Korea, the Philippines, Slovenia, and the United States of America, among others.

4.2.4.3 Integrating a human rights-based approach to school food and nutrition legislation

Some countries have adopted school feeding legislation founded on a human rights-based approach. Such an approach recognizes children's right to adequate food in school as a legal entitlement instead of public assistance. For example, *Law 11.947 of 2009* establishes the School Feeding Programme (PNAE) in all primary schools in Brazil. Article No. 3 of the Law states that school feeding is a students' right, and thus it is a duty of the state to promote and safeguard this right established by the Law (FAO, 2014).

Legal developments on SFN with a human rights-based approach go beyond the national level. In 2013, the Latin-American Parliament (Parlatino) adopted a regional model law *Framework law on school meals*, which provides a set of guidelines for regulating various aspects related to access to food for children within schools (FAO, 2014). In 2013, the Forum for Presidents of the Legislative Powers of Central America and the Caribbean Basin (Foprel) adopted the *Framework law on the right to adequate school food and nutrition*.

Figure 4.4: Legislative options for legislating on school food and nutrition



ELEMENTS OF A SCHOOL FOOD AND NUTRITION LAW



5. ELEMENTS OF A SCHOOL FOOD AND NUTRITION LAW

This section of the Guide is specifically intended for the drafting of a specific law on SFN. Most of the recommendations that follow are made with that in mind. However, if the choice of a country is not to draft a law but to revise the existing legal framework, the Guide offers many avenues for reflection that will help in this task.

This section will address elements that might be considered to be included or addressed in an SFN law. As mentioned earlier in this Guide, decision on what to regulate and how, will depend on the national legal system as well as the national policies in place. The elements related to food safety and public procurement should be referred to, but the issues still require their own separate legal instruments. The key elements addressed in the following sections include:

1. Opening provisions: objectives, scope of application, definitions and guiding principles
2. Rights and legal entitlements
3. Institutional framework
4. Nutrition and food environment
5. School-based food and nutrition education
6. Food safety aspects of SFN
7. Public food procurement for SFN
8. Monitoring mechanisms
9. Accountability mechanisms
10. Budget allocation

Each substantive issue will be presented through three subsections, described as follows:

Why

This first subsection aims at developing the reasons why it is important to legislate (essential/necessary or welcome) on each specific subject. It will be an opportunity to present the key issues and main reasons justifying the benefits of legislation.

How

This subsection aims to provide explanatory information on how to legislate at the national level regarding each topic dealt with. As has been repeatedly pointed out in this Guide, even though recommendations are made, this publication does not intend to provide universally applicable guidance. These recommendations should be adapted to the national context of each country.

The guidance provided in this section relies on the analytical framework presented in Section 3 as well as on FAO's approach to SFN. Finally, in this section we will raise the main legislative issues, challenges and possible regulatory options from a legislative point of view.

This subsection also provides examples of national legislation on the specific topic dealt with. The reader will find an illustrative explanation of the elements previously discussed.

QUICK CHECKLIST AND KEY RECOMMENDATIONS

In order to facilitate the reading and quick consultation of this publication, the Guide includes a quick reminder of the elements considered to be the most important in each subsection. The checklist and the recommendations are presented in the form of a table and are not intended to be exhaustive nor prescriptive.

5.1 OPENING PROVISIONS

Why

When it comes to legislating on a specific subject, it is essential to refer to certain basic elements that circumscribe and orientate the law's implementation. Those elements are: i) the objectives of the law; ii) the scope of application; iii) the relevant definitions; and iv) the guiding principles.

How

As elaborated in Section 3, human rights instruments, in addition to constitutional law, provide an existing normative framework to orientate the objectives, the scope, the definitions, and the guiding principles of an SFN law.

5.1.1 Objectives

The law on SFN should clearly establish what **the ultimate goal** is and what the **specific objectives** they want to achieve are. They must be clearly defined and recognizable to anyone.

The objectives of the legislation reveal the deep intention of the law and serve to guide further implementation by regulators and citizens who must abide by and respect it. They are indispensable as they serve as a basis for assessing whether or not actions are in accordance with the law.

The objectives of the law directly refer to the public policy the law is enforcing and to those major goals to be attained through legislative measures. Depending on the country realities, an SFN law could clearly establish, for instance, that the ultimate goal of the state is to fulfil children's right to adequate food at school through a food systems approach, providing children with healthy and sustainable food products. Other countries might opt to include objectives of a higher or lower ambition, depending on their legal framework, as well as their priorities and public policies.

In addition to a legal provision that establishes the regulatory objectives of legislation, legal drafters should ensure that all the legal provisions contained in the draft piece of legislation are consistent with the purpose and objectives established within the law.

Some examples of objectives included in school feeding legislation are illustrated in Table 5.1. The two country examples in the table show how legal provisions establishing the objectives of the law might differ. The legislation can convey the purpose by stating the general policy regarding food in schools, or by establishing concrete and defined objectives. The Bolivian Law specifically mentions the promotion of local production and purchases from family farming,

as some of its main objectives. The Law in the United States of America gives the programme a permanent status and authorizes the necessary appropriations for it. In that example, the objectives of the Law mention specifically the financial assistance provided to states to support the operation of the programme.

Table 5.1: Objectives of school feeding laws

Country	Legal instrument	Objectives of the Law
Bolivia (Plurinational State of)	Law on School Feeding in the Context of Food Sovereignty and the Plural Economy (No 622).	The purpose of the law is to regulate <i>Alimentación Complementaria Escolar</i> (Complementary School Feeding) by distributing responsibilities to the different levels of government, and promoting community social economy through the purchase of food from local suppliers. Article 3 establishes the following objectives: (1) to progressively guarantee Complementary School Feeding in the educational units of the Plurinational Educational System, with food from local production as part of an integrated development for 'Good Living (Vivir Bien)'; (2) to contribute to school performance and promote the permanence of students in the educational units of the Plurinational Education System through healthy, timely and culturally-appropriate nutrition; (3) to encourage the purchase of products intended for complementary school meals, by encouraging and prioritizing local food consumption and production.
United States of America	Richard B. Russell National School Lunch Act.	to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food by assisting the States, through grants-in aid and other means, in providing an adequate supply of food and other facilities for the establishment, maintenance, operation and expansion of non-profit school lunch programs.

5.1.2 Specific objectives

In addition to the ultimate goals, SFN laws might state **specific objectives** to list in a more detailed and precise way the concrete objectives to which this law seeks to contribute. Depending on the main objective of the law, specific objectives might seek to:

- Ensure access to adequate food at school (healthy, nutritious and safe).
- Contribute to improve education enrolment, attendance, cognition, and educational achievement.
- Address specific micronutrient deficiencies in school-age children.
- Provide an immediate response to children's food insecurity as well as social protection over the longer term.
- Promote healthy eating practices and habits.
- Reduce/prevent child obesity.
- Promote the health and well-being of children.
- Contribute to gender equity in education.
- Stimulate agricultural and economic development by linking school meals with local and smallholder production.
- Strengthen educational access to address vulnerability and marginalization.

Table 5.2: Specific objectives in the Guatemala Decree No. 16 of 2017 on School Feeding**Article 1. Purpose.**

The purpose of this Act is to guarantee school meals, promote health and encourage healthy eating among children and adolescents who attend public or private schools for the purpose of taking advantage of their learning process and the formation of healthy eating habits of students, through food and nutritional education actions and the supply of food to students during the school cycle, in accordance with this Act and its regulations. In the case of private educational centres, they shall not be beneficiaries of the School Feeding Programme; however, the rules contained in this Law shall apply to them.

Article 2. Specific Objectives.**Specific Objectives of this Law:**

- a. To carry out actions aimed at improving the nutritional status and academic development of children and adolescent students attending public or private educational institutions.
- b. Promote healthy eating habits throughout the population, starting with school level students, facilitating relevant education, including parents.
- c. Encourage students who attend these establishments to have the possibility of incorporating nutritionally adequate foods and beverages, establishing that they are available in the stores, cafeterias and dining rooms that are within the educational centers.



While some laws seek to implement a broader SFN policy, other laws might seek to implement a specific programme. In this particular case, laws that institutionalize a school feeding programme for example, have a less ambitious goal as they are limited to the implementation of a single programme rather than a policy that is more far-reaching in scope.

Table 5.3 provides an example of a regulatory instrument establishing general and specific objectives. This concrete example illustrates how some legal instruments are created to regulate the functioning of a specific programme but do not regulate a thematic in its broadest sense. Both the main and specific objectives of the Decree are circumscribed to the Qali Warma programme rather than a broader policy objective on SFN.

Table 5.3: General and specific objectives of the Qali Warma School Feeding Programme in Peru

Supreme Decree No. 008-2012-MIDIS, as amended, establishes the National School Feeding Programme Qali Warma, as a social programme of the Ministry of Development and Social Inclusion, with the purpose of providing good quality food services, appropriate to local consumption habits, sustainable and healthy, and co-managed with the community, for school children in public educational institutions under its coverage, as defined in Article 1 (see Table 5.4).

Beyond the main objective, Article 3 establishes specific objectives as follows:

- a) To guarantee the food service during all the days of the school year to the users of the Programme according to its characteristics and the zones where they live;
- b) Contribute to improve the attention of users of the Programme in classes, favoring their attendance and remaining in school;
- c) Promote better eating habits of the users of the Programme.

5.1.3 Scope of application

The scope of application of a law refers to the circumstances, persons, and geographic areas that are concerned by the legislation.

More specifically, the scope of the law addresses:

- **What does the law regulate?**
The circumstances and situations covered by the law (material scope).
- **Where will it be implemented?**
The geographic areas of implementation of the law – national vs specific targeted areas – (geographic scope).
- **Who is concerned?**
The persons to whom the law applies (personal scope).

In the context of SFN, the following considerations will be relevant for legal drafters when defining the scope of the law:

- Does the law apply to any type of foods delivered and available in schools (including meals delivered in the context of a public programme and food available in food kiosks – internal and external to school premises)?
- Does it apply to school premises only or does it consider the surrounding environment more broadly (immediate peripheral zones and/or events organized by the school but take place outside of the institution itself)?
- Does the law cover the entire country (national jurisdiction) or does it focus on specific geographical areas?
- Does the legislation apply to public and private schools? Does it include childcare institutions? Does it include primary and secondary schools?

Country	Legal instrument	Measure
Brazil	Law No. 11.947, School Feeding Programme, 2009. Resolution No. 6 Establishing the Provision of School Meals to Students in Basic Education under the National School Feeding Programme - PNAE, 2020.	Article 1 of the Law No. 11.947 defines school feeding in a broad sense, including all food offered in the school environment, regardless of its origin, during the school period. Article 2 establishes the universality of food services to students enrolled in the public basic education system. Article 6 of the Resolution that implements the Law, indicates that PNAE is addressed to students enrolled in basic education in the federal, state, district and municipal public systems, in accordance with the School Census of the previous year conducted by the Anísio Teixeira National Institute of Educational Studies and Research, of the Ministry of Education.
Cabo Verde	Law No. 89/VIII/2015, The School Feeding Law.	Applies to all establishments of the national educational system.

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Honduras	Decree No. 125-2016 Law on School Feeding.	Article 3 states that "this law is applicable to natural and legal persons, national or foreign who develop activities related to the feeding of children within the system of public education through the National School Feeding Programme."
Peru	Supreme Decree No. 008-2012-MIDIS, as amended by Supreme Decree No. 008-2019-MIDIS.	Targeted to school children in public educational institutions: (a) at the early education level from the age of three (3); (b) at the primary education level; (c) at the secondary education level, located among the indigenous peoples of the Peruvian Amazon, included in the Official Database of Indigenous Peoples, listed in Ministerial Resolution No. 321-2014-MC of the Ministry of Culture, or any that may replace or update it; (d) at the secondary education level, under the full school day modality; (e) at the secondary education level, under the diversified forms of care and/or educational service models.

Some specific examples of the scope of legislation in different countries have been provided in Table 5.4. Differences can be found in the scope of application, as some laws are directed exclusively at public schools and public educational institutions (independent of the level of education), while others are limited to primary education (Brazil). Other laws might have a broad geographical scope but a restricted (targeted) personal scope of application.

5.1.4 Definitions

Definitions are of great importance to facilitate the understanding of the law as well as to avoid confusion and ambiguity of certain terms. The definitions are usually incorporated at the beginning of the law as it makes it easier to read and understand.

Some key concepts relevant for SFN might already be defined in international law, international instruments or national legislation related to food security and nutrition, education, health, food safety and child protection. If this is the case, the legislation must refer to these pre-existing definitions. Legal drafters should avoid multiplying definitions in national legislation that would create confusion and would hinder the implementation of the law. Also, it is very important to emphasize that definitions should not contain normative rules that should be included only in the section on substantive provisions of the law.

In the *School Feeding Law* in Cabo Verde, which aims to establish the National School Food and Health Programme (PNASE), the choice of the legal drafter was to define concepts related to SFNE as well as concepts related to health (see Table 5.5).

The Paraguay *Law No. 5210 on School Feeding and Sanitary Control of 2014* establishes rules on school feeding and health control in the context of the educational institution with the aim of guaranteeing the rights to food and health of students. Two concepts are defined in the Law "school feeding" and "sanitary control", focusing on the impact that school feeding has on children's health; particularly their nutritional status.

As for the *Organic Law on School Feeding of 2020* in Ecuador, it defines various terms such as school feeding, adequacy, adequate amount of food, malnutrition, undernutrition, stunting

or undersize with respect to age, acute undernutrition or wasting, underweight, overweight and obesity, availability and access, vulnerability, school feeding modality, school cafeterias and eating habits. The Organic Law defines school feeding as a means to guarantee the right to food and nutrition of school-age children and adolescents (see Table 5.6).

Table 5.5: Definition of concepts in the Cabo Verde School Feeding Law (Article 3)

- (a) "School Feeding": any food or meal offered in the school environment, during the academic period, regardless of their origin or source of funding;
- (b) "Food and Nutrition Education": the set of training, continuous and permanent, transdisciplinary, intersectoral and multi-professional activities aimed at stimulating the voluntary adoption of healthy eating practices and choices that collaborate for learning, health status and quality of life of the individual;
- (c) "Foodstuff": means any substance or product which has been processed, partially processed or unprocessed, intended to be ingested by, or reasonably likely to be ingested by humankind, including beverages, chewing gum and all substances, including water, intentionally incorporated - in foodstuffs during their manufacture, preparation or treatment;
- (d) "Basic foodstuffs": those products which are essential to the promotion of healthy food;
- (e) "Partners": individual or collective entities of the public or private sector that contribute money, donations in kind or services to the National Food and School Health Programme (PNASE) or to the achievement of the objectives of food and school health;
- (f) "Screening of students' health": actions carried out by duly trained health professionals in order to verify the health status of the students through clinical, nutritional, health, hygiene, ophthalmological and auditory assessment, during the school year, under the joint coordination of government departments responsible for health and education;
- (g) "School health": all health surveillance and promotion activities, acquisition of knowledge, and development of skills and competences for health, nutritional education, hygiene and environmental sanitation, as well as measures for the prevention of diseases and health care developed in the school environment during the school year aimed at school professionals, students and the community.

Table 5.6: Definition of school feeding in Ecuador

Article 5. Definitions: For the purposes of this Act, the following definitions shall be used:

"School feeding: A service provided by the National Education System to guarantee the right to food and nutrition of school-age children and adolescents."

Table 5.7: Definition of "school feeding" in the Paraguay Law No. 6.277, 2019, which expands on Articles 2 and 10 of Law No. 5210, School Feeding and Sanitary Control, 2014

School feeding means "varied, balanced food, of optimum quality and adequate to the nutritional requirements of each age group, provided within the framework of the school system, according to the socio-cultural characteristics and the availability of the products and food inputs characteristic of the territories, and at the same time, promotes pedagogical actions that allow them to become an educational experience for the formation of healthy eating habits in the school population served by the Educational System and the development of pedagogical components in the area of the right to food and food security, with the participation of the educational community. Complementing school feeding, a minimum of two bananas, nationally produced, will be included at least three days a week, according to availability."

The choice of terms to be defined in an SFN law will depend on the specific circumstances and needs of a country in question. This section considers significant terms that may be included in the definitions section of an SFN law. The Guide does not seek to establish unique and precise definitions of these terms, but rather to bring essential elements of those concepts as elaborated by the international organizations that have a technical mandate directly related to SFN.

Adequate food

Adequacy means that the food must satisfy *dietary needs*, taking into account the individual's age, living conditions, health, occupation, sex, etc. Food should be *safe* for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. Adequate food should also be *culturally acceptable*. For example, food containing ingredients that are religious or cultural taboo for the recipients or inconsistent with their eating habits would not be culturally acceptable (OHCHR and FAO, 2010).

Food is considered to be adequate in terms of a number of variables, such as food safety, nutritional quality, quantity and cultural acceptability. The precise meaning of adequacy is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions (CESCR, 1999, para. 7) (FAO, 2019a).

The right to adequate food

In *General Comment 12*, the Committee on Economic, Social and Cultural Rights (CESCR) established that the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. According to the CESCR, the right to food does not mean simply a minimum daily package of calories, proteins and other specific nutrients needed to ensure freedom from hunger and malnutrition, it means "the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear". Although general comments of the CESCR are not legally binding, they give a highly authoritative interpretation of the rights contained in the ICESCR and are generally followed and respected by its state parties. In *General Comment 12*, the CESCR outlined in detail the normative content of the right to food, states' obligations and implementation at the national level (FAO, 2009b)

Home-grown school feeding

Home-grown school feeding (HGSF) constitutes a school feeding model that is designed to provide children in schools with safe, diverse and nutritious food, sourced locally from smallholders (FAO and WFP, 2018).

The core elements of this definition can be detailed as follows:

'*Safe, diverse and nutritious food*' means that HGSF programmes promote the design and adoption of quality and safety standards for fresh and local foods; support crop and dietary diversification; and integrate food and nutrition education for behavioural change, and to support culturally appropriate, healthier eating habits.

'Sourced locally from smallholders' means that HGSF programmes maximize benefits for smallholder farmers, by linking schools to local food production, strengthen the capacities of smallholder farmers and communities to produce food, and contribute to rural transformation.

Even if only a percentage of food is purchased locally from smallholder farmers, a school feeding programme can be considered as "home-grown", provided that local purchases are designed to support and foster local agricultural and food markets, and that these objectives are taken into consideration during programme design and implementation, and institutionalized in related policies and regulations (FAO and WFP, 2018).

Nutritional guidelines and standards

A set of rules, principles and recommendations, based on sound nutrition science and the national/local situation, designed to improve the nutritional quality and quantity and/or adequacy of foods and meals available/provided in schools (FAO, 2019b).

Nutrition guidelines: recommendations to improve the quality and adequacy of the food provided/ available at schools (FAO, 2019b).

Nutrition standards: specific values/quantities, levels or frequencies that should determine food/ meal composition (FAO, 2019b).

School-based food and nutrition education

School-based food and nutrition education (SFNE) consists of educational strategies and learning activities, which supported by a healthy food environment, help schoolchildren, adolescents and their communities to improve their diets and food choices. It further helps to build their capacity to act as agents of change (FAO, 2020).

School food environment

The school food environment refers to all the spaces, infrastructure and conditions inside and around the school premises where food is available, obtained, purchased and/or consumed (for example tuck shops, kiosks, canteens, food vendors, vending machines); also taking into account the nutritional content of these foods. The environment also includes all of the information available, promotion (marketing, advertisements, branding, food labels, packages, promotions, etc.) and the pricing of foods and food products.

Food environments shape how accessible, affordable, desirable and convenient specific foods are. **A healthy school food environment allows and encourages the school community (children, families, school staff, etc.) to make food choices that are consistent with better diets and improved well-being (FAO, 2020).**

5.1.5 Guiding principles

Legal drafters should consider including guiding principles in the opening provisions of an SFN law because they provide a solid basis for interpretation.

Some principles might derive from international human rights law, but others belong to the field of constitutional law, administrative law and good governance. Regardless of the legal source of these principles, their usefulness is vital to give meaning and interpretation to the legal provisions of an SFN law.

The following legal principles are recognized in international law, particularly in the CRC, which provides special emphasis to four ‘general principles’ that are considered necessary for the implementation of all rights contained within the CRC.

5.1.5.1 Non-discrimination

In the context of SFN, discrimination can take many forms, both against school children and against school food service staff. Discrimination can be experienced on the grounds of racial or ethnic origin, religion or belief, disability, age, or sexual orientation.

Students who often face discriminatory practices at school are children with disabilities (visual impairments, hearing limitations, reduced mobility, or children who experience difficulties learning in “regular” classrooms), children who do not speak the common classroom language or belong to a different religion or caste, and children who may be at risk of dropping out. Vulnerable groups in the context of school discrimination can also include girls who are pregnant and children affected by HIV/AIDS.

Research has evidenced that the nutritional needs of children with disabilities are rarely considered in the design of school meal programmes (Meresman and Drake, 2016). From a gender perspective, girls’ specific nutritional needs according to their age and condition (pregnant, lactating) are not always fully considered in the design of menus for school meals. Nevertheless, ensuring equal rights for girls’ access to education, and consequently to school meals have positive impacts on both, girls’ attendance to school and girls’ access to nutritious foods. Indeed, for adolescent girls, good nutrition in childhood and adolescence is important to establish a good nutritional status which in turn will affect future pregnancy outcomes (Mikkelsen, et al. 2015).

In some countries, discrimination can also take place if the food service is designed in a way that creates stigma among the students themselves. For instance, in the context of targeted SFPs, separating those students who are eligible for free school meals and those who do not participate (through separate lunch spaces or different lunch hours) can easily create stigma. According to a study in the United Kingdom of Great Britain and Northern Ireland, published by the Essex Institute for Social and Economic Research (Holford, 2012), more than a quarter of children entitled to free school meals take a packed lunch instead because they fear being stigmatized.

Discriminatory practices can also take place by overt identification and by shaming kids for the non-payment of subsidized lunches. Holding children publicly accountable for unpaid school lunch bills — by throwing away their food, providing a less desirable alternative lunch or branding them with markers — is often referred to as “lunch shaming.” According to a 2014 report from the United States of America Department of Agriculture, the practice is widespread,

as it found that nearly half of all districts used some form of shaming to compel parents to pay bills. About 45 percent withheld the hot meal and gave a cold sandwich, while 3 percent denied food entirely (USDA, 2014).

How can the principle of non-discrimination be incorporated into the school food and nutrition law?

Article 2 of the CRC establishes that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” From a legislative perspective, non-discrimination clauses as well as specific legislative measures to prevent and combat discrimination are needed to ensure equal access to food at school.

An SFN law could firstly **refer explicitly to national legislation that already regulates equal treatment at school**. Indeed, some of the legal requirements for an inclusive school environment are very often included in educational laws, or can also be anchored in a more specific legislation, such as laws on disabilities and other health conditions that require special treatment at school.

In addition, countries may also opt to include in an SFN law, a **general clause prohibiting discrimination** in access to food at school. To reinforce the importance of inclusiveness within the SFN approach, the law could dedicate a specific section to vulnerable groups, or students requiring special treatment, and define general obligations of competent authorities to protect and guarantee their participation in SFPs without discrimination.

Countries might also opt to include in an SFN law, **specific provisions to ensure equal access to school feeding** by establishing, for instance, legal requirements for meal modifications in specific circumstances. This can be the case for children with disabilities but also for specific intolerances, allergies and diseases requiring special consideration in foods available at school (for e.g. diabetes, celiac disease and obesity).

If a child has a food allergy, a meal accommodation may require the school and the local authorities to ensure: i) no food item offered to the child contains substances that may trigger an allergic reaction; and ii) adherence to proper food safety protocols to prevent cross-contamination with other allergen-containing foods. See also subsection 5.6. on food safety.

Regulations (secondary legislation) can further develop specific procedures to modify the menus or to request action and information from the competent authorities. Indeed, schools should not be engaged in determining whether a medical or physical condition is severe enough to benefit special treatment. This is not the legal responsibility of schools. Instead, legislation should contain specific procedures defining who is the responsible authority for those administrative decisions in order to support parents, students and the school community in guaranteeing the access to school food services without barriers.

Table 5.8: Measures related to special dietary needs and the principle of non-discrimination		
Country	Legal instrument	Measure
Spain	Law 17/2011 on food security and nutrition.	In Spain, students with allergies or food intolerances are provided with special meals adapted to their health condition. Where the organizational conditions, facilities or premises do not allow for the preparation of special menus, students are given access to cooling and heating facilities so that they can bring a packed lunch (Article 40).
United States of America	Code of Federal Regulations, 1988 (as amended). Title 7: Agriculture PART 210—National School Lunch Program.	The requirement to accommodate children with disabilities is also included in Program regulations at 7 CFR 210.10(m) and 7 CFR 220.8(m): "Schools must make substitutions in lunches and afterschool snacks for students who are considered to have a disability under 7 CFR 15b.3 and whose disability restricts their diet." (7 CFR 210.10[m])

Other issues that can be considered in an SFN law to make it more inclusive, as follows:

- Ensure accessible drinking water, washrooms and toilet facilities.
- Guarantee alternative meals to children with special dietary requirements or restrictions (at no extra charge).
- Gender sensitive meals, taking into consideration adolescent girls' nutritional needs, in particular pregnant and lactating mothers.
- Capacity building and training of teachers and school staff. This is particularly relevant as some children with disabilities might require assistance in feeding, and might have special needs in terms of hygiene, eating or swallowing.
- Curricular adaptations of school food and nutrition education to make contents accessible to children with special needs.
- Promote the recruitment of disabled workers or the recruitment of staff who specially support disabled students at school.
- Reinforce the principle of equality of opportunity and treatment in employment and occupation for school food service staff.

Box 5.1: Combating discrimination through the Mid-Day Meals Programme in India

Depending on many factors, school feeding programmes can either exacerbate or combat discrimination. In India, the Mid-Day Meals Programme has combatted discrimination against women by creating employment opportunities for those who would otherwise not have easy access to employment. The Mid-Day Meals Programme employs 2 million Dalit women as cooks – many of whom are poor and marginalized – generating positive impacts for Dalit women and helping to slowly change prejudices relating to caste. However, although caste-based discrimination is now illegal in India, it still persists, especially in rural regions. In many places, higher castes still refuse to eat food cooked by lower castes, and people from higher castes often keep a separate set of utensils to serve food and drink to those from lower castes.

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Two studies, in 2005 and 2008, by economist Sukhdeo Thorat found “differential treatment” toward lower castes with regard to the Mid-Day Meal in seven of India’s poorest states, including Uttar Pradesh, Bihar, Jharkhand and Chattisgarh. Thorat found a resistance in schools and communities to hire Dalit women as cooks, and also revealed that the higher caste women hired as cooks ended up discriminating against Dalit children during the school meal. Lower caste children are often served last. They are also required to bring their own plates, and they are also served from a distance. These findings are similar to those of a more recent report by Human Rights Watch (2014), which concluded that in those cases, the programme has created further discrimination instead of helping to fight it – children of lower castes sometimes drop out of school as a result of unfair treatment.

Sources: Human Rights Watch, 2014; Holford, 2012; Chatterjee, 2014.

Table 5.9 illustrates how legislative provisions in a specific country can be included in both national and federal legislation to prohibit discrimination against children in the context of SFPs.

Country	Legal Instrument	Measure
United States of America	Richard B. Russell National School Lunch Act.	Federal law prohibits discrimination by schools against any child eligible for a free or reduced-price lunch. This includes physical segregation, identification of the child by special tokens or tickets, announced or published list of names and by any other means.
United States of America	Code of Federal Regulations, 1988 (as amended). Title 7: Agriculture PART 210—National School Lunch Program.	Schools should consider ethnic and religious preferences when planning and preparing meals. Variations on an experimental or continuing basis in the food components for the meal pattern in paragraph (c) of this section may be allowed by FNS. Any variations must be consistent with the food and nutrition requirements specified under this section and needed to meet ethnic, religious, or economic needs.
California, United States of America	Child Hunger Prevention and Fair Treatment Act (2017).	Prohibits school personnel from using the denial or delay of a school meal as punishment for a child whose parents owe school meal fees. Mandates that all schools establish a plan to ensure that no pupil whose guardians have unpaid school meal fees is shamed or exposed to different treatment.
New Mexico, United States of America	Hunger-Free Students’ Bill of Rights Act (2017).	Prohibits schools from stigmatizing children who cannot pay their school meal fees. For example, the bill explicitly prohibits schools from publicly identifying or stigmatizing any student who cannot pay for a meal or who owes a meal debt by requiring that student to wear a wristband or hand stamp or to do chores or other work to pay for meals.

As explained later in the accountability subsection of the Guide (Section 5.4), the legal provisions prohibiting discrimination and the regulatory requirements for an inclusive food environment at school also need strong accountability mechanisms to be effective.

5.1.5.2 Participation

At country level, national and local authorities have the duty to promote spaces for participation in accordance with the provisions included in most of the constitutions and laws on public participation worldwide. Children's participation in decision-making is very often regulated in specific instruments such as national children's laws.

Who should participate in decision-making related to school food and nutrition?

- parents of all those entitled to school meals
- children, and adolescents entitled to school meals
- teachers and school directors within the framework of the responsibilities and functions established in the basic education law and its regulations
- parents' associations
- community organizations
- associations of ethnic and indigenous people's groups
- interested groups
- the private sector
- all those who are affected by policies related to SFN
- all those who will implement those policies

"In the context of school food and nutrition, very often children passively accept the food they get. Some students may offer suggestions or complain from time to time, but they soon learn that their views have little impact. They may find that they don't get their meals, or meals of the quality they expect, but often they find there is not much they can do about it." (Kent, 2010, p. 10)

All students, except perhaps the very youngest of them, should be engaged in discussions about how school-based programmes should operate. They should have an opportunity to express their preferences and have some influence in determining the choices that are made. They should understand that they have particular rights in relation to the feeding operations, and that others have particular duties to ensure that those rights are realized. Those who are responsible to ensure the adequate delivery of food services at school should be engaged as well. Discussions could be organized during a specific period at the end of each school year, with a view to implementing the revised plan in the following year (Kent, 2010).


Research has evidenced that the most effective and sustainable school feeding programmes are those that respond to community needs, have local buy-in and incorporate parental or community contribution (Drake *et al.*, 2016). Yet, the participation of the community is often limited to prepare and serve the menu. A participatory approach in such programmes has a meaningful impact when the community is involved in the definition of programme needs, in the design of the intervention, and in the implementation and evaluation of the programme. At the same time, it is equally crucial to ensure that communities, parents, teachers and school staff are not overburdened by their participation in school meal programmes. Instead, where possible, it is most effective to use school meal programmes as a vehicle for local employment, empowering particularly women by generating new sources of income (Drake *et al.*, 2016).

How can the principle of participation be incorporated into school food and nutrition laws?

Although some mechanisms for public participation in decision-making are likely to be established already in laws regulating public participation, an SFN law can guarantee procedural mechanisms for fulfilling the right to participate in SFN matters.

Participatory mechanisms are very often established in general laws on participation. Such mechanisms can include public consultations and specific procedures to: i) request information; ii) exercise the right to petition government for redress of grievances; iii) make a complaint; and iv) seek the assistance of government. These general participatory mechanisms are also applicable to SFN and stakeholders can use them for a specific SFN related matter.

Other mechanisms for public participation might also be regulated in sector specific legislation of relevance to SFN such as food security and nutrition laws, education laws or children's legislation (i.e. Children's Act). Indeed, framework laws on food security and nutrition very often include provisions to promote participation and establish institutional arrangements accordingly (national and local councils, or committees, on food security and nutrition). Those institutional settings might provide a very good basis for participation of stakeholders in SFN matters.

 Legal drafters of SFN laws might consider it relevant to establish strong linkages to existing participatory mechanisms rather than creating new ones. To be effective, institutions require both financial and human resources and these costs should not be underestimated as part of the SFN operational budget.

SFN laws can also create tailored mechanisms such as School Food and Nutrition Committees to promote participation, ownership and social control. The establishment of SFN Committees should ensure the participation of vulnerable groups, with specific consideration to gender and minority groups.

The principle of participation can be embedded in SFN laws as one of the guiding principles in the opening provisions of the law. However, legal drafters might also opt to consider drafting a specific provision aiming at actively involving parents, students, school directors, teachers, and the whole community in the implementation and monitoring of relevant school programmes. The principle of participation can also be applied through specific measures aimed at encouraging, promoting or guaranteeing the participation of the local community – for instance, local small-scale farmers and small enterprises – in local food procurement for SFPs.

Integrating the principle of participation into SFN laws may also involve legislative measures to guarantee participatory assessments that are systematic, age-appropriate and gender-sensitive, as well as the collection of data by sex and age (see UNHCR, 2008).

Some legislative examples of mechanisms of participation in SFN are provided in Table 5.10.

Table 5.10: Participatory mechanisms in school feeding programmes		
Country	Legal instrument	Measure
Brazil	Law No.11 947 of 2009.	<p>The States, the Federal District and the Municipalities shall establish within their respective jurisdictions, School Feeding Councils (Conselhos de Alimentação Escolar - CAE), collegiate bodies of a supervisory, permanent, deliberative and advisory nature, composed of the following form:</p> <p>I - one (1) Representative indicated by the Executive Power of the respective federal entity;</p> <p>II - two (2) representatives of the entities of education workers and students, indicated by its representative body, to be chosen by means of a specific assembly;</p> <p>III - two (2) representatives of parents of students, indicated by School Councils, Associations of Parents and teachers or similar entities, chosen by means of a specific assembly;</p> <p>IV - two (2) representatives indicated by civil entities organized, chosen in specific assembly.</p>
Peru	Resolution No. 016/13 / MIDIS approving the Directive No. 001-2013-MIDIS on General Procedures on the Co-Management Model for the Operation of the Food Service of the Qali Warma National School Feeding Programme, as amended.	<p>6.2.6. Functions and responsibilities of the CAEs (School Feeding Committees):¹⁰</p> <ol style="list-style-type: none"> To manage the collection and storage of products and prepared rations that are delivered by the suppliers selected in the purchase process, as appropriate. Grant conformity of receipt of products and rations. Organize food preparation according to Qali Warma-approved school recipe programming, where appropriate. Deliver and distribute food to Qali Warma users at the appropriate public educational institution. Monitor the consumption of food by the users of Qali Warma in the public educational institution and to communicate to the Programme any incidence in relation to the delivery or provision of the food service, through its Territorial Units. Comply with the good practices of food handling promoted by Qali Warma, according to the regulation of the health sector. Participate in the trainings, courses and workshops offered by Qali Warma. Keep a register of users served and report rations or products delivered according to specific procedures approved by Qali Warma.

¹⁰ CAEs are composed as follows: The director, or whoever acts as such, of the public education institution, who chairs the Committee, may delegate his or her functions to a teacher from his or her public education institution; and two (2) parent representatives from the public school.

5.1.5.3 Transparency

Transparency is closely related to the right to freedom of information. In the context of SFN, the government must ensure that information about SFN policy objectives and SFN programmes including laws and budgets, are published in ways that are accessible to those who need to know it. Information should use language that can be easily understood and that it is disseminated through the appropriate media.

Table 5.11: Transparency requirements in the United States of America School Lunch Program

The Code of Federal Regulations 210.18 contains a section on administrative reviews for the United States of America School Lunch Program, 1988 (as amended).

- (m) Transparency requirement. The final results of the most recent administrative review must be easily available to the public.
- (1) The State agency must post a summary of the results for each school food authority on the State agency's public Web site and make a copy of the final administrative review report available to the public upon request.
 - (2) The summary must cover meal access and reimbursement, meal patterns and nutritional quality of school meals, school nutrition environment (including food safety, local school wellness policy, and competitive foods), civil rights, and program participation.
 - (3) The summary must be posted no later than 30 days after the State agency provides the results of administrative review to the school food authority.
- (n) Reporting requirement. Each State agency must report to FNS the results of the administrative reviews by March 1 of each school year on a form designated by FNS. In such annual reports, the State agency must include the results of all administrative reviews conducted in the preceding school year.

5.1.5.4 Accountability

Although central to human rights practice, accountability has long been a prime concern in development, governance, politics, law, ethics, business and activism. While the meanings and functions of accountability differ across disciplines, in most public policy contexts, accountability refers to the obligation of those in authority to take responsibility for their actions, to answer for them by explaining and justifying them to those affected, and to be subject to some form of enforceable sanction if their conduct or justification for it is found inadequate. Under international human rights law, states are primarily accountable for respecting and protecting the rights of those within their jurisdiction (OHCHR, 2013).

Accountability mechanisms should monitor adherence to human rights standards, independently review government performance, and recommend measures for remedy, redress or other corrective action in cases of non-compliance. Effective systems of accountability promote systemic and institutional progress that creates conditions in which rights can be more fully enjoyed. Human rights accountability should be integrated into all stages of the policy cycle, from initial planning, to budgeting, implementation, monitoring and evaluation.

In the context of SFN, accountability mechanisms should allow the community, individuals and social organizations to influence SFN decisions and the management and implementation of school feeding and other related programmes. Accountability mechanisms help to contribute to a more efficient and transparent use of resources, the equitable provision of services and help to sustain the fulfillment of children's rights. Citizen oversight allows individuals or community organizations to exercise their control over:

- management and expenditure of financial resources
- fulfillment of the purposes of the programme
- coverage for beneficiaries
- effectiveness and quality of service
- bidding process
- compliance with nutritional standards

Accountability requires concrete mechanisms through which individuals can have access to administrative and judicial remedies to redress non-compliance and violations of the right to food in schools. Non-compliance and violations can relate to:

- delay or failure to deliver food
- non-compliance with food safety rules
- foodborne diseases or food poisoning
- insufficient food rations
- failure to meet nutritional standards
- inadequate structures and equipment
- cases of discrimination in access to food
- corruption in resource management

Regarding the implementation of SFPs involving indigenous communities, some countries have provided judicial protection on the principle of prior consultation with such communities when choosing school feeding operators during the bidding process. Constitutional courts have safeguarded the need to preserve the traditions and cultural identity of indigenous and tribal peoples, recognizing that prior consultation should take place before the selection of the operator of the SFP as established by legislation. (see Box 5.2).

Box 5.2: Judiciary protection of the right to prior consultation of Afro-descendent communities in the School Feeding Programme in Colombia

In 2016, the Constitutional Court of Colombia analysed the implementation of the principle of the 'best interests of the child' vis-à-vis the right to prior consultation of Afro-descendent communities when contracts for School Feeding Programmes were being signed by Governments in their local territories.

Although the Court stressed that the implementation of the principle of the 'best interests of the child' is acceptable as a valid limitation of their right to prior consultation – with the sole objective of ensuring the uninterrupted and immediate provision of the services of these programmes – it decided that in future contracts for the provision of school feeding services, the authorities must ensure a dialogue that respects the fundamental right to prior consultation with the communities involved, and thus ensure that such programmes reflect an integrated approach.

Source: Constitutional Court - Case law T-475 of 2016.

5.1.5.5 The best interests of the child

The term ‘best interests of the child’ is an international principle which broadly describes the well-being of a child. Such well-being is determined by a variety of individual circumstances, such as the age, the level of maturity of the child, the presence or absence of parents, and the child’s environment and experiences. In the context of SFN, this international principle can be applied to guarantee children’s right to adequate food and health, and in particular, adequate nutrition as a fundamental factor for determining the well-being of the child.

Table 5.12: Best interests of the child (Article 3 of the Convention on the Rights of the Child)

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (...)”

States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

Source: Convention on the Rights of the Child, 1989.

National courts in several countries have been applying this international principle to guarantee children’s right to food within the framework of the implementation of an SFP (see Table 5.12 and Box 5.3).

Box 5.3: Best interests of the child – Case law related to school meals in France

On 28 August 2017, the Administrative Court of Dijon revoked the 2015 decision of the city of Chalon-sur-Saône not to offer alternative meals in school canteens when pork is on the menu of the day. The Court grounded the judgement on the basis of the best interests of the child referred to in Article 3 of the Convention on the Rights of the Child. The judge balanced the interest of the child to benefit from a school meal on the one hand, and the technical or financial constraints that this would entail for the municipality. According to the Court, the town’s failure to provide an alternative meal implied that many local Muslim children were left out, which was “not in the spirit of the Convention on the Rights of the Child” nor “in the interests of the children.”

Source: TA Dijon, 28 août 2017, Ligue de défense judiciaire des musulmans et autres, n° 1502100 et 1

See overleaf for a quick checklist and key recommendations related to the opening provisions of a school food and nutrition law.

QUICK CHECKLIST AND KEY RECOMMENDATIONS

1 Guiding questions related to the opening provisions of a school food and nutrition law**Does the SFN law include the purpose of the law?**

- ✓ What are the regulatory objectives established in the SFN law in response to the policy priorities and problems identified by policy makers?
- ✓ What is the scope of application of the SFN law?
- ✓ What are the terms and key concepts defined in the SFN law? Do they refer to international law or existing national legislation?
- ✓ Does the SFN law establish guiding principles to orientate its implementation?

Legal drafters should:

- Assess national policies and strategies that directly or indirectly relate to school food and nutrition to identify the key objectives that the SFN law should contribute to.
- Assess whether national laws already define key terminology related to SFN.
- Establish the definitions taking international law and international standards as a main reference.
- Avoid loose definitions and be as precise as possible.
- Ensure that the substantive provisions of the SFN law develop and establish concrete measures to give effect to the objectives established in the opening provisions.

5.2 RIGHTS AND LEGAL ENTITLEMENTS

Why

As part of the substantial provisions, an SFN law should contain specific provisions on rights and entitlements. As mentioned earlier in Section 3 of this Guide, school-based programmes and policies that promote SFN are key for the realization of children’s human rights that are interrelated (the right to food, the right to health, the right to education and the right to life).

The legal recognition of human rights that are relevant to SFN is often done in very broad terms. To be effective, rights should be articulated so as to confer specific entitlements, or claims to specific goods or services (Kent, 2010). Establishing clear entitlements to school meals and to a healthy food environment provides a more precise definition and understanding of SFN as a right to be implemented through other provisions of the law, thus strengthening legal certainty.

How

An SFN law should explicitly recognize rights and entitlements that will guarantee the accomplishment of the regulatory objectives stated in the law. Beyond the substantive recognition of those rights and legal entitlements, the law should also establish procedures, legal responsibilities and institutional mechanisms to ensure their effective realization.

5.2.1 The universal right to food at school

Considering access to adequate food at school as a right of all school children very often triggers the debate between providing universal coverage or targeting approaches.

Acknowledging the significant importance of this discussion, this Guide does not intend to argue the *pros* and *cons* of universal coverage vs targeting approaches. This decision pertains to government policy, and therefore it is not the scope of the Guide to advocate for one or the other. However, it is essential to understand the human rights legal implications and the obligations for states in order to determine how legislation can effectively comply with international law and standards.

“People might assume that school feeding is intended primarily for children from poor families, but it is important to ensure quality of school feeding for all students. The human right to adequate food, like all human rights applies to all people. School meals are not necessarily free meals, just as the right to food does not necessarily mean free food” (Kent, 2006).

Countries may opt to include in an SFN law, a specific provision establishing access to food at school as a right in order to provide a strong foundation for SFN. Beyond that, other provisions may more precisely detail rights and specific entitlements to school meals (and related aspects mentioned in 5.2.2). The explicit recognition of a right with specific entitlements in an SFN law implies that access to food at school, as a legal guarantee, can be claimed before national authorities (administrative and judicial).

5.2.2 Rights and legal entitlements in the context of school feeding programmes

If social policies and programmes adopt a human rights-based approach, beneficiaries should be entitled to something and government authorities should be obliged to behave in a certain way and to deliver certain goods and services to realize those rights. Students and parents should be able to be active participants in making sure they get that to which they are entitled (Kent, 2006).

“States should define benefits as legal entitlements so that individual beneficiaries are informed about their rights under social programmes and have access to effective and independent grievance redressal mechanisms”.

(Report of the Special Rapporteur on the Right to Food, UN, 2014).

A specific legal provision in an SFN law could, for instance, establish when and how the meals are provided; make specific considerations for students with specific needs; specify the quantity and the quality of school meals (nutritional value); establish the modalities of service (for e.g. take home rations, to be provided at school); specify the menu and composition; the frequency and duration of the school meal service; and the costs (if any).

The following **rights and legal entitlements** (tangible claims on specific goods and services related to SFN) should be included in an SFN law to give effect to a human rights-based approach to SFN. Attention should be paid to avoid including too much detailed information in primary legislation as details could be more aptly included in secondary legislation.

School children should have the right to:

- have access to adequate, safe and nutritious food without discrimination, in conditions of equality and equity;
- be treated with dignity and respect in the exercise of the right to food in the school environment, paying particular attention to individual, cultural, sexual and linguistic diversity as well as to the specific needs of each individual;
- have adequate school canteens, in accordance with the technical criteria established in regulations;
- have access to drinking water in school canteens free of charge;
- receive theoretical and practical education on school food and nutrition and on the benefits of acquiring healthy eating habits throughout the whole student cycle;
- participate and be a fundamental actor in the decision-making processes related to school food and nutrition in educational centres;
- periodically and transparently receive information related to school menus and the origin of the food used in the school feeding service; and
- receive information regarding legal entitlements in the context of school feeding programmes, participation mechanisms and enforceability mechanisms to guarantee the exercise of the right to food in the school environment.

5.2.3 Legal implications of targeting approaches to school feeding programmes

As mentioned earlier, governments may opt to implement targeted SFPs. In principle, human rights standards are not compromised by the use of targeted schemes as a form of prioritization of the most vulnerable and disadvantaged groups.

However, in accordance with human rights standards, the methods of targeting must comply with the principle of non-discrimination, which requires not only that all **eligibility criteria must be objective, reasonable, and transparent** but also entails an obligation to give priority to the poorest of the poor and to avoid stigmatizing beneficiaries (Sepúlveda Carmona, Nyst and Hautala, 2012).

In those cases where the choice has been made to implement SFPs with a targeted approach, the SFN law should contain clear, objective, reasonable and transparent eligibility criteria and procedures for determining those eligible students. In this particular case, legal provisions in the SFN law should also require competent authorities to undertake a periodical review of procedures utilized to identify and register beneficiaries of SFPs to avoid possible exclusion

errors. Accountability mechanisms should be referred to in the SFN law to allow complaint and redress for possible exclusion errors.

In addition, to make sure that SFPs reach everyone who is entitled, the SFN law should require competent authorities to carry out broad outreach and information campaigns to inform beneficiaries of their rights and entitlements, the eligibility criteria and participation requirements, and the available mechanisms for accountability and complaint (Sepúlveda Carmona, Nyst and Hautala, 2012).

In this regard, accountability mechanisms should be accessible and effective to guarantee individual and collective complaint procedures in case of mismanagement or violations of rights.

Table 5.13: Legal entitlements in the context of school feeding programmes

Country	Legal Instrument	Measure
Brazil	Law No. 11.947 establishing the school feeding programme (PNAE), Article 3.	Establishes school meals as a universal right for all students in the public school system.
India	The National Food Security Act No. 20 of 2013, Article 5.	<p>Established that: "every child up to the age of fourteen years shall have the following entitlements for his nutritional needs, namely:</p> <p>(a) in the case of children in the age group of six months to six years of age, one appropriate meal, free of charge, through the local anganwadi so as to meet the nutritional standards specified in Schedule II:</p> <p>Provided that for children below the age of six months, exclusive breast feeding shall be promoted;</p> <p>(b) in the case of children, up to class VIII or within the age group of six to fourteen years, whichever is applicable, one mid-day meal, free of charge everyday, except on school holidays, in all schools run by local bodies, government and government-aided schools, so as to meet the nutritional standards specified in Schedule II.</p> <p>Every school, referred to in clause (b) of sub-section (1), and anganwadi shall have facilities for cooking meals, drinking water and sanitation:</p> <p>Provided that in urban areas facilities of centralised kitchens for cooking meals may be used, wherever required, as per the guidelines issued by the Central Government."</p>

QUICK CHECKLIST AND KEY RECOMMENDATIONS

2 Guiding questions related to rights and entitlements within the school food and nutrition law

Does the law on school feeding explicitly recognize the right of children to adequate and healthy food? Does it provide for the recognition of specific entitlements?

- ✓ What are the procedures and mechanisms established by the SFN law to enable right-holders to claim all goods and services related to SFN?
- ✓ Does the SFN law define clear, objective, reasonable and transparent criteria for targeting approaches in the context of school feeding programmes?
- ✓ What are the institutional and procedural mechanisms established by the SFN law to enforce the substantial provisions contained in the law?
- ✓ How does the SFN law refer to existing accountability mechanisms to protect children's rights, including the right to adequate food?

Legal drafters should:

- Identify whether existing national legislation (including education laws, food security and nutrition laws, social protection laws and legislation on the child) already recognizes certain rights and entitlements related to SFN.
- Identify social protection legislation and avoid potential conflicts and overlaps.
- Identify in the existing national legislation what are the compliance mechanisms, to ensure the enforceability of the SFN law.

5.3 INSTITUTIONAL FRAMEWORK

Why

School food and nutrition involves a wide array of sectors and actors at national and decentralized levels. One of the most frequent challenges in the implementation of school programmes that aim to improve food security and nutrition relates to the lack of coordination, overlaps and conflicting institutional mandates.

The role of national and decentralized institutions and other stakeholders should be clearly defined to avoid challenges that might affect the adequate implementation of SFN related policies and programmes. Legislation helps to establish clear mandates and responsibilities and facilitates the coordination of the various institutions, agencies and actors involved at national and decentralized levels.

How

This section introduces legal recommendations that may help to ensure: i) effective institutional architecture for school food and nutrition; ii) inter-institutional coordination; and iii) participation of stakeholders.

5.3.1 Competent authority

Legislation must designate a specific ministry or agency that will have primary responsibility for implementing the SFN law as well as the related programmes. The lead authority is often the Ministry of Education. In some countries, the leading authority might be assigned to another ministry, such as the Ministry of Social Protection, or to more than one institution.

Frequently, the Ministry of Education and the Ministry of Health are those with a prominent role in the implementation of school feeding and other relevant laws. However, choosing the ministry to be mandated with the function of lead authority depends on many factors including SFN objectives in the country, as well as capacities of national institutions (financial and human). Taking into account that SFN has a cross-sectoral nature, it is recommended that countries establish a board comprised of representatives from different relevant public institutions.

After designating the lead authority, the legislation must define:

- the role of the lead authority
- its functions and duties
- its enforcement powers.

Depending on the country, the role of the lead authority may be to:

- oversee
- coordinate
- implement
- regulate.

Depending on the role of the competent authority as established by the law, some of the duties may be the following:

- ensure the overall oversight of SFN actions in the country;
- review SFN policy formulation to ensure coherence between country realities and policy priorities;
- lead the design of SFN programmes, consulting relevant stakeholders in the country;
- ensure the appropriate management of SFN programme(s) according to national legislation and regulations;
- calculate costs of implementation of SFN programme(s) and prepare the proposal of the annual budget to ensure a budget line for SFN in the Budget Law to be approved in Parliament;
- disburse funds to other agencies and local authorities when applicable;
- ensure the timely procurement and delivery of food supplies to schools;
- coordinate SFN activities with all institutions, agencies and stakeholders involved in the implementation of SFPs;
- ensure the adequate implementation of programme(s) according to SFN legislation and regulations;
- ensure transport of food supplies and logistics related to the functioning of the SFN programme(s);
- undertake internal monitoring and evaluation of the programmes;
- disseminate information and ensure that all stakeholders are aware and know about: i) SFN objectives in the country; ii) the applicable rules and modalities of implementation of the related programme(s); and iii) progress and impact assessments of the programme;
- maintain registries of SFN operators (private sector, NGOs, associations) and deliver authorizations when applicable in compliance with national legislation and regulations;
- train personnel involved in the implementation of the SFN programme(s) in coordination with other relevant authorities;
- respond to petitions and SFN related complaints (mismanagement and human rights violations);
- promote civil society participation in the design, implementation and monitoring of SFN related programmes;
- carry out resource mobilization to ensure complementary funds for SFN in the country;
- present legislative proposals related to SFN as well as legislative amendments required to sectoral legislation that affects SFN;
- develop subsidiary legislation (regulations and standard-setting);
- deliver regular accountability reports to: i) Parliament; ii) civil society iii) the Ombudsperson; iv) Comptrollers Office; and v) Attorney General's Office – and other relevant actors.

Table 5.14: Competent authority for school food and nutrition and its functions

Country	Legal instrument	Competent authority	Functions
Chile	Law N° 15.720/1964 establishing the National Board of School Assistance and Scholarships (Junta Nacional de Auxilio Escolar y Becas – JUNAEB), Article 6.	Junta Nacional de Auxilio Escolar y Becas (JUNAEB) is an agency of the State Administration, responsible for administering state resources destined to children and young people in a biopsychosocial vulnerability condition, so that they enter, stay and have success in the Educational System. JUNAEB outsources the implementation of the school feeding programme to private entities.	Proposing amendments to legislation, regulatory and management functions including monitoring and evaluation. Programme design and budget. Conclude financial cooperation agreements. Prepare the annual report of the institution and request accountability reports from the Provincial and Local Boards. ¹¹
Sao Tome and Principe	Law 4/2012 establishing the PNASE, School Food and Health Programme.	PNASE National Coordination ¹² – attached to the Board of Educational Administration – (BAE) within the Ministry of Education.	Include: i) The annual preparation of the programme budget and its inclusion in the annual budget proposal of the Ministry of Education, which should be submitted to the Ministry of Finance for the preparation of the State Budget; ii) The elaboration of the rules and procedures for implementing the programme; iii) Dissemination of programme activities at national, regional and international levels; iv) Seek additional funding sources; v) Represent PNASE in national, regional and international events; vi) National coordination of the school food and health programme; vii) Monitor and evaluate the implementation of the programme and report to the BAE on the use of funds allocated to the PNASE.

¹¹ Functions are established in Article 6 of Law 15.720 of 1964. This is a non-exhaustive list but reflects some of the most relevant functions in the context of SFN.

¹² The PNASE National Coordination has the following composition: A General Coordinator to be indicated by the minister in charge of education, and Technical Coordination composed of: a) Technical Department; b) Administrative and Financial Department; and c) Logistics Department.

5.3.2 Institutional coordination and public participation


School food and nutrition involves a wide and diverse range of actors at the national, regional and local levels. The coordination of all these actors can be challenging if the mechanisms of interaction are not formally foreseen. Similarly, articulating the citizen participation that is critical to the success of policies and programmes for school food and nutrition requires concrete mechanisms to ensure that the voices of all are heard and that actions are translated into effective coordination.

5.3.2.1 Institutional coordination

Due to the cross-sectoral nature of SFN, it may be necessary and recommended to create an inter-ministerial agency or a coordination board where several ministries can coordinate actions around SFN.

In addition to the Ministry of Education and the Ministry of Health, the Ministry of Finance plays a key role in the implementation of SFN programmes. Increasing linkages of SFPs with local procurements from small-scale farmers, for instance, require also the participation of the Ministry of Agriculture and the Ministry of Trade. In some countries, the Ministry of Social Affairs can also play a key role.

Depending on available resources, existing institutions and institutional capacities, countries might choose to establish a specific council or committee to deal with SFN issues in a coordinated manner. However, very often countries already have coordination structures dealing with multisectoral issues such as food security and nutrition. Other institutional structures coordinating social development and social protection are also relevant for SFN and should be explored before creating new structures.



Boards with a mandate to coordinate cross-sectoral issues are needed and strongly recommended, but it is important to avoid unnecessary multiplication of institutions leading to unnecessary bureaucracy and further budget constraints. Institutions that are already engaged in coordinating food security and nutrition could be used as umbrella structures for coordinating the different institutions involved in SFN-related policies and programmes, instead of creating new ones.

Legislation should define the role of the institution that will be established to coordinate the different institutions and stakeholders around SFN. It can take the form of a committee or a council at national and decentralized level. Depending on its role (advisory, consultative, executive), the legislation shall define its composition and tasks.

One option for legal drafters is to establish an advisory committee on SFN that would include participation of governmental and non-governmental actors (NGOs, private sector, donors, farmers and other concerned stakeholders). In this particular case, the interests of different actors would be represented in this advisory institution which would allow them to be informed and consulted on a wide spectrum of issues related to SFN. The main role of this structure would be to provide recommendations to the competent authority on different topics related to SFN, including proposals for the adoption of relevant legislation.

Another option is to establish a multi-stakeholder decision-making body. In this case, direct participation of stakeholders would be allowed in decision-making processes regarding certain issues established specifically in the law. An extended participation of stakeholders and interested groups in decision-making should be carefully assessed in order to foster participation, while maintaining the regulatory powers and responsibilities at the governmental level.


Vertical coordination with decentralized authorities (federal, state, local, community-level structures) is also essential to ensure good implementation of SFN-related policies and programmes. Involving decentralized authorities in existing structures for coordinating SFN is key for states, regions or districts to be able to learn from each other's experience and have an overall view of the challenges and good practices in implementing SFPs in the country.

Table 5.15: Intersectoral coordination in Cabo Verde and Honduras

Country	Legal instrument	Legislative measure
Cabo Verde	Law No. 89/VIII/2015 establishing the legal regime for school food and health and the National Programme for School Food and Health.	Article 33 of Chapter V on Inter-sectorial articulation establishes that: <ol style="list-style-type: none"> 1. The Government shall establish at national level an intersectoral structure for coordination and articulation of sectoral policies and different interests in the area of school food and health, in accordance with, inter alia, the principles of transversality, integration and multisectoriality. 2. Regional or local structures of articulation may also be set up, including representatives of the education, health and agricultural sectors, municipalities, non-governmental organizations and parents and guardians. 3. The national structure of intersectoral articulation develops partnerships and harmonizes its actions with the National Council for Food and Nutrition Security (CNSAN) created, pursuant to the law, by Resolution No. 111/2013 of 25 October, as amended by Resolution no. 32/2014 of 28 March.
Honduras	Decree No. 125 of 2016, Law on School Feeding.	According to Article 12 of the Law, the Interinstitutional Technical Committee of School Feeding is created for the implementation of actions related to the national school feeding programme. The Committee is integrated by the Undersecretariats of State in the Dispatches of: Development and Social Inclusion, Education, Health, Agriculture and Livestock, Finance, in coordination with the Secretary of State in the Office of General Coordination of Government through the Technical Unit of Food Security and Nutrition (UTSAN) and a representative of the Association of Municipalities of Honduras (AMHON).

5.3.2.2 Public participation

National legislation can include provisions aimed at involving key stakeholders such as parents, teachers, civil society and private sector organizations in SFN programmes. The *State of School Feeding 2013* highlighted that parent's participation in school feeding programmes increases its effectiveness and performance (WFP, 2013). However, duties and responsibilities of civil society need a careful definition in order to avoid overwhelming parents with excessive tasks and responsibilities.

 Taking into consideration that SFN programmes are under a government’s direct legal responsibility, parents should not have to carry out certain activities without being closely supported by a ministerial agency (or relevant institutional body). An example of this is the voluntary preparation of school meals without consideration of the risks and legal responsibilities associated with food safety aspects.

Governments have a responsibility to promote citizen participation but in a responsible manner and therefore legal frameworks must establish legislative measures to support effective participation. To this end, parents and other community members who contribute to the programme on a voluntary basis should be trained and receive legal certification by national or local authorities, to comply with food safety legislation and standards. Parents who may wish to be involved in the implementation of these programmes on an ongoing basis, may also find there a source of employment that should be valued as such.

The role of other actors such as NGOs, international organizations and donors, might be essential in countries that depend on external aid to deliver school meals. Legislation may delegate powers to private entities that can perform certain tasks more efficiently. A memorandum of understanding or a contract can stipulate the tasks and responsibilities to be delivered by the private entity (NGO, private caterer, etc.). Delegated powers and activities can go from supporting the work of government and institutional authorities to performing training, monitoring, or even to implementing the totality of SFN programmes in certain regions or in the entire country.

Table 5.16: Participation in school feeding laws

Country	Legal instrument	Legislative measure
Guatemala	Decree No. 16 of 2017 on School Feeding.	<p>Article 17 regulates the participation of parents' organizations in the food and nutrition education activities promoted by the Ministry of Education. According to Article 17, their duties are the following:</p> <ol style="list-style-type: none"> Represent the educational community of the educational center or jurisdiction to which it belongs. Identify the priority needs of their educational community. Collaborate in the field of their competence to develop national education plans and policies in order to see reflected in them the reality of their environment. Support the execution of the funds of the School Feeding Programme that are transferred to them by the Departmental Directorate of Education of their jurisdiction, in the establishment in question. Favor the culture of management, transparency, and social auditing, through the correct execution and rendering of accounts of the public funds assigned. Strengthen the democratic participation of all sectors within the national education system.

../cont.

Guatemala (cont.)	Decree No. 16 of 2017 on School Feeding. (cont.)	<p>g. Participate in the food and nutrition education activities promoted by the Ministry of Education, through the General Board for the Strengthening of the Educational Community (Dirección General de Fortalecimiento de la Comunidad Educativa).</p> <p>h. Ensure the quality of school feeding.</p>
India	G.S.R. 743 (E) Mid-Day Meal Rules, 2015 as amended, in exercise of the powers conferred by the National Food Security Act, 2013.	<p>Overall responsibility for the programme lies with the Department of School Education and Literacy and State governments and union territories are responsible for implementation.</p> <p>At State level, the rules establish the creation of a State Steering cum-Monitoring Committee for Mid-Day Meal Scheme (SSMC) which shall oversee the implementation of the Scheme with a view to ensure implementation of the Act including the establishment of a mechanism for maintenance of nutritional standards and quality of meals. At the school level, the School Management Committee (SMC) for Monitoring Mid-day Meals Scheme is mandated under the Right to Free and Compulsory Education Act 2009, to monitor the implementation of the Scheme and oversee quality of meals provided to children, cleanliness of the place of cooking and maintenance of hygiene in implementation of MidDay Meal Scheme.</p>

5.3.3 Decentralization

Provisions referring to institutional mandates should also provide clarity between authorities and responsibilities of national government and decentralized authorities.

Before developing a specific law on SFN, a legal assessment should carefully examine the competence and mandate of the different territorial entities. Decentralization of SFN responsibilities can facilitate the emergence of robust and direct forms of community-level participation, thereby strengthening the scrutiny of local governments and fostering more responsive forms of development. However, conflict or confusion over jurisdictional competence between local and central authorities can lead to poor decision-making or abdication of responsibility. In addition, decentralization should be accompanied by strong central oversight to avoid corruption and the control of local elites (OHCHR, 2013). Governments must also ensure that decentralized authorities are trained appropriately and have enough resources to assume their responsibilities.

QUICK CHECKLIST AND KEY RECOMMENDATIONS

3 Guiding questions related to the institutional framework for school food and nutrition**Does legislation define the role of national and decentralized institutions with regard to school food and nutrition?**

- ✓ Does legislation designate a specific ministry or agency that will have primary responsibility for implementing the school food and nutrition legislation as well as the related programme(s)?
- ✓ What is the role of the competent authority in regard to SFN? What functions, duties and enforcement powers are established by the SFN law?
- ✓ Does the SFN law refer to or create an inter-ministerial agency or a coordination board where several ministries can coordinate actions around school food and nutrition?
- ✓ Does legislation define the role of the coordination body and depending on its role (advisory, consultative, executive), does it define its composition and tasks?
- ✓ Does legislation determine the duties of national government and decentralized authorities regarding SFN?
- ✓ To what extent does the law promote and guarantee civil society participation in SFN decision-making?
- ✓ How does the SFN law avoid overwhelming parents and teachers with excessive tasks and responsibilities?

Legal drafters should:

- Identify whether existing coordination institutions for relevant legal areas such as food security and nutrition exist already in the country, and assess if these could be used as a coordination structure for SFN.
- Assess whether the creation of a specific coordination structure for school food and nutrition is needed.
- Examine the competence and mandate of the different territorial entities in order to define the role of national and decentralized authorities with regard to school food and nutrition.

5.4 NUTRITION AND THE FOOD ENVIRONMENT

Why

Good nutrition is key to children's physical and mental development. Targeting school-aged children is critical for attaining some amount of recovery from damage caused by infant malnutrition, improving nutrition, supporting health and school attendance and performance, and for fostering healthy food-related skills, outlooks and practices for children (FAO, 2017).

School-based programmes and policies are important to promote good nutrition among schoolchildren by ensuring that food and beverages available and consumed in schools are safe, of good quality, and are in line with children's nutrition priorities. Healthy school environments should also be ensured, through access to potable water, adequate sanitation facilities and waste disposal. This should be complemented by deworming and infectious diseases vector control, where necessary.

Taking into account the high rates of primary school attendance, school is a relevant access point to improve child nutrition and an important vehicle to reach adolescent girls and address their specific nutritional needs. In some contexts, gender discrimination plays an important role in intra-household food allocation, where girls may receive less food and/or food that is inferior in quality (Haider, 2016). Good nutrition is especially important for adolescent girls who need to be well-nourished for their own immediate development and for the future nutritional demands of childbearing (FAO, 2013b). Therefore, school programmes that aim at improving food security and nutrition require being gender-sensitive, in terms of nutritional needs according to different ages.

How

Mandatory legal instruments can: i) shift local food systems and make them nutrition-sensitive at schools; ii) influence behaviours at an early age through quality school-based food and nutrition education; and iii) limit the exposure of children to highly processed foods or other low nutritional value foods at schools.

A number of countries have strived to create a regulatory environment enabling healthy diets for children. These include, among others, initiatives to establish nutrition standards and guidelines for school meals and other foods available within the school premises, to reduce the marketing of highly processed and low nutritional value foods to children, and to integrate quality food and nutrition education within the school system, and to consider food fortification at school.

This section only addresses the type of legal interventions that can be directly applicable to or that have an impact in schools. Some of the more concrete legislative measures that have a direct impact on SFN are the following:

- A state may wish to include a legal provision in its SFN law stating that all food distributed and sold in schools must not only be safe, but also in line with children's nutritional needs and priorities. Specific standards would be developed in the implementing regulations. If there are already general nutritional standards developed on the basis of another legal instrument, the SFN law can in this case, directly refer to those applicable standards.

- Countries may decide to enact strict rules prohibiting and penalizing the marketing of highly processed foods with low nutritional value at schools, particularly those high in saturated fat, salt and added sugars.
- School food and nutrition should be flanked by environmental health measures to minimize or eliminate potential risks such as unsafe water and sanitation, vector-borne diseases such as malaria, yellow fever and dengue fever, as well as other environmental hazards that can have a negative impact on student's health and nutritional status.

5.4.1 Nutrition guidelines and standards for school meal programmes

Specifically, the objective of nutrition guidelines and standards that apply to school meal programmes is to ensure that the food provided by the programmes meets an appropriate amount of the daily energy and nutrient requirements of the targeted children, and respond to programme objectives (FAO, 2019b).

Nutrition standards should be a central part of school feeding programmes, as these have critical linkages with the whole school, including food procurement, meal planning and food preparation, capacity development of foodservice staff, the food environment, community involvement and food and nutrition education. These can be food or nutrient-based.

Nutrient-based standards specify minimum and/or maximum quantities of energy and nutrients that the meals should provide; while, food-based standards specify the quantities, frequency and types of food or food groups that should be included or excluded in the meals (FAO, 2019b).

There are internationally recommended standards for the different meals (e.g. one meal should cover 30 percent of key nutrient requirements of children according to age), but these may not be suitable for all contexts or to achieve the different programmatic objectives. A solid understanding of the current situation of the school feeding programme and the context in which they operate, is key to devise nutritional standards that are feasible, respond to the actual needs and are realistic.

From a legislative perspective, nutrition standards that are applicable to schools can be regulated through different legal instruments. They can have their legal basis in the health code and be further developed through health regulations. They can also have their legal basis in an SFN law, which can:

- Establish that the competent authority shall develop regulations establishing nutritional standards for school meals (taking into account the technical nature of nutrition standards, these should be developed through subsidiary legal instruments).
- Establish restrictions on highly processed and low nutritional value foods to be delivered by school feeding programmes.

Table 5.17 includes some examples of how nutrition standards for school feeding programmes are regulated through national legislation in some countries.

Table 5.17: Nutrition standards for school feeding programmes in national legal systems

Country	Regulatory instrument	Legislative measure
Brazil	Resolution No. 6 Establishing the Provision of School Meals to Students in Basic Education under the National School Feeding Programme - PNAE.	<p>At least 75% of the funds used under the PNAE must be allocated to the purchase of fresh or minimally-processed foods; a maximum of 20% may be allocated to the purchase of processed and ultra-processed foods; and a maximum of 5% may be allocated to the purchase of culinary ingredients.</p> <p>The Resolution establishes an increase of the requirement of weekly provision, for each student, of fruits and vegetables in their natural state.</p> <p>Article 22 prohibits the use of funds within the scope of the PNAE for the acquisition of ultra-processed food and beverages such as the following: artificial soft drinks and refreshments, beverages or concentrates based on guarana or gooseberry syrup, ready-to-consume teas and other similar beverages, cereals with additives or sweeteners, candies and similar confectionary, chocolate in bars or granulated form, biscuits or filled cookies, cakes with iced toppings or fillings, cereal bars with additives or sweeteners, icecream, gelatine, seasonings with monosodium glutamate or sodium salts, mayonnaise, and powdered or reconstituted foods.</p>
Colombia	Resolution No. 29452 of 2017 Establishing the Technical-Administrative Guidelines, Standards and Minimum Conditions of the School Feeding Programme.	<p>Article 2 establishes that the technical and administrative guidelines, standards and minimum conditions for the provision of the service and execution of the school feeding programme are mandatory for territorial entities, operators and all actors of the programme.</p> <p>Article 5 establishes that the distribution of the total caloric value for the ration prepared on site will be as follows: Protein: 14%, fat: 30%, carbohydrates: 56%. For the industrialized ration, the distribution of the total caloric value will be divided in the following way: Protein: 12%, fat: 28%, carbohydrates: 60%.</p> <p>The food supplement morning/afternoon must provide at least 20% of the daily recommendations for energy and nutrients, according to age group.</p> <p>The food supplement lunch must provide at least 30% of the daily recommendations for energy and nutrients, according to age group.</p> <p>The industrialized ration must provide at least 20% of the daily recommendations of energy and nutrients, according to age group.</p>

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<p>United Kingdom of Great Britain and Northern Ireland</p>	<p>Requirements for School Food Regulations 2014 (England);</p> <p>Nutritional Requirements for Food and Drink in Schools Regulations 2008 (Scotland);</p> <p>Nutritional Standards for School Lunches 2007, and Nutritional Standards for Other Food and Drinks in Schools 2008 (Northern Ireland);</p> <p>Healthy Eating in Schools (Nutritional Standards and Requirements) Regulations 2013 (Wales).</p>	<p>The School Food Standards in England are food-based and apply to all food and drink provided to pupils on and off school premises and during an extended school day (up to 6pm), including school trips, breakfast clubs, tuck shops, mid-morning break, vending and after school clubs.</p> <p>Scotland has reviewed its Nutritional Regulations 2008 and the revised Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2020 will come into force on 8 April 2021. Scottish school food standards are both nutrient and food based.</p> <p>The Nutritional Standards for School Lunches in Northern Ireland were extended to include all other food and drinks provided in school such as breakfast clubs, tuck shops and vending machines. The Department of Education has launched a public consultation on proposed updates to these standards.</p> <p>The Healthy Eating in Schools (Nutritional Standards and Requirements) (Wales) Regulations 2013 set out nutrient based nutritional standards for an average school lunch and food and drink requirements throughout the school day. The requirements describe the types of food and drink that must be provided, restricted and not permitted.</p>
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To achieve improved nutrition among schoolchildren, governments must also look to the full food supply chain, from production and processing through procurement and catering, to consumption. A holistic food systems approach can ensure children's access to nutritious, diverse and safe food products.

Governments can undertake diverse legal measures to have beneficial effect on the food systems and school food supply. For example, legislation can require that the food purchased, provided, or made available in schools, complies with nutritional standards. Governments can also require food suppliers and catering services to follow mandatory nutrition standards to ensure that food and menus supplied in schools are healthy and nutritionally balanced. Another option for governments is to develop subsidy schemes to promote the consumption of healthy foods, such as programmes to distribute fruits and vegetables at schools, or measures to tax unhealthy foods to reduce the consumption of energy-dense nutrient-poor foods, such as a tax on sugary drinks and high calorie food. Some country examples are mentioned further in Table 5.19 related to nutrition standards for food available within school premises in national regulations.

5.4.2 Food fortification

Micronutrient deficiencies (FAO, 2017) are a widespread form of malnutrition, partially due to inadequate intake of fruits, vegetables, animal-source foods and other micronutrient-rich foods, among others.

In cases where food fortification is chosen as one of the policy options to achieve the objective of combatting micronutrient deficiencies, fortification programmes can be made mandatory or voluntary within the regulatory limits set by the government. Fortification can target the general population or a specific vulnerable group of the population.

Food fortification is defined by FAO and WHO as the “practice of deliberately increasing the content of an essential micronutrient, i.e. vitamins and minerals (including trace elements) in a food, so as to improve the nutritional quality of the food supply and provide a public health benefit with minimal risk to health.”

Since SFPs can act as platforms to provide fortified foods to schoolchildren, such a legal provision could also be included in an SFN law (FAO, 2017). Collaboration between the government, the food industry, public distribution programmes and technical oversight agencies, is needed to ensure that food fortification programmes are considered and implemented as part of the broader sustainable framework to address malnutrition among schoolchildren.

Box 5.4: Fortification of school meals in India

Fortification has acquired considerable traction in India over the past two years. It is being promoted through both, the open market and the government safety programmes such as the Integrated Child Development Services (ICDS), the Mid-Day Meal Scheme (MDM) and the Public Distribution System (PDS).

In October 2016, the Food Safety and Standards Authority of India (FSSAI) operationalized standards for fortification of five staples, namely Wheat Flour and Rice (with Iron, Vitamin B12, Folic Acid), Edible Oil, and Milk (with Vitamin A and D), and Salt (with Iron in addition to Iodine) and released the F+ logo as an identity of the fortified food. The Food Safety and Standards Authority of India (FSSAI) set up a scientific panel on “food fortification and nutrition” to help fight malnutrition in the country.

In 2018, the Food Safety and Standards Authority of India approved the Food Safety and Standards (Fortification of Foods) Regulations, establishing that Food Business Operators shall comply with all the provisions of these regulations by 1 July 2019 (date extended by FSSAI).

Key central ministries such as the Ministry of Women and Child Development have mandated the use of Fortified Edible Oil, Double Fortified Salt and Fortified Wheat Flour in Integrated Child Development Scheme (ICDS) and Mid-Day-Meal (MDM) respectively. Further, Ministry of Human Resource Development of India has also advised all States/UTs especially those States/UTs that are distributing wheat flour through Public Distribution System (PDS), to distribute fortified wheat flour through PDS.

Source: FFRC, 2018.

5.4.3 Food environment and marketing regulation

Improvement to the nutrition quality of foods available within and around school premises (e.g. canteens, school shops, vending machines, etc.) and the food that schoolchildren bring from their homes, can promote healthy food environment.

Children are particularly vulnerable to the influence of advertising because they are cognitively less able to differentiate between information and marketing. Legislative measures are therefore needed to protect vulnerable children from excessive marketing exposure.

Schools are an increasingly important venue for marketing and brand promotion by food companies. In-school marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt can encompass the following:

- use of vending machines;
- branding of school catering menus;
- branding of school signs or stadium signs;
- use of vouchers as educational rewards;
- donation of branded school or gym equipment;
- offering of school materials in return for food purchases;
- sponsorship of school events or fairs, or sponsorship in school publications such as yearbooks or event programmes;
- sponsorship of school vehicles.

In-school marketing applies not only to activities on the school premises, but also may apply to any school-organized events, activities or trips that may occur outside the school grounds or outside of school hours (WHO, 2012). See Table 5.18 for a more detailed list of in-school marketing.

Table 5.18: Categories of commercial activities in schools	
Product sales	
Product sales benefiting a district, school, or student activity	<ul style="list-style-type: none"> • Exclusionary contracts or other arrangements between district consortia, school districts, or schools and bottlers to sell soft drinks in schools or on school grounds. • Contracts or other arrangements between districts or schools and fast food companies to sell food in schools or on school grounds. • Contracts or other arrangements between districts or schools and companies providing school pictures, yearbooks, caps and gowns, or gym uniforms.
Cash or credit rebate programmes	<ul style="list-style-type: none"> • Programmes that award cash or equipment to schools in proportion to the value of store receipts or coupons collected by the schools. • Credit or shopping card programmes that award a percentage of the amount of customer charges to a school designated by the customer. • Internet shopping programmes that donate a percentage of a customer's charges to a designated school.
Fundraising activities	<ul style="list-style-type: none"> • Short-term sales of candy, magazines, gift wrap, cookie dough, concession items or similar by parents, students, or both, to benefit a specific student population or club.

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Direct advertising	
Advertising in schools, in school facilities and on school buses	<ul style="list-style-type: none"> • Billboards and signs in school corridors, sports facilities, or buses. • Product displays. • Corporate logos or brand names on school equipment, such as marquees, message boards, scoreboards, and backboards. • Advertisements, corporate logos, or brand names on posters, book covers and student assignment books.
Advertisements in school publications	<ul style="list-style-type: none"> • Advertisements in sports programmes, yearbooks, school newspapers and school calendars.
Media-based advertising	<ul style="list-style-type: none"> • Televised advertisements aired by TV stations seen in schools. • Computer-delivered advertisements by commercial advertisers and commercial search engines. • Advertisements in commercial newspapers or magazines.
Product samples	<ul style="list-style-type: none"> • Free snack food or personal hygiene products.

Source: WHO, 2012.

As mentioned earlier in this Guide, the *Set of Recommendations on the Marketing of Food and Non-alcoholic Beverages to Children* presented to the World Health Assembly, urged Member States to identify the most suitable policy approach given national circumstances, and to develop new policies or strengthen those existing that aim to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt (WHO, 2012). The Recommendations distinguish two possible types of approaches for policy development depending on national circumstances and resources in Member States: i) a comprehensive approach; and ii) a stepwise approach (Recommendation 3, WHO, 2010), as follows:

- i) *A comprehensive approach* means that Member States should restrict **all forms of marketing** to children of foods which are high in saturated fats, trans-fatty acids, free sugars, or salt.
- ii) *A stepwise approach* implies that **some form of risk assessment and prioritization is undertaken** in order to identify different forms and types of marketing and the impact of such marketing. Policies are then developed which prioritize action to control the marketing practices, the highest risk being top priority. Regulatory measures to address marketing at school fit in this category, prioritizing a specific place where children gather.

Depending on the country, legislation aiming at protecting children against the exposure to marketing may be included in different areas of law, such as:

- public health legislation;
- child protection legislation;
- food labelling, composition and distribution;
- consumer protection and consumer rights regulations;
- planning and zoning laws;
- food retailing legislation;
- school regulations.

In the context of school related regulatory interventions, legislation can require the setting of mandatory standards for foods available and sold in schools and in their immediate vicinity, including specific bans on certain food products or vending machines. See Table 5.19, which includes country examples of the development of nutrition standards for foods available within school premises.

Country	Regulatory instrument	Implementation measure
Bahrain	2016/2017 Food Canteen List.	The Ministry of Health of Bahrain developed and applies a mandatory list of permitted, conditionally allowed, and prohibited foods for public elementary and secondary schools. For drinks, only unsweetened 100% fruit juice, water, milk and milk drinks are permitted; fruit drinks, soft drinks and energy drinks are prohibited. Fresh fruits and vegetables are on the list of permitted foods. Conditionally allowed foods must comply with certain criteria, such as not using trans-fats, using low fat cheese instead of cream cheese for sandwiches and limiting portion size. Prohibited foods include processed meat, potato chips, mayonnaise, puff pastries, and confectionery.
Chile	Law 20.606 of 2012 on Nutritional Composition of Foods and their Advertising.	Chile prohibits the sale of foods and beverages high in calories, saturated fat, sugar and sodium in schools. The definitions of calories, saturated fat, sugar and sodium content considered "high" in food and beverages are found in the regulatory norms.
Lithuania	Order V-964.	The Lithuanian Ministry of Health sets catering standards for preschools and secondary schools based on food and nutrient-based standards. For example, to promote the consumption of healthy foods, a fruit or vegetable option must be offered at all meals and schools must provide drinking water. Similarly, as a means to discourage the consumption of nutrient-poor foods, "oil-boiled" foodstuffs, sweets and savoury pastry are prohibited, as well as soft drinks.
United Arab Emirates	The School Canteen Guidelines for the Emirate of Abu Dhabi (2011-12).	The Guidelines, which are set and revised by a joint committee of representatives from the Abu Dhabi Education Council, the Abu Dhabi Health Authority and the Abu Dhabi Food Control Authority, establish the requirements vendors must meet to obtain a licence to operate in public and private school canteens. The Guidelines apply to both nutrient- and food-based standards. They include sample menus and a list of permissible and banned foods by category including energy-dense foods, soft drinks and fruit punch, as well as trans fats, mono-sodium glutamate (MSG), preservatives, colours and artificial flavours, caffeine and hot and spicy sauces. The Guidelines also limit the calorie, fat and sugar content of school food, and set minimum amounts for macro and micronutrients.

Source: World Cancer Research Fund International, Nourishing Framework database, 2019.

Governments have at their disposal multiple means of addressing the adverse influence of marketing on children at school including statutory regulation, government guidelines, and self-regulation. A description of those three types of regulatory interventions are included in Table 5.20.

The different regulatory approaches mentioned previously are not necessarily mutually exclusive; many possible combinations of approaches exist, and most countries are unlikely to take a single route. The different approaches are commonly associated with certain advantages and disadvantages. (WHO, 2012).

Statutory regulation requires uniform implementation and compliance by all market actors, and it establishes government's responsibility both to protect the health of children, and to set definitions in policy according to public health goals and challenges – as well as to ensure policy is legally enforced. With a statutory approach, government, or the public sector, carries the cost of policy development as well as compliance monitoring and enforcement (WHO, 2012).

Type of regulation	Description
Statutory regulation	<p>Texts enshrined in laws or statutes, or rules designed to fill in the details of the broad concepts mandated by legislation.</p> <p>Development, promulgation, and enforcement are the responsibility of a government or mandated body.</p> <p>Can be used to implement restrictions or prohibitions, including advertising bans, which prohibit the quantity or content of specified forms of advertising through specified media.</p>
Government guidelines	<p>Guidelines issued or implemented by a government or mandated body have no legal backing.</p>
Self-regulation	<p>Regulation that is led, funded and administered by the industries concerned.</p> <p>Two basic elements: A code of practice that governs the content of marketing campaigns; and a process for the establishment, review, and application of the code of practice, usually in the form of a "self-regulatory organization" set up by the advertising and media industries, and in many cases involving the companies that use advertising to promote their products or services.</p> <p>Usually exists independently of government regulation but may be mandated by government.</p> <p>Used only rarely to impose restrictions.</p> <p>Self-regulation is sometimes used to refer to voluntary codes developed by individual food companies, but they cannot be described strictly as self-regulation because they usually lack a semi-independent process for the establishment, review and application of the code of practice.</p>

Source: Hawkes, 2007b.

In an approach where private sector leads in the implementation process or participates through co-regulatory mechanisms, the cost of policy development and compliance monitoring and

enforcement can be lower for governments. Non-statutory approaches may be faster to develop and may also be adapted more quickly to changes in the marketing environment (WHO, 2012). However, it can be difficult to gain agreement across industry groups. While self-regulation can effectively assist responsible advertising to children, it does not address the amount and effectiveness of food marketing experienced by children (Hawkes, 2007). Besides, the industry itself may not remain committed if pressure from policymaking decreases (Mello *et al.*, 2008).

Within statutory regulation, two main avenues have been identified for regulating the advertisement of low nutritional value foods:

1. Regulations that aim to **reduce the intensity of marketing** for energy-dense, nutrient-poor foods **clearly targeted at children**. This category comprises regulations that limit food marketing to children in specific places, times and techniques (e.g. in child-specific settings, such as schools and/or specific to techniques widely used to target children, such as gifts and collectables). This category also includes regulations that would reduce the incentives for the food and advertising industries to market food to children, such as a tax on advertising of energy-dense, nutrient-poor foods (which could also generate funds for nutrition education and health promotion) (WHO, 2012).
2. Regulations that aim to significantly **reduce the quantity and effectiveness of marketing** for energy-dense, nutrient-poor foods **experienced by children in any place, at any time, and using any technique**. This category comprises more comprehensive prohibitions, i.e. prohibiting the marketing of energy-dense, nutrient-poor foods in general, prohibiting the commercial marketing of any food and drink to children, or prohibiting all commercial promotion to children (WHO, 2012; Hawkes, 2007).

Evidence suggests that regulatory intervention in this area tend to be strongest when it originates with a legislative mandate and give explicit implementation responsibilities to an administrative agency (Mello *et al.*, 2008). Self-regulation in this area is considered to be rather ineffective, so it is recommended that self-regulation is linked to statutory legislation establishing mandatory rules applicable to food industries. In terms of regulatory effectiveness, research shows that very often regulations do not include monitoring mechanisms to evaluate the progress and impact of such measures. Therefore, legal drafters and regulators should ensure the inclusion of monitoring and enforcement mechanisms to ensure compliance with the regulations. Table 5.21 provides some examples of how countries regulate marketing to children in schools.

Country	Legal instrument	Legislative measure
Brazil	Resolution 163 Conanda, 13 March 2014 as enforced by the Consumer Defense Code Law 8078/1990 and the Child and Adolescent Statute Law 8069/1990.	According to Art. 2 § 2, advertising and marketing communication within childcare and primary education institutions, including in their school uniforms or teaching materials, is considered abusive. Abusive advertising is defined as a communication intended to persuade children to consume a product or service using strategies such as childish language, children's songs or music sung by children, child representation, people or celebrities that appeal to children, comics or animations, dolls or puppets, promotions using prizes, collectible gifts, competitions or games that appeal to children.

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Hungary	Act XLVIII on Basic Requirements and Certain Restrictions of Commercial Advertising Activities (2008), Section 8.	Prohibits all advertising directed at children in kindergartens, elementary schools and school dormitories.
Uruguay	Law No 19,140 Healthy foods in schools.	Prohibits advertisements and marketing on schools' premises of foods and drinks not featured on the list of healthy food and drink items published by the Ministry of Public Health. The law prohibits advertising in all forms, including posters, billboards, use of logos/brands on school supplies, sponsorship, distribution of prizes, free samples on school premises and the display and visibility of food.
France	Law No. 2004-806, Article 30.	Prohibits vending machines for beverages and food products that are subject to payment and which are accessible to students in educational establishments.
Mauritius	Food (Sale of Food on Premises of Educational Institutions) Regulations 2009 (G.N. No. 94 of 2009).	Bans all foods not specifically permitted in the law from sale on the premises of any educational institution. This includes all soft drinks and unhealthy snacks, such as deep-fried sandwich fillings.
Slovenia	School Nutrition Law (2013).	Prohibits vending machines on school property. The law has a two-fold objective to reduce the consumption of unhealthy foods by children and to eliminate the marketing space available on the exterior of vending machines. The ban is meant to complement other measures to improve nutrition among schoolchildren, such as food standards, subsidies for school meals, cross-curriculum nutrition education, and a school fruit programme (World Cancer Research Fund International, 2017b).

Source: WCRF, NOURISHING framework database. Last update on May 2019.

5.4.4 Restrictions on the retail environment

As part of their initiatives to improve nutrition among schoolchildren, governments can use public planning laws or legislation regulating commercial licensing to set incentives and rules for a healthy retail and food services environment for schools. This can be a particularly fruitful avenue for change because the neighbourhood food retailers and outlets are the means through which children access their food supply, and the availability of specific foods inevitably influences their choices. For example, governments can restrict the kinds of foods permitted to be sold within schools and at school events. Governments can also use zoning or public planning laws to restrict the development of hot food take-away outlets, fast-food outlets and other energy-dense nutrition-poor food retailers within a certain perimeter of school grounds.

Another option available to governments to ensure a health-promoting school retail environment is to establish rules on nutrition labelling, including through 'traffic light' systems or other easily understood symbols. These rules can be used as a means to improve the health status of children by providing them with the information necessary to make healthy nutrition choices.

QUICK CHECKLIST AND KEY RECOMMENDATIONS

4 Guiding questions related to nutrition and food environment**To what extent does national legislation shift food systems and make them nutrition-sensitive in schools?**

- ✓ Does the SFN law unambiguously limit the exposure of children to highly processed foods or other low nutritional value foods in schools?
- ✓ Does national legislation establish mandatory nutritional standards that are applicable to schools? Does the SFN law require compliance with those standards?
- ✓ Does national legislation restrict the development of hot food take-away outlets, fast-food outlets and other energy-dense nutrition-poor food retailers within a certain perimeter of school grounds?
- ✓ Does national legislation regulate public planning or commercial licensing to set incentives and rules for a healthy retail and food service environment within and around schools?
- ✓ Does national legislation establish rules on nutrition labelling to improve the health status of children by providing them with the information necessary to make healthy nutrition choices?

Legal drafters can:

- Include a provision in the SFN law stating that all food distributed and sold in schools must not only be safe, but also nutritious.
- Include a provision in the SFN law to mandate the competent authority to develop specific nutritional standards for school meals. These can be regulated through different legal instruments such as the Health Code, a food security and nutrition law or through regulations of the SFN law.
- Include a legal provision requiring food suppliers and catering services to follow mandatory nutritional standards to ensure that food and menus supplied in schools are healthy and nutritionally balanced.
- Include a provision establishing food fortification as a legal requirement in certain products that are distributed in schools. An SFN law can also establish this legal requirement for a specific group of the school population (age/gender).
- Establish restrictions on highly processed, low nutritional value foods to be delivered by school meal programmes.
- Protect children from excessive marketing exposure by delegating the competent authority to adopt regulations to reduce the incentives for the food and advertising industries to market food to children, such as a tax on advertising of energy-dense, nutrient-poor foods. These sanctions could also generate funds for nutrition education and health promotion.
- Set mandatory standards for other foods (competitive) available and sold in schools and in their immediate vicinity, including specific bans on, for example, vending machines.

5.5 SCHOOL-BASED FOOD AND NUTRITION EDUCATION

Why

School-based food and nutrition education (SFNE) has been recognized internationally for its potential to develop and foster children's capacities to engage in and maintain healthy food-related practices. These capacities are critical to improve diets and prevent all forms of malnutrition, when accompanied by an enabling food environment, and when supported by positive household and community influences.

In the context of SFN, the integration of quality SFNE not only favourably impacts children and their families' practices and outlooks, but also enhances the effects of food environment policies and interventions. Therefore, SFNE is a key ingredient for holistic programmes.

How

To have a long-lasting improvement on food outlooks and practices, SFNE must be well designed and closely monitored. The quality of SFNE largely depends on:

- being grounded upon a good analysis of the situation (including nutrition issues, consumption patterns, common knowledge, attitudes, perception, practices, obstacles, motivations and influences of children, parents and school community actors);
- setting real-life and practical learning aims;
- the approach, which should be mostly skill and practice-based, making use of children's own experiences, and building on motivations;
- close involvement of families and community;
- adequate intensity and duration in the school curriculum;
- Long-term cumulative programming (ideally), through all school grades;
- capacities of front-line educators (e.g. teachers, NGO staff, etc);
- maintaining explicit linkages to food provision and food environment measures (school meal nutrition standards, regulation and sale of marketing, etc.).

Different avenues exist for integrating quality food and nutrition education into the school system, including as a stand-alone subject in the curriculum, across the total school curriculum, within a specific subject, via school meals programme(s), or through extracurricular or project-based activities.

Independently of the avenue used, legislation is required to ensure that the school system prioritizes SFNE and dedicates the necessary resources to adhere to minimum criteria of quality for obtaining expected results. SFNE should be articulated in an SFN law, but it can also be integrated into legal instruments of varying nature, as illustrated in Table 5.22.

Legislation that is supportive of SFNE should clearly define: main objective (particularly in terms of practices and not only knowledge); scope; main sectoral responsibilities; minimum standards of quality; main priorities to address; minimum time requirement in the curriculum; and capacity requirements of front-line educators.

Table 5.22: School-based food and nutrition education		
Country	Legal instrument	measure
Argentina	Food Disorders Law (Law No. 26396 of August 13, 2008, Article 6).	<p>The Ministry of Health shall coordinate with the Ministry of Education and the Ministry of Social Development:</p> <ul style="list-style-type: none"> a) The incorporation of Nutritional Food Education (EAN) into the education system at all levels, as well as measures that encourage physical activity and avoid sedentary lifestyle, and the promotion of a healthy school environment. b) The training of educators, social workers, health workers and other community operators in order to train agents able to: <ul style="list-style-type: none"> 1. Contribute to the training, improvement and updating of basic knowledge about food issues. 2. Adequately detect situations of vulnerability and promote actions and strategies to address them through appropriate guidance and / or referral. c) The holding of workshops and meetings to inform parents about issues related to the prevention of eating disorders, and the dangers of unhealthy lifestyles.
Bolivia (Plurinational State of)	Law on School Feeding in the Context of Food Sovereignty and the Plural Economy (Law No. 622 of December 29, 2014, Article 9).	The central government has, among others, the responsibility to insert contents on nutritional food education into the curricula of the Plurinational Educational System, and to implement it progressively.
Chile	Law on Nutritional Composition of Foods and their Advertising (Law No. 20606 of June 22, 2012, published in the Official Gazette of July 6, 2012; Article 4).	Establishes that preschool, primary and secondary education establishments in the country must include, at all levels and teaching modalities, didactic and physical activities that contribute to developing habits of healthy eating and warn about the harmful effects of an excessive diet in fats, saturated fats, sugars, sodium and other nutrients whose consumption in certain quantities or volumes can represent a health risk. It also states that educational establishments of the country should incorporate physical activity and sports practice, in order to encourage their students in the habit of an active and healthy life.


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Mexico	General Education Law, 2019.	<p>Stipulates that the Secretariat of Public Education of the Federal Public Administration (Secretariat) shall establish the foundations to promote healthy lifestyles including physical activity, school sports, physical education, good nutritional habits, among others, in order to prevent, address and counteract, where appropriate, student's overweight and obesity. With regard to the promotion of school health, the Secretariat will consider the Official Mexican Standards issued by the Secretariat of Health to this effect.</p> <p>It also establishes that cooperatives that operate with the participation of the educational community shall be committed to promoting healthy lifestyles with regard to students' nutrition and shall operate in accordance with the guidelines established by the Secretariat and other applicable provisions.</p>
Japan	The School Lunch Act (2008); Basic Law on Shokuiku (2005).	<p>Aims to promote dietary education in schools and nurseries. The name of the programme translates to diet (Shoku) and growth and education (iku). Diet and nutrition teachers are trained in professional registered dietician programmes at universities. The goal of the programme is to foster the understanding, decision-making and eating habits necessary for a healthy diet.</p>

5.5.1 School gardens

School gardens can also be commonly used by countries as learning platforms for food and nutrition education. They are usually cultivated areas within or near schools, tended to at least in part by schoolchildren. School gardens can be established in legislation as a means to achieve educational purposes to: i) show children how to grow a variety of foods; ii) demonstrate to children and their families how to extend and improve diets with home-grown foods; iii) increase children's preference for and consumption of vegetables and fruits; and iv) to enhance school meals with micronutrient-rich vegetables and fruits (FAO, 2010).

For those countries that envisage using the food coming from school gardens as a complement for school meals, it is key to remember that food safety is a priority for all food served in schools and products that come from school gardens are no exception. Food from school gardens has the shortest physical distance to travel from harvest to plate, a food safety benefit. However, good growing, harvesting and storage practices should be followed when implementing school gardens, in accordance with food safety legislation (see Section 5.6 on food safety).

 School gardens should primordially remain an educational activity that could also be used to teach different subjects (i.e. biology, maths, chemistry) and should avoid abusing scarce time of teachers and parents. Children can undertake these activities for educational purposes while not for production purposes. In that case, and if not properly regulated, the activities in school gardens could risk child labour issues.

Some of the legal issues to be considered when regulating school gardens are:

Scope of school gardens

- goal and purposes of school gardens (educational, economic, food security and nutrition);
- definition of school gardens;
- type of school gardens;
- physical location: within/outside school grounds.

Institutional framework and governance

- clear defined legal responsibilities of government institutions;
- mechanisms of coordination and participation of the different stakeholders;
- mechanisms for monitoring and evaluation;
- accountability mechanisms;
- funding sources.

Linkages of school gardens with education, food security and nutrition

- linkages with national education programmes and school feeding programmes;
- curricula adjustments to ensure adequate time allocated to school gardening activities and integration of school gardening with the rest of the curriculum subjects and activities;
- consistency with nutrition guidelines and standards.

Operation of school gardens

- responsibilities and institutional arrangements;
- partnerships with non-profit organizations and community members including associations and cooperatives (particularly women's organizations);
- development, management and maintenance of the school garden (labour, land development, fencing, irrigation, etc.);
- type and intensity of students' activities related to school gardens vis-à-vis child labour (international conventions and national legislation).

Access to resources

- access to land (property and user rights, maintenance obligations);
- access to water;
- access to other inputs (seeds, fertilizers, etc.).

Use of food produced in school gardens

- authorization or prohibition to use school-grown produce in school meal lunches, and by school cafeterias.

Food retail

- authority of the school to sell food grown in their school garden;
- restrictions for certain foods that may carry particular risks;
- use of the revenues from the sale of produce.

Food safety requirements

- safe agricultural practices;
- rules and standards for the storage, handling, and preparation of food, including produce.

Rules and procedures on donation of foods

- applicable if produce of school gardens is donated to food banks.

Government support

- grants supporting school gardens;
- technical assistance to schools, food service personnel, and non-profit entities;
- equipment, training and education, and training materials.

Liability issues and insurances

- liability for injury, death or damages caused while participating in farm-to-school or school garden activities;
- risks involved with injuries and illnesses caused by the ingestion of food sold through school gardening and through the donation of foods.

Table 5.23 illustrates how school gardens have been regulated in some countries at state level.

Country	Legal instrument	Measure
State of Washington, United States of America	Senate Bill 6483 Enacting the local farms-healthy kids and communities Act.	<p>Section 2. (1) A farm-to-school program is created within the department to facilitate increased procurement of Washington grown food by schools. (2) in consultation with the department of health, the office of the superintendent of public instruction, the department of general administration, and Washington State University, shall, in order of priority: (...) (f) support efforts to advance other farm-to-school connections such as school gardens or farms and farms visits.</p> <p>New section, section 7: (1) School districts may operate school gardens or farms, as appropriate, for the purpose of growing fruits and vegetables to be used for educational purposes and, where appropriate, to be offered to students through the district nutrition services meal and snack programs. All such foods used in the district's meal and snack shall meet appropriate safety standards. (2) If a school operates a school garden or farm, students representing various student organizations, including but not limited to vocational programs such as the Future Farmers of America and 4-H, shall be given the opportunity to be involved in the operation of a school garden or farm. (3) When school gardens or farms are used to educate students about agricultural practices, students shall be afforded the opportunity to learn about both organic and conventional growing methods.</p>

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<p>State of California, United States of America</p>	<p>California Education Code § 51795–51797 and § 51798.</p>	<p>Recognizes the value of school gardens to student education and establishes the Instructional School Gardens Program under the State Department of Education. The regulation calls for the establishment of an advisory committee and permits school districts to apply for grants of up to USD 2 500 “per school site” to create school gardens. Large schools which educate more than 1 000 students may receive grants of up to USD 5 000. Within six months of spending a grant, the appropriate educational body must submit a report to the Superintendent regarding how the money was allocated.</p> <p>§ 51798 authorizes a school district, charter school, or county office of education that is operating a school garden to sell produce grown in the school garden, if the school district, charter school, or county office of education complies with applicable federal, state, and local health and safety requirements for the production, processing, and distribution of the produce.</p>
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QUICK CHECKLIST AND KEY RECOMMENDATIONS

5 Guiding questions related to School Food and Nutrition Education

Does the SFN law include provisions on school-based food and nutrition education?

- ✓ To what extent does the SFN law aim at influencing behaviours and developing children’s capacities to engage in and maintain healthy food-related practices from a young age?
- ✓ Does national legislation promote a skill development and practice-based approach to food learning, making use of children’s own experiences, and building on motivations?
- ✓ Does the SFN law include provisions to develop capacities of front-line educators (teachers, NGO staff, etc.)?
- ✓ Does the SFN law set explicit linkages between food provision and food environment interventions (school meal nutrition standards, regulation and sale of marketing, etc.)?
- ✓ Does the SFN law include provisions on school gardens?
- ✓ Does the law explicitly refer to food safety legislation as the applicable legal instrument for guaranteeing food safety through growing, harvesting and storage practices?

Legal drafters should:

- Take into consideration good analysis of the situation including nutrition issues, consumption patterns, common knowledge, attitudes, perception, practices, obstacles, and motivations and influences of children, parents and school community actors.
- Avoid creating an additional burden for teachers and parents – the purpose and time of school gardens should be adequately regulated.
- Be aware that children can undertake these activities for educational purposes, but not for production purposes. If not properly regulated, school garden activities could risk to be considered as child labour.

5.6 FOOD SAFETY AND QUALITY

Why

Schools should be safe places for all students, yet preventable foodborne illness outbreaks remain frequent. Foodborne diseases are caused by a range of hazards (micro-biological, chemical or physical), which because of a lack of controls, are able to enter the supply chain.

In a school food chain, as in any type of catering service, factors like increased food handling and cross contamination, poor monitoring of cooking and holding temperatures, significantly increase the risk of exposing school children to FBDs. Furthermore, the absence of potable water and inadequate sanitation and hygiene can expose children to enteric pathogens and parasites. Schoolchildren can also be exposed to acute and chronic chemical intoxication (for e.g. mycotoxins in staples – toxic compounds from the use of inappropriate, contaminated containers in food production and storage).

All of the above risks are caused and/or exacerbated by a lack of good practices at various stages of the food chain including agricultural practices on the farm, and hygienic practices in transport, storage and handling; which are more likely to occur in an environment where food control is weak or absent and capacities of stakeholders to ensure food safety along the supply chain are inadequate.

A national enabling legal and regulatory framework for food safety is essential to put in place necessary control measures to prevent FBD outbreaks – the absence of which constitutes a major obstacle to children’s health at school.

In the context of SFN, it is important to recall that children, due to their less mature physiology, are more vulnerable to foodborne hazards than adults. Indeed, children under five years of age represent one-third of global deaths from foodborne illnesses (WHO, 2015). Foodborne diseases can lead to impaired and reduced nutrient absorption, resulting in malnutrition, underweight, growth retardation, stunting, and micronutrient deficiencies (Global Panel on Agricultural and Food Systems for Nutrition, 2016), which in turn, can impact negatively on other developmental outcomes. Severe cases can even result in fatal outcomes.

Ensuring food safety especially in schools, is thus a fundamental aspect of governments’ responsibility to safeguard public health and achieve children’s rights to food, health and education.

Despite the significant importance of food safety, according to recent studies carried out by FAO, food safety is not always a top priority in the design and implementation of SFPs, which implies that schools are not always in a position to guarantee the health of their students and staff (FAO, 2017).

How

To address these risks, school feeding and other related programmes must necessarily take into consideration food safety concerns. As a starting point, it is important to carry out an assessment of the existing food safety legislation and determine how the programme(s) can receive the necessary support to comply with the existing requirements. Food safety should be assured all along the school food chain, from food production (including school gardens) and transport, to school purchases, food handling, food storage, and preparation and consumption in schools.

School directors and managers have a key role in ensuring that food safety authorities/specialists at the appropriate level(s) are involved in the design, implementation and monitoring of the programme(s), and regularly report to them. For this purpose, the development of a food safety control plan and regular monitoring of compliance (including corrective action requests) is highly recommended. Alternatively, assurances can also be obtained via a food safety certification system.

National legal frameworks governing food control and food safety vary widely in their complexity and their coverage. In many countries, food safety legislation is incomplete or outdated, having been in place for decades, or is not supported by appropriate enforcement. Responsibility for food control in most countries is shared between different agencies or ministries. The roles and responsibilities of these agencies may be quite different and duplication of regulatory activity, fragmented surveillance (often only parts of the supply chain are covered), and a lack of institutional coordination, are common (FAO, 2013b).

Box 5.5: Food poisoning in primary schools in India

The Indian Mid-Day Meals programme is one of the biggest school feeding programmes in the world, covering more than 120 million children. It serves hot cooked mid-day meals to school children studying in Classes I-VIII of government, government-aided schools, Special Training Centres, and Madarasas and Maktabas supported under the Sarva Shiksha Abhiyan.

In July 2013, a total of 48 students fell ill from contaminated food. The incident led to the death of 23 children of which 16 died on site. The poisoning occurred from the consumption of a free lunch cooked with oil contaminated with monocrotophos, an organophosphate pesticide. A case was filed by one of the victim's parents and after trial, a judgement was issued by the Judiciary condemning the principal of the primary school to imprisonment of 17 years.

Inquiries into the Bihar incident revealed serious gaps in the institutional and regulatory mechanisms that are in place to ensure food safety in in the Mid-Day Meals Scheme. The Ministry of Human Resource Development and the Food Safety and Standards Authority of India (FSSAI) are taking a number of steps to prevent the recurrence of such incidents. The government of India has issued Guidelines on Food safety and Hygiene for School Level Kitchens under the Mid-Day Meal Scheme to all the States and Union Territories (UTs), and has also established mechanisms for the monitoring and supervision of the Mid-Day Meal Scheme at central, state and district levels to ensure food safety and hygiene in the scheme. In addition, Joint Review Missions (JRMs) consisting of educational and nutritional experts, review the scheme through field visits twice per year. The reports of JRMs are shared with concerned States and UTs so that suitable action can be taken on the findings.

The States and UTs have established a Grievance Redressal Mechanism at various levels in their States, with a toll-free number for addressing the grievances of stakeholders related to Mid-Day Meals.

Source: India TV News, 23 January 2017, Press Information Bureau, Government of India, Ministry of Human Resource Development, 14 December 2015, and 27 June 2019.

The challenge is to establish SFN programmes that take into account the existing national food legislation and that foster collaboration with food control authorities to address food safety issues in a manner that is effective and appropriate to the given context. It is advisable to apply a risk-based approach that assesses key food safety risks relevant to the programme, puts in place appropriate control measures and monitors these regularly. The assessment of risks and their management should be documented in a food control plan, which should be reviewed periodically, and in particular, if parameters have changed (e.g. new food items, new recipes, new supply chains).

5.6.1 Food safety and quality legislation in the context of school food and nutrition laws

As previously mentioned, SFN legislation cannot substitute or complete weak or incomplete food safety and quality legislation. Conversely, it should incorporate the necessary references to facilitate appropriate implementation of food safety and quality legislation in all stages of the school food supply chain.

It is beyond the scope of this Guide to offer legislative guidance on general food safety legislation. This Guide only seeks to emphasize that SFN programmes should comply with, and be part of, existing food safety legislation which should be harmonized with international food standards. In this context, a good reference point for improving in-country food safety legislation is an FAO publication entitled *Perspectives and guidelines on food legislation, with a new model food law* (FAO, 2005). This publication provides recommendations to national regulators to set up a food safety regulatory framework, based on the existing national institutional frameworks for food control.

Of a more technical nature, are the international standards, guidelines and codes of practice developed by the Codex Alimentarius Commission. These are aimed at contributing to the safety and quality of food and thereby protecting consumer health. For instance, the *Recommended International Code of Practice on General Principles of Food Hygiene* (FAO and WHO, 2009), follows the food chain from primary production to final consumption and highlights key hygiene controls at each stage.

5.6.2 Elements of food safety and quality legislation in school food and nutrition laws

Legislation for SFN must appropriately address food safety and quality standards, establishing the necessary links with the food safety control system and avoiding overlapping or fragmentation in legislation.

To this purpose, an SFN law:

- must ensure alignment with food safety legislation – this can be achieved by requiring compliance with prescribed food safety standards at all stages of the school food chain;
- may introduce mechanisms to facilitate coordination between the competent authorities for SFN and food safety, both at the central and the decentralized levels – this is particularly relevant in relation to the need for food safety control over products purchased by the school;
- could refer to the need for staff working on food production and handling to comply with national requirements or certification, as prescribed in food safety legislation – diplomas and certificates should be made available to food inspectors;

- may support the introduction of:
 - i) good agricultural practices (GAP) that help to minimize food safety hazards at primary production level;
 - ii) specific production methods/systems, for e.g. in relation to food production in school gardens, SFN legislation could require that food produced by the schools is produced with organic production methods – such production requirements is normally regulated in separate agriculture production-related legislation implemented by the ministries in charge of agriculture.
 - iii) good hygienic practices (GHP) that help to minimize food safety hazards in school meals;
 - iv) GAP and GHP, as approved by national food safety legislation or good practices;
 - v) responsibilities of competent authorities and school directors to disseminate information on GHP to children, parents and personnel.

Finally, SFN legislation should also designate a responsible authority to monitor implementation of the relevant food safety and quality requirements within the school. Such an authority should have the technical capacity and resources to comply with this role. School directors may not have the background or knowledge to verify the capacity of workers to handle food, follow-up appropriate implementation of GHP, or ensure the safety of products purchased from local producers. During the implementation of SFN and food safety legislation, the school director should engage the food safety authorities and/or rely on an appropriate food operators' certification system to ensure food safety requirements are met and verified at the different stages of the school food chain (purchases, handling, storage, etc). School directors should also verify that all school personnel that handles food has the prescribed food safety training and/or certification.

Table 5.24: Examples of how food safety at school is addressed in legal instruments of selected countries		
Country	Legal instrument	Measure
Ecuador	Organic Law on School Feeding, 2020.	The Organic Law establishes that one of its purposes is to ensure the safety, quality and control of food that is sold and distributed in educational institutions.
	Ministerial Agreement No. 1 –Instructions for the Operationalization of the Regulations for the Control of National Educational System School Canteens, 2015.	According to the Ministerial Agreement of 2015, all staff must complete a 30-hour certification course in food safety prior to working in the school canteen. The Ecuadorian Professional Training Service (SECAP) is empowered by the Ministry of Public Health to evaluate whether canteen workers have successfully completed the training course and to issue the corresponding food safety certificates.

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Paraguay	Resolution S.G. No. 17, 2020, establishing the requirements and conditions for the preparation or provision of food in the framework of school feeding and approving the sanitary surveillance plan, designating the authority responsible for monitoring it and establishing its powers.	The Resolution establishes requirements and conditions to be met by anyone who prepares or provides food for school. These requirements include the mandatory Certificate of Training for Food Handlers in Good Manufacturing Practices issued by the National Food and Nutrition Institute. It also designates the Institute as responsible for the enforcement of these requirements, as well as for the implementation of the Sanitary Surveillance Plan for school feeding, including the responsibility of carrying out controls and inspections, coordinating the tasks of supervision and control with other competent institutions, including the taking of food samples within the framework of school feeding and providing training in good manufacturing practices and issuing the document that accredits the participation in such training.
United States of America	Code of Federal Regulations, 1988 (as amended). Title 7: Agriculture PART 210—National School Lunch Program. Subpart C – Requirements for School Food Authority Participation §210.13 Facilities management.	Establishes requirements to be met by the school food authority as follows: (a) Health standards. The school food authority shall ensure that food storage, preparation and service is in accordance with the sanitation and health standards established under State and local law and regulations. (b) Food safety inspections. Schools shall obtain a minimum of two food safety inspections during each school year conducted by a State or local governmental agency responsible for food safety inspections. They shall post in a publicly visible location a report of the most recent inspection conducted, and provide a copy of the inspection report to a member of the public upon request. Sites participating in more than one child nutrition program shall only be required to obtain two food safety inspections per school year if the nutrition programs offered use the same facilities for the production and service of meals. (c) Food safety program. The school food authority must develop a written food safety program that covers any facility or part of a facility where food is stored, prepared, or served. The food safety program must meet the requirements in paragraph (c)(1) or paragraph (c)(2) of this section, and the requirements in §210.15(b) (5). (...) (d) Storage. The school food authority shall ensure that the necessary facilities for storage, preparation and service of food are maintained. Facilities for the handling, storage, and distribution of purchased and donated foods shall be such as to properly safeguard against theft, spoilage and other loss.

5.6.3 Food allergies at school

The rise of food allergies among schoolchildren is another crucial consideration for protecting children against foodborne risks. School feeding programmes must be sensitive to this challenge, ensure that procedures are introduced to prevent cross-contamination and, where possible, offer alternative meals to assure that all children have equal access to safe food at school.

Legislation should take into account specific needs and health considerations to prevent risks associated with food allergies and enable alternative options for menus.

5.6.4 Employee health

School food and nutrition laws should refer to applicable health and food safety legislation to ensure that specific measures are in place to temporarily exclude/restrict staff members suffering an infectious illness/disease from food production or preparation areas (in due respect of constitutional provisions and legal principles). This is particularly relevant if they develop symptoms of gastrointestinal illness, fever or skin rashes. The staff responsible for verifying health certificates and food safety requirements at school should be aware of these legal requirements and follow applicable legislation.

5.6.5 Home-grown school feeding programmes

Many governments are increasingly sourcing food for SFPs locally from smallholder farmers in a bid to boost local agriculture, strengthen local food systems and lift rural smallholder farmers out of poverty. This approach, which has become known as 'home-grown school feeding' (HGSF), augments the benefits of school-based programmes with increased food production and diversification as well as economic benefits for local communities (FAO and WFP, 2018).

As with any SFP, appropriate food safety measures need to be in place to ensure that the health of school children is not put at risk. Since HGSF programmes involve sourcing food products from smallholder farmers, who may not be familiar with producing for institutional food supply chains, raising their awareness and capacity to ensure the food they produce is safe and of acceptable quality can go a long way towards preventing FBDs at the production end of the supply chain. It has to be kept in mind that food safety hazards can be introduced at any stage of the supply chain, so it is important to assess and control food risks along the entire chain, starting with the primary production level on the farm, to transportation, storage and preparation, all the way to the point where students are consuming their meals. **This 'farm to fork approach' should form the basis for the identification of food safety risks along the supply chain and the application of appropriate control measures to manage these risks by way of applying good practices (including GAP and GHP).**

As the supply chain often cuts across several sectors, it is necessary to consider which legislation is applicable and how the mandated authorities can best coordinate and collaborate to ensure compliance.

5.6.6 School gardens

Many countries are using school gardens to help children discover and learn where food comes from and to develop healthy eating habits. Some SFPs have found that gardens provide a way for children to become more accepting of new fruits and vegetables (National Food Service Management Institute, 2015).

Although the final objective of this activity is pedagogical, many times the foods produced in school gardens are also used to complement the school meals. Regardless of who is the person in charge of school gardens, and the objective of the activity itself, the food produced in the context of school gardens should be safe for all students. Therefore, basic food safety precautions should be followed both for the production and for the preparation of food produced at schools, with special attention to:

- site selection, materials and water use;
- use of chemicals and fertilizers (organic or otherwise) and withdrawal periods;
- food and gardening safety training instructions, including harvest and post-harvest handling;
- preparation practices for products prepared in school gardens, particularly if they are served raw.

Potential risks are mitigated by applying GAPs and GHPs during growing, harvesting, and serving (FAO, 2007; FAO, 2009a).

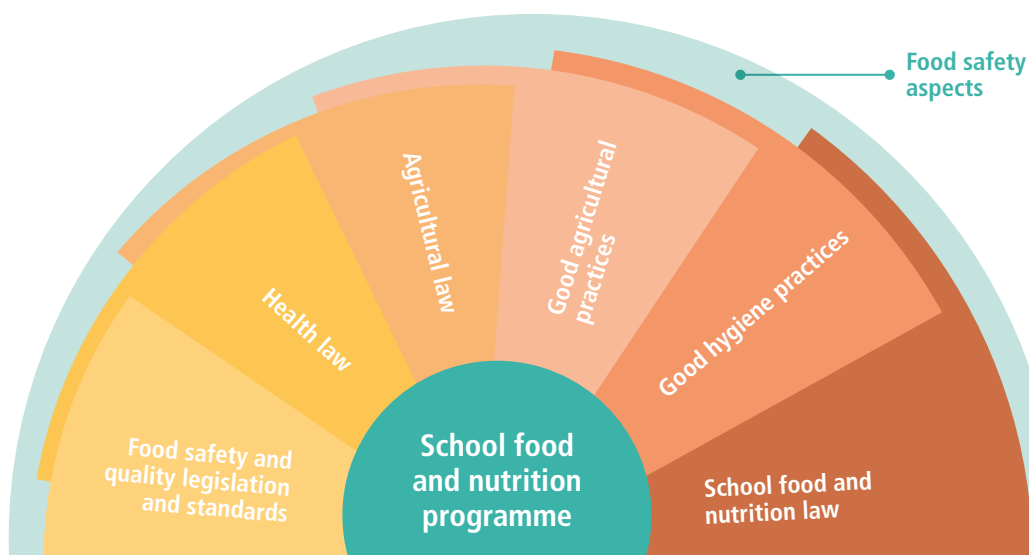
5.6.7 School sanitation

School feeding programmes should also comply with national applicable laws regulating:

- water sources and ventilation;
- waste disposal facilities and equipment;
- clean toilet and handwashing equipment and facilities.

Figure 5.1 shows the legislation that applies to SFN programmes, while Table 5.25 provides an overview of the relevant food safety aspects that should be regulated by national legislation (including food safety and quality legislation, health law and agricultural law), GAP and GHP, as well as key elements that can be regulated in an SFN law.

Figure 5.1: Legislation and standards applicable to food safety aspects of school food and nutrition programmes



As mentioned earlier in this section, an SFN law should not regulate issues that should be covered by food safety and health legislation. In turn, SFN legal provisions should ensure compliance with food safety legislation and they could also establish specific legal requirements to be applied only in the context of SFN.

Legal basis	Scope and substantive elements within legislation
Food safety legislation and standards Health law Agricultural law	<p>Food supply chain from farm to fork:</p> <ul style="list-style-type: none"> • food production • food processing • transport • food purchases • food handling • food storage • food preparation • food distribution • food consumption at school. <p>Institutional mandates and responsibilities:</p> <ul style="list-style-type: none"> • food safety authority • food control authorities • (national and local) • food safety certification system • training requirements • inspection system • recall procedures • enforcement.
School food and nutrition law	<ul style="list-style-type: none"> • legal provision requiring programme's compliance with: i) food safety legislation and standards; and ii) GAP and GHP; • legal requirement for school authorities to develop a food safety plan including a risk-based approach to: i) school food services; ii) food brought from home or other sources; iii) food in the class room; iii) vending machines; iv) concessions; and v) use and access to kitchen (Almanza and Sneed, 2003); • mechanisms to facilitate coordination between the competent authorities for SFN and food safety at national and local level; • legal provision designating a responsible authority to monitor the implementation of the food safety and quality requirements within the school; • legal requirement for competent authorities and school directors to disseminate information on GHP to children, parents and school food service staff; • legal provision requiring compliance of food safety requirements for food handlers within the school (training and certification); • food control (inspections).

QUICK CHECKLIST AND KEY RECOMMENDATIONS

6 Guiding questions related to food safety aspects of school food and nutrition

What are the existing institutional and regulatory mechanisms to ensure food safety in school feeding or other related programmes?

- ✓ Does SFN legislation establish the necessary linkages between the school feeding authorities to ensure food safety at schools and the food safety authorities (at national and local level)?
- ✓ Does it refer to national food safety and quality standards and legislation as the benchmark for all food products produced, purchased, prepared and provided in schools?
- ✓ Does it define the roles and responsibilities of the different actors involved in the programmes?
- ✓ Does it designate a responsible authority in the school to monitor and verify compliance with food safety and quality legislation, including compliance with training and certification requirements? Does this authority have the necessary mechanisms to achieve this purpose?
- ✓ Does it include the necessary provisions to ensure that the needs of children with special food vulnerabilities (such as food allergies) are addressed?

Key recommendations:

- School food and nutrition laws should refer to food safety and quality legislation instead of establishing new rules and procedures that could overlap and contradict food safety regulatory frameworks.
- Food safety and quality legislation should be applicable to school feeding and other related programmes from primary production to consumption.
- A preventive approach rather than a reactive approach is recommended to ensure food safety and quality at school. This can be facilitated by appropriate food safety and quality legislation, as well as by the necessary connections between SFN and food safety and quality laws.
- Good hygiene practices and good agricultural practices should be implemented in a manner that protect children's health.
- Governments should actively support smallholder farmers to achieve food safety and quality standards so that they can entirely participate and benefit from sustainable food procurement policies.
- Governments should ensure knowledge and awareness by stakeholders of food safety issues related to school food and nutrition.

5.7 PUBLIC PROCUREMENT

Why

Linking schools' institutional demand for safe and nutritious food to local smallholder production has potential multifaceted benefits: nutritional achievements, improved agricultural production and productivity, increased local employment and income, and support to local sustainable development (FAO and WFP, 2018).

This linkage is based on the premise that governments, when using their authority and financial capacity to award contracts, can go beyond the immediate need to meet demand, but also by addressing additional social, economic and/or environmental objectives that contribute to the overall public good of a state (Kelly and Swensson, 2017; De Schutter, 2014; Quinot and Arrowsmith, 2013).

When linked to local smallholder production, and especially when coupled with food and nutrition education and healthy school food and meals guidelines, SFPs can:

- improve food and nutrition security for vulnerable communities, including not only school children but also vulnerable producers;
- value local dietary habits and ingredients;
- support increased production and diversification;
- support the adoption of nutritional, agro-ecological and/or climate-sensitive agriculture practices while supporting smallholder producers' integration to markets. (FAO and WFP, 2018; UNSCN, 2017; Tartanac *et al.*, 2019.)

This linkage does not mean that the programme is limited to the exclusive purchase of local products from smallholders. Rather, it means that, depending on the country context and production availability, it is designed and implemented with the objective of supporting and boosting the local economy and in a way that enables local smallholder suppliers to participate and benefit from access to those market opportunities. Even if only a percentage of food is effectively sourced locally from smallholder producers (FAO and WFP, 2018).

For smallholder producers – including both farmers and rural enterprises – the regular access to school's stable and predictable demand for food can reduce uncertainty associated with producers' engagement with markets and investment risks in improved and diversified production. This may encourage investments and improve quality, leading to improved food systems, higher and steadier incomes and ultimately improved livelihoods (Mitchell, 2011; Sumberg and Sabates-Wheeler, 2010).

School feeding programmes provide the opportunity to government to also target and support specific groups of vulnerable producers, including women, members of indigenous communities, and youth. Such programmes may provide them not only with a stable and predictable market for products, but – when coupled with tailored capacity building strategies – also act as a learning path for the access to other formal and more demanding private and public markets (Kelly and Swensson, 2017).

How

Regulatory instruments are recommended as a means to establish the linkage between SFPs and local smallholder production. They can prescribe, for instance, a specific percentage goal of the procurement budget that should (or must) be spent for the procurement of food directly from the defined target beneficiaries. Table 5.26 provides examples of different legal and policy instruments in different country contexts.

Country	Regulatory instrument	Measure
Brazil	Law No. 11.947/2009.	Imposes an obligation to states, municipalities and federal schools to use at least 30 percent of the National School Feeding Programme budget for food procurement in the purchase of food directly from family farmers and rural entrepreneurs or their organizations, prioritizing land reform settlements, traditional indigenous communities and Quilombola communities. Recognizes only three possible justifications for non-compliance: (i) impossibility of family farming producers to provide a regular and constant supply; (ii) impossibility of those suppliers to issue the necessary tax invoices; and (iii) inadequacy of their sanitary conditions (Art. 14, para. 2).
Paraguay	Law No. 6.277, 2019, which expands on Articles 2 and 10 of Law No. 5210, School Feeding and Sanitary Control, 2014.	Article 10 stipulates that as a guideline for school feeding, priority should be given to acquiring food from family farming, and especially from national banana production through summary procedures that guarantee the purchase from these actors. These procedures, currently regulated by Decree No. 9270/2018, will be applied as an exception to the provisions contained in Law No. 2051/03 "public procurement" and Law No. 153599 on "state financial administration".

Furthermore, SFN must ensure alignment with public procurement legislation, which will tailor and limit the choices of public buyers regarding: (i) what food to purchase; (ii) how to purchase it; and (iii) from whom to purchase (Swensson, 2018).

Indeed, one of the key distinctive characteristics of public procurement compared to a similar commercial transaction between private parties is that, due to its economic and political relevance, the process through which a government acquires goods and services to fulfil its public function is regulated by specific rules in almost all countries in the world. In most countries public procurement regulations will govern each phase of the procurement process and generally impose: i) a default procurement method (i.e. the open tender or "bidding" process); and ii) awarding criteria (including, most often, the lowest price) considered the most appropriate to achieve the traditional procurement principles (transparency, competition and equal treatment) and objectives of public procurement. They will also impose and/or tailor administrative practices related, for instance, to payment time-lags; publication of tender opportunities; participation requirements; and contract size, etc.

The main issue is that most often these standard procurement rules and practices, imposed or tailored by public procurement regulation, are unsuitable to the characteristics and capacities of smallholder suppliers and their organizations. This can represent a key barrier to entry for small-scale farmers and enterprises trying to tap into public markets, and, therefore, for the implementation of the policy objective of building the linkage between SFPs and local smallholder production (Brooks, Commandeur and Vera, 2014; De Schutter 2014; Kelly and Swensson, 2017; Swensson, 2018). Examples include, the complexity and cumbersomeness of the standard open tender procedure; disproportioned and costly participation requirements; over-emphasis on price and other non smallholder-friendly awarding criteria; and long payment time-lags, among others.

For the effective implementation of SFPs that aim to leverage schools' structured demand for food as an instrument to achieve socio-economic goals through the inclusion of local and smallholder farmers, the alignment of public procurement rules and related administrative procedures may be necessary.

There are different types of legislative instruments that governments can adopt to favour the access of smallholders (or other specific types of suppliers) to public food demand, without undermining the core principles and traditional objectives of public procurement (Swensson, 2018; Watermeyer, 2004). They may differ from country to country according to the context, including the characteristics of the legal system as well as the procurement model adopted by the SFN programme. Examples include the use of adapted procurement procedures (such as Paraguay's *Simplified Process for the acquisition of agricultural products from Family Farming*), smallholder-friendly awarding criteria, contract lotting, and preferential procurement schemes. Table 5.27 provides a description of key preferential procurement schemes and country examples within an SFN context.


Scheme	Country example targeting local and/or smallholders	Related programme and/or regulatory framework	Description
Reservation or "setting-aside"	Brazil	Law No. 12.512/2011: PAA (Food Purchase Programme); and Law No. 11.947: PNAE (National School Feeding Programme).	Contracts or portions thereof are reserved for a certain category of supplier (target beneficiaries) who satisfy certain prescribed criteria (see Box 5.6).
Preferencing	United States of America	Richard B. Russell National School Lunch Act; 42 usc 1758(j) and 42 usc 1760(n): USDA's Child Nutrition Programmes.	Although all contractors who are qualified to undertake the contract are eligible to tender, competitive advantages are granted to a certain category of supplier (who satisfies certain prescribed criteria) or who undertakes to attain specific goals in the performance of the contract.

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Indirect	Paraguay	Decree n. 3000/2015 and Resolution DNCP 2915/2015; Paraguay National School Feeding Programme.	Although procurement is not done directly by public institutions from target beneficiaries, procurement requirements are used to promote policy objectives by constraining contractors to attain specific goals in the performance of the contract (e.g. requiring contractors to supply at least a percentage of products from target beneficiaries).
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The implementation of such schemes requires:

- legal underpinning and clear policy support;
- clear rules which guarantee transparency in the system, limit discretionary power and set:
 - the conditions in which the new strategy can be adopted;
 - the safeguards that manage the trade-off between the new social, economic and/or environmental goals to be achieved and the traditional principles and objectives of public procurement;
 - the target beneficiaries and eligibility criteria (Swensson, 2018).

 It is important that any legal mechanism be accompanied by administrative adjustments, aimed at adapting procuring entities practices, at addressing operational issues of the procurement process, and ultimately, at facilitating the access of smallholder farmers to public markets.

These can be established by legislation or more often by regulations or guidelines, and include mechanisms which:

- reduce payment time-lags;
- facilitate access to information (on both tender opportunities as well as on award notices);
- increase time offered to suppliers to respond to tenders;
- rationalize requirements (i.e. documents for tender, performance bonds, etc.);
- adapt contract size (Brooks, Commandeur and Vera, 2014).

Furthermore, when using public food procurement to support local smallholder production it is critical to define and identify who those producers are within the country context and the programme's objectives. Clear eligibility criteria will not only ensure transparency and fairness to the systems, but also facilitate the implementation and monitoring of the public procurement initiative (Brooks, Commandeur and Vera, 2014; Swensson, 2018; UNEP, 2017).

There are different strategies that can be adopted to define smallholder producers. In some countries, like Brazil, the definition of smallholder (in this case, family farmers) is provided by legislation (see Box 5.6). In the absence of a unified definition established by law, governments can adopt the definition provided by other regulatory frameworks, policies and/or programme documents, or even create a specific definition for the related programme. However, any

programme-level definition should be coordinated with existing definitions adopted by national policies and programmes supporting smallholders, to facilitate potential synergies between school meals and such programmes.

A legal and unified definition is particularly important for countries where farming and farmers are highly heterogeneous (such as in Latin American countries). Especially in those contexts, a legal definition can contribute to the strength of the institutionalization of smallholder farming in the country and to the development and articulation of different policies and programmes to support them (FAO, 2013a).

Registration systems with specific requirements for classification of smallholders can be a good supporting strategy. This system alleviates the need for individual procuring entities to determine on a case-by-case basis whether suppliers can, or cannot, be classified as smallholder ones, and access the programmes as such. It can also provide key information about smallholder production in the region, and, as a consequence, to better plan procurement. A registry of school food suppliers is also important from a food safety perspective (traceability of products).

Nevertheless, it is important to note that such a registration system can lose its benefits (and even prevent smallholder suppliers from participating in the registration process) if it is too burdensome, too complicated, too costly, or if it is not kept properly updated (ITC, 2014).

Box 5.6: Brazilian legislation defining family farming

Law No. 11.326/2006 (amended by Law No. 12.512/2011) establishes four criteria with which rural actors must simultaneously comply in order to be classified as a family farmer or rural entrepreneur and, therefore, to have access to all national policies and programmes targeting these types of producers. These criteria are that:

- (i) the rural property does not exceed four “land units” (see below);
- (ii) labour used in the rural activities is predominantly family-based;
- (iii) a minimum percentage of the family income is generated by the activities of the rural property or enterprise; and
- (iv) the establishment is directly managed by the family.

Because of the widely different types of farms within the Brazilian regions, the Brazilian definition uses land units (*módulos fiscais*) as a land measure unit. Each land unit can represent between 5 and 100 hectares of land, depending on the production conditions of each region in the country.

The Law includes the following rural actors as its beneficiaries when they comply with requirements (ii), (iii) and (iv) presented above. They are: foresters; aquaculturists; extractivists; fishers; indigenous people; and remaining members of traditional communities.

The Food Purchase Programme (PAA) and the National School Feeding Programme (PNAE) legislation also include land reform settlers among their beneficiaries, so long as they comply with all the above criteria.

Source: Adapted from Swensson, 2015.

QUICK CHECKLIST AND KEY RECOMMENDATIONS

7 Guiding questions related to public school food procurement

Does the law include provisions establishing the linkages between school feeding programmes and local smallholder production?

- ✓ Does the law prescribe a specific percentage goal of the procurement budget that should (or must) be spent for the procurement of food directly from the defined target beneficiaries?
- ✓ Does the law establish clear eligibility criteria for target beneficiaries (e.g. smallholder or family farming producers)? Does it build on existing legislation or other regulatory frameworks, policies and/or programme documents? When these are inexistent, does the law create its own definition of target beneficiaries?
- ✓ Does the law ensure alignment with the public procurement regulatory framework? Does it build on existing legal tools (such as reservation, preferencing and indirect procurement schemes) or stipulate the development of specific new legal tools, for supporting the access of smallholder farmers (and/or other target beneficiaries) to schools' public food markets?

Legal drafters should:

- Ensure coordination among different regulatory frameworks such as laws and rules on public procurement, food quality and safety (see Section 5.6), and in some contexts, legal frameworks establishing the definition of smallholder (or family) farmers.

Public procurement regulatory frameworks should:

- Provide appropriate legal tools (such as the abovementioned preferential procurement schemes, adapted procurement methods and smallholder-friendly awarding criteria) to support the linkage between schools' institutional demand for safe and nutritious food, and local smallholder production.
- Determine administrative adjustments, which facilitate the access of smallholder farmers to public food markets. These can be imposed by laws as well as by regulations or guidelines, and include mechanisms which:
 - reduce payment time-lags;
 - facilitate access to information (on both tender opportunities as well as on award notices);
 - increase time offered to suppliers to respond to tenders;
 - rationalize requirements (i.e. documents for tender, performance bonds, etc.); and
 - adapt contract size.

5.8 MONITORING AND EVALUATION

Why

Progress regarding the implementation of policies and programmes for SFN needs to be monitored to measure the results against the targets set. The purpose of monitoring is to refine and optimize operational activities to ensure that programmes are successfully delivering their intended objectives and to adjust them as needed. Legislation is required to define *who* is responsible to undertake monitoring and control, *what* is the type of information to be collected and *how* to do it.

How

Important efforts have been undertaken to unify monitoring and evaluation of school feeding programmes in low and middle-income countries. According to the *Home Grown School Feeding (HGSF) Monitoring & Evaluation (M&E) tool* developed by the Imperial College London's Partnership for Child Development, routine programmatic monitoring activities include context, process, output, and outcome monitoring, where:

- Output monitoring tracks daily operations and assesses whether programme operations and activities are running as planned.
- Process monitoring evaluates the quality of the services delivered and the perceptions of the beneficiaries.
- Outcome monitors changes in the target population by collecting baseline data at the start of the programme and at repeated intervals throughout programme implementation.

Some key issues that need to be established in legislation in order to periodically review the implementation of SFN programmes include:

- the procedures being used to register beneficiaries, in order to identify the possible wrongful exclusion of beneficiaries;
- possible abuses and mismanagement occurring at the local level; and
- the procedures being used to monitor any misappropriation of financial resources (Sepúlveda Carmona, Nyst and Hautala, 2012).

5.8.1 Monitoring school food and nutrition from a human rights-based approach

Applying a human rights-based approach to monitoring in the context of SFN entails that indicators should measure outcomes and processes according to human rights standards, and corrective action should be taken where the resources committed are not made available or when the results do not meet the expectations.

Information generated through rights-focused monitoring should foster accountability and respect for the rule of law, and should increase knowledge among vulnerable groups about their rights and entitlements and about ways of claiming those rights.

The *Right to Food Guideline 17* suggests that the monitoring process itself be participatory and inclusive, i.e. rights-based (FAO, 2005b). The meaning of participation can range from people being asked to provide information, to being consulted on certain issues, all the way to people initiating and undertaking the monitoring process, and directly benefiting from the monitoring results linking these to follow-up actions decided on by them (FAO, 2008).

Box 5.7: Attributes of human rights-based monitoring

Rights-based monitoring means analysing the monitoring process to see if it is rights-compliant and is conducted in ways that are consistent with human rights principles and approaches.

Human rights-based monitoring requires transparency and allows rights-holders to hold duty-bearers accountable for the delivery of public services to realize the human right to adequate food. It increases transparency in the way that policy measures are implemented and public resources are used, and thus makes it easier to assess how the state responds to emerging needs. This in turn identifies areas in which the capacity of duty-bearers to deliver services may need to be strengthened.

Monitoring processes strengthen the capacity of rights-holders to claim their rights, and to plan actions in line with their own priorities and needs.

The impact of relevant policy measures is monitored and assessed over time and compared to established targets and benchmarks related to the progressive realization of the right to adequate food.

Special emphasis is placed on monitoring food-insecure and vulnerable groups, particularly by analysing the underlying causes that lead to their suffering from food insecurity and/or vulnerability to food insecurity, so that they may be better targeted to benefit from right-to-food measures.

The principle of non-discrimination is upheld and firmly integrated in monitoring decisions, actions, and conduct of political, economic, social, and cultural institutions, and in the allocation of public resources, thereby enhancing social and gender equity.

Source: FAO, 2008.

5.8.2 Institutional responsibilities and mandates

The majority of countries have a single institution in charge of conducting the independent monitoring of human rights protection. In many countries, the role of the Ombudsperson is key to monitoring and evaluating the implementation of social programmes affecting children's rights.

Beyond an independent institution having a surveillance role, legislation can establish specific mechanisms to monitor SFN programmes. Specific programmes that are run in the context of public education might already exist and might be regulated in sector-specific legislation (social protection legislation, basic laws on education, etc). Monitoring and accountability mechanisms can also be established by general laws on public information and public participation.

More specifically, an SFN law can regulate monitoring measures by:

- establishing a specific institution at national level to control compliance of SFN legislation;
- determining the composition of the institutional body that will perform monitoring and evaluation;
- establishing a decentralized system for monitoring and evaluation (school, district, state, region);
- determining procedures for the collection of information and disaggregated data related to the implementation of programmes by school, district, and region, as well as at national level including:
 - a register of meals delivery
 - quality of food service
 - financial expenditures;
- setting the criteria for the selection, training and evaluation of reviewers;
- establishing procedures for the inspection of schools;
- establishing the power for authorized officers to inspect, collect evidence, and interrogate school staff, caterers, students, and parents about the school food services;
- defining the standards against which the SFN monitoring system is based;
- establishing the timing and period of reviews;
- determining reporting and recordkeeping mechanisms;
- establishing monitoring procedures to verify compliance with:
 - meal requirements including dietary specifications
 - competitive food services
 - food safety rules and standards (including waste management, water quality and sanitation)
 - use of funds
 - school meal reimbursements (compliance with free and reduced-price criteria and eligibility procedures)
 - procurement rules
 - food service management contracts (catering)
 - perception of students' satisfaction with school meals
 - children's rights
 - access to information
 - participation of the community
 - training
 - corrective actions.

5.8.3 Participation of civil society

A participatory monitoring system based on human rights principles may also be included in the provisions of an SFN law. In the context of human rights, monitoring means to examine the results and impacts of development processes, of policies, and of programmes and projects, against specific goals that have been set as desired outcomes for the enjoyment of those rights. In some countries, civil society organizations play a significant role in monitoring the implementation of SFN programmes. In particular, students' participation is highly recommended to foster a culture of ownership and accountability from an early age (FAO, 2008).

School Food and Nutrition Monitoring Committees may be established by the SFN law at national and decentralized levels. These Committees can monitor and control the implementation of

the programme, quality of meals and compliance with programme regulations. They can also assume the responsibility for the approval of the municipalities' and states' financial reports.

Decentralized institutions can in principle be monitored more directly by rights-holders. Combined with disaggregated data collection, this can improve the detection of discrimination and local inequities, and uncover social exclusion that national statistics may mask (OHCHR, 2013).

Table 5.28: Monitoring school feeding programmes in Brazil, Guatemala, Honduras, Paraguay, the Philippines, and Sao Tome and Principe		
Country	Legal instrument	Measure
Brazil	Law No.11 947 of 2009 on school food.	<p>Establishes different mechanisms to monitor the quality of implementation and to control that resources are spent in compliance with the rules established by law.</p> <p>Article 9 establishes that the Fundo Nacional de Desenvolvimento da Educação (FNDE), the entities responsible for the education systems and the bodies of external and internal federal, state and municipal oversight will create, according to their own competencies or in the form of an integrated network, adequate mechanisms for the oversight and monitoring of the execution of the PNAE.</p> <p>Article 11. The technical responsibility for school feeding in the States, Federal District, Municipalities and federal schools shall fall to the responsible nutritionist, who shall respect the guidelines set forth in this Law and in the pertinent legislation, within its specific attributions.</p> <p>State Education Departments and the municipal government shall establish the School Feeding Council (<i>Conselho de Alimentação Escolar: CAE</i>). The CAE is a central part of the School Feeding Programme (PNAE) (see Table 5.10 for a detailed description) and functions as an autonomous supervisory unit that supports monitoring. The members of the CAE have a mandate of four years, and may be re-elected according to the indications of their respective groups.</p>
Guatemala	Decree No. 16 on School Feeding, 2017.	<p>Article 20 creates the National System of Information and Evaluation of School Feeding, under the responsibility of the Ministry of Education as the governing body, which is a monitoring tool that allows for the provision of information and the periodic analysis of the nutritional situation of the country's school population in coordination with the National System of Food and Nutritional Security and the National Health System.</p> <p>The data and information of the System will be considered public information and of free access, and must be disseminated permanently and periodically, except for the restrictions of law, according to its corresponding regulation.</p>

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Honduras	Decree No. 125 of 2016 on School Feeding.	Article 15 establishes platforms for social audit and participation in the context of the programme. It states that “with the purpose of creating spaces for participation and social audits, the Municipal Development Councils (COMDES), the School Development Councils (CED) and the parents' associations of each educational center must ensure that at all levels of management of a national school feeding programme, the objectives of this Decree are fulfilled and the performance of said institutions is analysed, based on results-based management, from the economic, financial and social point of view. As appropriate, it may formulate to the Interinstitutional Technical Committee on School Food technical recommendations, alternative solutions and legislative reform aimed at strengthening the National School Feeding Programme.”
Paraguay	Paraguay Law No. 5210 on School Feeding and Sanitary Control, 2014.	Article 8 recognizes the educational and social importance of the Law on School Meals and Sanitary Control, and takes into account that satisfactory health and nutritional conditions of students are essential requirements for school performance. The Central, Departmental and Municipal Governments shall develop and implement strategies for monitoring and evaluating the processes and the impact of the implementation of school feeding.
Philippines	Republic Act No. 11 037 Masustansyang Pagkain para sa Batang Pilipino Act of 2017.	Section 9 establishes that the National Government Agencies (NGAs) (the Department of Education and the Department of Social Welfare and Development), in coordination with the local government units, the National Nutrition Council and other stakeholders, shall regularly monitor, review and assess the impact and effectivity of the National Feeding Programme as well as ensure compliance with the standards and guidelines of the National Feeding Programme for food safety, quality, accountability, community participation and the procurement and liquidation processes adopted. For this purpose, the NGAs shall prepare and submit an annual report on the status of the implementation of the Programme to the Office of the President and both Houses of Congress. According to Section 6 of the Act, the National Nutrition Council shall harmonize all existing national and local nutrition databases from national government agencies, local government units and other relevant agencies of government in order to identify individuals, groups, and/or localities that have the highest magnitude of hunger and undernutrition. This National Nutrition Information System system shall be utilized in monitoring the health and nutrition of all Filipino children, especially those covered by the Programme.

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<p>Sao Tome and Principe</p>	<p>Law No. 4 of 2012 establishing the School Food and Health Programme (PNASE).</p>	<p>Article 27 establishes the District Inspection Council (Conselho Distrital de Fiscalização (CDF) of the PNASE that shall be composed of four members, with the following composition:</p> <ul style="list-style-type: none"> i) A representative of the Local or Regional Power, designated by the President of the District Chamber or by the President of the Regional Government, preferably the representative for the social area; ii) A representative of organized civil society, with an interest in monitoring the school feeding programme and having its seat in the District or Autonomous Region under consideration, elected at a specific meeting for this purpose and recorded in the minutes; iii) A representative of the association of parents and guardians of education elected at a special meeting for this purpose and recorded in the minutes; iv) A representative of the General Inspectorate of the Ministry responsible for education, appointed by the respective inspector-general. <p>Article 33 establishes the functions of the CDF/PNASE as follows:</p> <ul style="list-style-type: none"> a) Supervise the implementation of PNASE in the school units benefiting from the programme at district or autonomous region level; b) Inspect compliance with approved rules and regulations on the purchasing and accountability process of the Management Commissions of the PNASE; c) Check the records on the financial execution of the funds available at the level of the beneficiary schools of the programme in their respective areas of jurisdiction; d) To advise the School Management Committees of PNASE on aspects to be improved in the management and control of the resources available for the implementation of PNASE at the level of the school units; e) Inform the PNASE National Coordination on the irregularities observed in the management and control of the resources made available to the school units; f) Keep regularized records of the resources available to the different school units benefiting from the programme in their areas of jurisdiction; g) Analyze and issue opinions on the reports of accounts prepared by the School Management Committees of PNASE; h) Provide information to the PNASE National Coordination and to the District President or the President of the Autonomous Region Government whenever requested; i) Produce semi-annual reports on the activities carried out at the district or Autonomous Region level and refer to the PNASE National Coordination and the Presidents of the District Chambers and the Regional Government.
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QUICK CHECKLIST AND KEY RECOMMENDATIONS

8

Guiding questions related to monitoring and evaluation of school food and nutrition

Does the SFN law establish or define a monitoring mechanism at central and decentralized levels to evaluate the implementation of SFN programmes and policies?

- ✓ If so, what is its composition, mandate and authority?
- ✓ Does the SFN law define the standards against which the programme should be monitored?
- ✓ Does the SFN law provide for participatory mechanisms of stakeholders in monitoring systems?
- ✓ Does the SFN law require the publication of the results achieved by SFN programmes and the corrective action taken to ensure transparency?

Legal drafters should:

- Consider the relationship with other monitoring mechanisms established by other legal instruments.

5.9 ACCOUNTABILITY

Why

As mentioned earlier in the Guide (Section 3.1.1 on human rights), states have a duty to respect, protect and fulfil human rights, and to provide effective remedies when they are infringed. These duties require states to take legislative, administrative, judicial, budgetary and other measures to create conditions in which people within their jurisdiction enjoy their rights, including their economic, social and cultural rights (OHCHR, 2013). A number of national institutions (including the executive, legislative and judicial branches), each with distinct responsibilities defined in constitutional and administrative law, are responsible and accountable for the design, implementation, monitoring and evaluation of school-based policies and programmes for SFN and their impact on human rights.

Accountability has both preventive and corrective functions. It is preventive because it helps to determine which aspects of policy or service delivery are working, so they can be built upon, and which aspects need to be adjusted. Accountability mechanisms can improve policymaking by identifying systemic failures that need to be overcome in order to make service delivery systems more effective and responsive (this aspect closely relates to monitoring). The corrective function allows for the addressing of individual or collective grievances, and the sanctioning of wrongdoing by individuals and/or institutions (OHCHR, 2013).

Monitoring, accountability and redress mechanisms are essential to the smooth functioning of an SFN programme. They ensure that right-holders have access to effective remedies in cases of non-compliance with the programme requirements. Outlining a system of accountability as part of the programme increases effectiveness by minimizing and addressing cases of mismanagement.

To be accountable, a person or an institution must have prior defined responsibilities and must be subject to forms of enforceable sanction or remedial action if he or she fails to carry out his/her responsibilities without good reason. The ultimate objective of enforcing accountability is not to punish but to ensure fair and systematic mechanisms to assess compliance by individuals and institutions with agreed standards of responsibility and adopting appropriate corrective action.

How

As shown earlier, SFN legislation defines the responsibility of public and private entities or persons in relation to substantive and procedural requirements of the law. It will also specify sanctions in cases of non-compliance with the requirements and the forum and procedure through which the responsible entity or person is held accountable. An SFN law may, for example, identify the national and local level authorities that are responsible for the management of, and reporting on, the resources allocated to SFN and the sanctions for failure to comply with rules of disbursement, accounting, reporting and/or auditing, which may include the suspension of transfer of resources.

Furthermore, SFN legislation may authorize regular courts, administrative tribunals and/or other local level grievance redressal mechanisms to handle cases of non-compliance with its provisions, and define the procedure they will follow in deciding such cases. Administrative recourse mechanisms could provide the most effective remedies as they rely on structures built

for the implementation of SFN legislation. In addition, SFN legislation may simply refer cases of non-compliance with its requirements to existing accountability mechanisms, such as the public prosecutor or courts of law, which derive their mandate from other laws. Local level non-judicial grievance mechanisms provide the most accessible forum of accountability.

Such mechanisms should: build on existing, sometimes informal, structures; be impartial; use participatory and non-discriminatory procedures; be accessible to local communities; provide reasoned decisions; and document complaints and the decisions thereon (see Figure 5.2). The provisions on grievance redressal mechanisms should include a right of appeal.

Figure 5.2: Grievance mechanisms



Table 5.29: Accountability in the school feeding programmes in Brazil, India and Sao Tome and Principe

Country	Legal instrument	Measure
Brazil	Law No. 11.947 establishing the School Feeding Programme(PNAE).	<p>The law requires the States, the Federal District and the Municipalities to report to the Fundo Nacional de Desenvolvimento da Educação (FNDE) on the use of the resources they receive for the implementation of the school feeding programme (Article 8). Any natural or legal person may report to the FNDE, the Federal Audit Court, the internal control organs of the Executive Branch of the Union, the Public Prosecutor's Office and the Conselho de Alimentação Escolar (CAE) any irregularities that may have been identified in the use and application of the resources (Articles 10 and 29). In cases where the States, the Federal District or the Municipalities fail to report on the balance of programme resources/accounts or to ensure the full functioning of CAE, or commit other irregularities in executing the programme, the FNDE is authorized to suspend the transfer of the programme resources (Articles 20 and 26). The law further provides for the accountability of a responsible person or manager who falsified documents or engages in fraudulent reporting (Articles 8 and 26).</p> <p>The FNDE and the external and internal control bodies of the Executive Power of the Union will monitor the application of the programme resources through audits, inspections and analysis of the processes that originate the respective rendering of the balance of accounts (Article 28).</p> <p>Resolution No. 6 of 2020 of the Fundo Nacional de Desenvolvimento da Educação (FNDE), introduces the possibility of suspending the transfer of resources to the Implementing Entities that do not have a nutritionist registered as a technical responsible in the FNDE systems and duly registered in the Regional Council of Nutritionists. For effective monitoring and verification of compliance with this rule, the registration of nutritionists in the PNAE will be updated, from the year 2021, with the requirement of regular verification of registration in the Regional Council of Nutritionists.</p> <p>The changes contemplated in the new resolution came into force on the date of its publication, 13 May, 2020. However, the provisions will only be required for the purposes of the accountability process for the year 2021, allowing the States, Federal District, Municipalities, and the federal network to make the necessary adjustments during 2020.</p>
India	National Food Security Act, 2013.	<p>Chapter VII of the Act provides for grievance redressal mechanism as follows:</p> <p>Article 14. Every State Government shall put in place an internal grievance redressal mechanism which may include call centres, help lines, designation of nodal officers, or such other mechanism as may be prescribed.</p>

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<p>India (cont.)</p>	<p>National Food Security Act, 2013. (cont.)</p>	<p>Article 15.</p> <p>(1) The State Government shall appoint or designate, for each district, an officer to be the District Grievance Redressal Officer for expeditious and effective redressal of grievances of the aggrieved persons in matters relating to distribution of entitled foodgrains or meals [under Chapter II], and to enforce the entitlements under this Act.</p> <p>...</p> <p>(5) The officer referred to in sub-section (1) shall hear complaints regarding non-distribution of entitled foodgrains or meals, and matters relating thereto, and take necessary action for their redressal in such manner and within such time as may be prescribed by the State Government.</p> <p>(6) Any complainant or the officer or authority against whom any order has been passed by the officer referred to in sub-section (1), who is not satisfied with the redressal of grievance may file an appeal against such order before the State (Food) Commission.</p> <p>Article 29 of the Act provides for an accountability mechanism to ensure the transparency and proper functioning of the Targeted Public Distribution System and the accountability of the functionaries in such system:</p> <p>(1) ... every State Government shall set up Vigilance Committees as specified in the Public Distribution System (Control) Order, 2001, made under the Essential Commodities Act, 1955, as amended from time to time, at the State, District, Block and fair price shop levels consisting of such persons, as may be prescribed by the State Government giving due representation to the local authorities, the Scheduled Castes, the Scheduled Tribes, women and destitute persons or persons with disability.</p> <p>(2) The Vigilance Committees shall perform the following functions, namely:—</p> <p>(a) regularly supervise the implementation of all schemes under this Act;</p> <p>(b) inform the District Grievance Redressal Officer, in writing, of any violation of the provisions of this Act; and</p> <p>(c) inform the District Grievance Redressal Officer, in writing, of any malpractice or misappropriation of funds found by it.</p>
<p>Sao Tome and Principe</p>	<p>Law No. 4 of 2012 establishing the School Food and Health Programme (PNAE).</p>	<p>Article 20 authorizes the National Coordination and the District Supervisory Councils to monitor the financial resources related to PNAE through audits, inspections and analysis of balance of accounts reports. Any natural or legal person may report irregularities identified in the application of the resources to the Councils and, depending on the severity of the complaint, they will together initiate the necessary legal mechanisms to investigate the situation and take such preventive or corrective measures as they deem appropriate. Article 47 provides for the form and contents of such complaints, including the identification of the complainant and the summary of the questionable acts and facts, and guarantees the confidentiality of the data of the complainant.</p>

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Sao Tome and Principe (cont.)	Law No. 4 of 2012 establishing the School Food and Health Programme (PNASE). (cont.)	<p>Where the National Coordination Council of PNASE does not approve the report on balance of accounts, it shall send it back to the respective School Management Committee with an explicit indication of the missing or unclear information identified in the reports presented. In such cases, the Council will withhold 50% of the financial resources to be transferred to until the adjustment of the situation that must occur within a maximum period of 15 days from the date when the rejected report is sent back (Article 43).</p> <p>According to Article 44, failure to prepare and submit reports on balance of accounts by any School Management Committee is considered as a serious and harmful practice, be it intentional or caused by irresponsibility of the programme managers, and punishable according to the laws in force in the Country related to mock crimes and misuse of public funds.</p>
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QUICK CHECKLIST AND KEY RECOMMENDATIONS

9

Guiding questions related to accountability mechanisms for school food and nutrition

Does the law define the responsibility of public and private entities or persons? Does it establish reporting obligations and procedural requirements?

- ✓ Does the law establish sanctions for non-compliance?
- ✓ Does the law establish (or refer to) impartial, participatory, non-discriminatory, accessible and effective grievance redressal mechanisms for the beneficiaries of the programme (or rights-holders) at the national and local levels?

Legal drafters should:

- Consider the relationship between judicial, administrative and community level grievance mechanisms, and the need to guarantee the right to appeal.
- Ensure mutual reinforcement and coordination between monitoring and accountability mechanisms.

5.10 BUDGET ALLOCATION

Why

Legislation, policies and programmes cannot be implemented without sufficient financial resources being mobilized, allocated and spent in an accountable, effective, efficient, equitable, participatory, transparent and sustainable manner (CRC, 2016).

Prioritizing children's rights in budgets, at both national and subnational levels, as required by the *Convention on the Rights of the Child*, contributes not only to realizing those rights, but also to long-lasting positive impacts on future economic growth, sustainable and inclusive development, and social cohesion (CRC, 2016).

Indeed, states parties to the Convention have the duty to ensure that:

- laws and policies are in place to support resource mobilization, budget allocation and spending to realize the rights of children (...);
- sufficient public resources are mobilized, allocated and utilized effectively to fully implement approved legislation, policies, programmes and budgets;
- budgets are systematically planned, enacted, implemented and accounted for at the national and subnational levels of the state, in a manner that ensures the realization of children's rights.

Furthermore, ICN2 specifically recommended increasing responsible and sustainable investments in nutrition, especially at country level with domestic finance (ICN2, 2014).

How

Specific measures, which state parties should take in relation to public budgets, include reviewing existing legislation and developing and adopting legislation that aims to ensure that budgets are sufficiently large for the realization of children's rights at the national and subnational levels.

Furthermore, state parties shall not discriminate against any child or category of children through resource mobilization or the allocation or execution of public funds. Spending equitably does not always mean spending the same amount on each child, but rather making spending decisions that lead to substantive equality among children. Resources should be fairly targeted to promote equality.

An SFN law should require the allocation of, and should stipulate, the financing arrangements necessary for the implementation of SFN programmes. The law could also stipulate the principles that govern the allocation and spending of resources on SFN.

The law could include provisions that:

- require the minister of finance to allocate specific and sufficient resources for the purposes of the implementation of SFN in the annual budget;
- reaffirm that the obligation to ensure every child's right to adequate food at school can never be deviated from by temporary or permanent cutbacks;
- specify other possible sources of financing for SFN, such as special funds, tax interventions, etc.

Financial resources should ensure the effective functioning of the institutional framework for the implementation of SFN programmes, and monitoring mechanisms should be established to ensure the budget is being respected and adequately implemented.

Table 5.30: Provisions for budget allocation for school food and nutrition

Country	Legal instrument	Measure
Bolivia (Plurinational State of)	Law on School Feeding in the Context of Food Sovereignty and the Plural Economy (No 622). Supreme decree No 2.471 modifying and complementing Supreme decree No 2.294 of 2015.	Municipalities are in charge of mobilizing and managing resources for school feeding. The Alimentación Complementaria Escolar (ACE) is funded through 3 main sources: municipalities' own resources, including the funds from the direct tax on hydrocarbons (IDH); departmental governments resources; and international organizations and NGO funding.
El Salvador	Legal decree No 605, 2005 – law on the Special Fund for Resources from the Privatization of ANTEL.	El Salvador's school feeding programme is financed with government funds and a trust fund established with the proceeds from the privatization of the national telecommunications company (ANTEL), as mandated by national law.
Ecuador	Organic Law on School Feeding.	The funding of school feeding shall be a permanent expenditure and the National Education Authority shall provide the necessary resources for the development of plans and programmes in the public education system. The budgetary allocation for this item may not be decreased during the fiscal year and its resources must be permanently available in order to guarantee the fundamental right to food, health and nutrition of school-age children and adolescents. The State will promote, in a complementary manner, international cooperation for the exercise of the right to adequate food of children and adolescents, as well as the obtainment of resources from public-private alliances or those assigned by the Decentralized Autonomous Municipal Governments, channeled through a cooperation agreement with the governing entity established by law.
Philippines	Republic Act No. 11 037 Masustansyang Pagkain para sa Batang Pilipino Act of 2017.	Section 11. Appropriations – The amount necessary to carry out the initial implementation of this Act shall be sourced from the current appropriations of the National Government Agencies (NGAs). Thereafter, such sums as may be necessary for the continuous implementation of this Act shall be included in the annual General Appropriations Act under the respective budgets of the NGAs.

Table 5.31: Legal provisions for budget allocation for school food and nutrition in the Guatemala Decree No. 16 of 2017 on School Feeding

Article 33 establishes the rules for the budget allocation for school food and nutrition in Guatemala. For the implementation of this Law, the Ministry of Public Finance, in the preparation of the General Budget of Revenue and Expenditures of the Nation, in each fiscal period, must assign a specific amount of at least four Quetzals per day (USD 0.52) per beneficiary. Beneficiaries are all students who are enrolled in the corresponding school year.

Article 34 establishes the financial regime and states that the School Feeding Programme will be financed as follows:

- a) The resources coming from the application of the single tariff of the Value Added Tax destined for Peace (IVA-Paz), integrated as follows:
 - a) zero point five percent (0.5%) of what is allocated annually for the Peace Funds; and
 - b) zero percentage point eight percent (0.8%) of the amount allocated annually in the financing of social expenditures for the school feeding programme.
- b) Any other ordinary or extraordinary income that is expressly assigned for the School Feeding Programme.

Article 35. Operationalization. The Ministry of Education, through the departmental directorates, must include in their operational plans and their budget of annual income and expenditures, the necessary allocations for the execution of the School Feeding Programme.

Article 36. Destination of the resources. The resources allocated for the School Feeding Programme can only be used for the purchase of food and supplies.

Article 37. Financial quotas. The Ministry of Public Finance must guarantee in the first ten (10) business days of the corresponding year, the financial availability corresponding to the first disbursement of the School Feeding Programme, as well as the financial allocation necessary to meet the following disbursements.

QUICK CHECKLIST AND KEY RECOMMENDATIONS

10 Guiding questions related to budget allocation for school food and nutrition

Does the SFN law establish participatory, transparent and accountability mechanisms to determine financial resources to be allocated and spent in an effective, efficient, equitable and sustainable manner?

- ✓ Does legislation provide allocation priority for the realization of children's rights in budgets?
- ✓ Does the SFN law establish the financing arrangements necessary for the implementation of SFN programmes?
- ✓ Does the SFN law stipulate the principles that govern the allocation and spending of resources on SFN?
- ✓ Does the law include provisions that:
 - require the minister of finance to allocate in the annual budget specific and sufficient resources for the purposes of the implementation of SFN?
 - reaffirm that the obligation to ensure every child's right to adequate food at school can never be deviated from by temporary or permanent cutbacks?
 - specify other possible sources of financing for SFN, such as special funds, tax interventions, etc.?
- ✓ Does the law establish monitoring mechanisms to ensure the budget is being respected and adequately implemented?

Legal drafters should:

- Review existing legislation and ensure that the newly proposed legislation provides for budgets that are sufficiently large for the realization of children's rights to adequate food at school, at both the national and subnational levels.

CONCLUSIONS



6. CONCLUSIONS

International law, and in particular international human rights law, represent a solid foundation for ensuring children's right to adequate food in schools. Besides international law, recommendations and soft law instruments adopted in the last decades provide clear guidelines to states on how to put into practice concrete actions for the realization of children's rights in the school environment. This Guide includes a reference to some of the most significant international instruments relevant to school food and nutrition, and categorizes them through selected areas of law considered fundamental to achieving school food and nutrition goals sustainably.

As a direct response to the international call for improved nutrition and food systems, and in the context of the Second International Conference on Nutrition and the UN Decade of Action on Nutrition, FAO proposes a holistic approach in school-based interventions, and builds on four areas of action: i) promoting a healthy school food environment and adequate and safe school food; ii) integrating effective food and nutrition education throughout the whole school system; iii) stimulating inclusive procurement and value chains for school food; and iv) creating an enabling political, legal, financial, and institutional environment.

Recalling the primary role of law to translate political intentions into legal obligations (by making policy objectives enforceable and sustainable in time), this guide promotes a holistic and human-rights based approach to school food and nutrition, and highlights the importance of legislation to achieve a healthy school food environment.

A healthy school food environment cannot be achieved without establishing rules aimed at ensuring the safety of food from farm to table, nor without mandatory nutritional standards to define the type of food to be distributed in the school setting. Mechanisms should allow small-scale local producers to sell their products to schools, and legislation should avoid creating unnecessary barriers for those farmers and their households who gain from participating in the local market. Legislation also has an important role to play in defining mechanisms for stakeholders' active and responsible participation, and in establishing procedures to ensure that food provided to students is safe and nutritious to ensure the well-being of students.

This Guide conveys the message that sustainable SFN goals require coherent legislation. More than a single law, a legal and regulatory framework for SFN is a comprehensive package of harmonized legal instruments conducive to achieving the SFN objectives set by government. Therefore, legislating on SFN encompasses different laws and regulations governing areas such as health, education, nutrition, social protection, agriculture, rural development and urban planning, food safety, trade, finance, and public procurement.

This Guide presents a range of legislative options to legislate for adequate food and nutrition at schools. Knowing that legislative options depend on the reality of each country and its own context, this Guide recommends the development of a specific law on school food and nutrition as a useful instrument to establish: children's rights and entitlements regarding food and nutrition in the school environment; institutional responsibilities and coordination mechanisms; the principles and general rules that apply to school food and nutrition; the monitoring and surveillance mechanisms to ensure that the rights of students are respected. This does not mean that all countries necessarily require a specific law on the subject. Some countries may have comprehensive and harmonized legislation that is effective in ensuring adequate food

in schools, but in those countries where legislation may be incomplete, and where there is legislative fragmentation, a specific law on the subject may be very useful.

Independently of each country's approach and choice, undertaking an SFN legal assessment is recommended as an opportunity to analyse the extent to which an existing legal framework is conducive, or not, to the implementation of sustainable policies for SFN. The conclusions of a legal assessment should inform the formulation of SFN-related policies and should also constitute evidence for immediate and future legislative action.

This guide seeks to provide general considerations for developing a participatory process in the analysis of national legislation related to SFN, and it also aims to provide elements and basic tools to analyse the legal framework relevant to school food and nutrition in order to determine possible gaps, overlaps and conflicting provisions. A legal review of SFN-related instruments is required to provide effective legislative responses and to determine whether legislation should be amended or not, and whether a specific law on SFN is needed.

Many countries have laws covering the management of a school feeding programme and this Guide argues that such laws could be broader in scope to allow for a holistic approach to SFN, where regulatory coherence is possible between the different sectors. This does not mean that all areas that are relevant for SFN should be regulated in detail in a single SFN law. Reference to other laws that regulate a relevant area is preferable – in particular on food safety and public procurement – which have their own legal frameworks. With regard to other aspects, such as SFNE, provisions may be found in the national education law, and nutrition may be covered in health regulations.

This Guide proposes that an enabling legal framework for SFN needs to encompass: i) laws covering issues such as nutrition, food safety and public procurement; and ii) other specific laws that bring the different legal areas together in a coherent and coordinated whole (see Table A2.1 in Annex 2 for a list of the provisions of a school food and nutrition law).

The key message that this Legal Guide wants to communicate to law practitioners, policy makers, parliamentarians, and all actors who are interested in taking legislative action for adequate food and nutrition in schools, is that appropriate linkages should be made, and regulatory coherence ensured. This Legal Guide also covers elements that could be regulated in a specific law on SFN, in ways that enhance legislative coherence.

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LEGAL INSTRUMENTS

Legally-binding instruments

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), United Nations, Treaty Series, vol. 1249, p. 1318, adopted by the General Assembly, December 1979.

Convention on the Rights of Persons with Disabilities (CRPD) United Nations, Treaty Series, vol. 2515, p. 3 adopted by the General Assembly Resolution A/RES/61/106 on 13 December 2006.

Convention on the Rights of the Child (CRC), adopted under UN General Assembly Resolution 44/252 on 20 November 1989, and entered into force on 2 September 1990, in accordance with Article 49(1) of the CRC.

International Covenant on Civil and Political Rights (ICCPR), United Nations, Treaty Series vol. 999, adopted by General Assembly Res 2200A (XXI) on 16 December 1966.

International Covenant on Economic, Social and Cultural Right (ICESCR), United Nations Treaty Series vol. 993, adopted by General Assembly Res 2200A (XXI) on 16 December 1966.

Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure, adopted by General Assembly Res A/RES/66/138 on 19 December 2011.

Vienna Convention on the Law of the Treaties, United Nations, Treaty Series, vol. 1155, p. 331, adopted by the UN Conference on the Law of Treaties on 23 May 1969.

WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 1867 UNTS 493, 15 April 1994.

WTO Agreement on Technical Barriers to Trade, 1868 UNTS 120, entered into force in on 1 January 1995.

WTO Agreement on Government Procurement (GPA) (GPA 1994) signed in Marrakesh on 15 April 1994 and entered into force on 1 January 1996.

Non-legally-binding instruments

2005 World Summit Outcome, adopted under Resolution A/RES/60/1 on 24 October 2005 at the High-Level Plenary Meeting of the Sixtieth session of the UN General Assembly.

Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, adopted by UN General Assembly Resolution A/Res/67/1 on 30 November 2012.

Global Action Plan for the Prevention and Control of NCDs 2013-2020 endorsed by Resolution WHA66.10 at the Sixty-sixth World Health Assembly on the 27 May 2013.

Model Law on Public Procurement, 2011. United Nations document, A/66/17, annex I as adopted by the United Nations Commission on International Trade Law on 1 July 2011.

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Recommended International Code of Practice - General Principles of Food Hygiene (GPFH), including Annex on Hazard Analysis and Critical Control Points (HACCP) System and Guidelines for its Application (CAC/RCP 1-1969, Rev. 4-2003) adopted by the Codex Alimentarius Commission in 1997, revised in 2003.

Second International Conference on Nutrition (ICN2), Rome Declaration on Nutrition and the Framework for Action. Endorsed by over 170 countries in Rome, 2014.

Transforming Our World: the 2030 Agenda for Sustainable Development, adopted by the UN General Assembly (A/RES/70/1) on 25 September 2015. The Agenda has 92 paragraphs. Paragraph 59 outlines the 17 Sustainable Development Goals and the associated 169 targets and 232 indicators.

UN Guiding Principles on Business and Human Rights – Implementing the United Nations “Protect, Respect and Remedy” Framework. The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011. New York, United States of America and Geneva, Switzerland. (also at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding), adopted on 3-5 May 2003 at the Second Inter-agency Workshop, Stamford, United States.

Universal Declaration of Human Rights (UDHR) adopted by General Assembly Res 217 A(III) art 5 on 10 December 1948.

Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security. Adopted by the 127th Session of the FAO Council, November 2004. Rome. (also at <http://www.fao.org/3/a-y7937e.pdf>)

CASES

Judiciary protection of the right to prior consultation of Afro-descendent communities in the School Feeding Programme in Colombia. Constitutional Court - Case law T-475 of 2016.

TA Dijon, 28 août 2017, Ligue de défense judiciaire des musulmans et autres, n° 1502100 et 1.

SUPRANATIONAL LEGISLATION

European Union

- Regulation on the new School Fruit, Vegetables and Milk Scheme EU No. 2016/791.
- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

FOPREL (Central America and the Caribbean Basin)

- Framework law on the right to adequate school food and nutrition, 2013.

PARLATINO (Latin-American Parliament)

- Framework law for Latin America on the regulation of the publicity and promotion of foods and non-alcoholic drinks aimed at children and adolescents, 2012.
- Framework law on school meals, 2013.

NATIONAL LEGISLATION

Argentina

- Law No. 26396/2008 - Food Disorders Law.
- Decree 1395/2008.

Bahrain

- 2016/2017 Food Canteen List.

Bolivia (Plurinational State of)

- Law No. 622/2014 - Law on School Feeding in the Context of Food Sovereignty and the Plural Economy (Ley de alimentación escolar en el marco de la soberanía alimentaria y la economía plural).
- Supreme decree No 2.471 modifying and complementing Supreme decree No 2.294 of 2015.

Brazil

- Law 11.947/2009 National School Feeding Programme (PNAE).
- Resolution 163 Conanda, 13 March 2014 as enforced by the Consumer Defense Code Law 8078/1990 and the Child and Adolescent Statute Law 8069/1990.
- Law No. 11.326/2006 (amended by Law No. 12.512/2011) establishing the guidelines for the formulation of the National Policy for Family Farming and Rural Family Units.
- Resolution No. 6 establishing the Provision of School Meals to Students in Basic Education under the National School Feeding Programme (PNAE), 2020.

Cabo Verde

- Law No. 89/VIII/2015. The School Feeding Law – establishing the PNAE (National School Food and Health Programme).

Chile

- Law 20.606 of 2012 on Nutritional Composition of Foods and their Advertising (as amended by Law 20869 of 2015).
- Law N° 15.720/1964 establishing the National Board of School Assistance and Scholarships (Junta Nacional de Auxilio Escolar y Becas –JUNAEB).

Colombia

- Decree° 1075 of 2015 Official Gazette No. 49.523 of 26 May 2015 issuing the Unified Regulatory Decree for the Educational Sector, amended by Decree 1852 of 2015.
- Resolution° 29452 of 2017 establishing the Technical-Administrative Guidelines, Standards and Minimum Conditions of the School Feeding Programme (SFP) and repealing Resolution° 16432 of 2015.
- Decree° 218 of 2020 establishing the internal structure of the School Feeding Special Administrative Unit – Food for Learning.

Costa Rica

- Executive Decree No. 36910-MEP-S (2012) setting restrictions on products sold to students in elementary and high schools.

Ecuador

- Regulation for school bars within the national education system establishing mandatory nutrition requirements for food and drinks prepared and sold in school bars and cafeterias (Ministerial Agreement No. 5, Official Record 232), 2014.
- Ministerial Agreement No. 1 – Instructions for the Operationalization of the Regulations for the Control of National Educational System School Canteens, 2015.
- Organic Law on School Feeding, 2020.

El Salvador

- Decree No 605, 2005 – law on the Special Fund for Resources from the Privatization of ANTEL (Decreto Legislativo N° 605 - Ley del fondo especial de los recursos provenientes de la privatización de ANTEL – Administración Nacional de Telecomunicaciones).
- Law of the School milk programme, 2013.

Estonia

- Regulations on nutrition requirements applicable to food served in school and pre-school canteens (2008).

Finland

- Basic Education Act (13.6.2003/477).
- Act on Early Childhood Education and Care (8.5.2015/580).

France

- Public Health Act No. 2004-806 prohibiting vending machines on school premises from selling drinks and snacks.

Guatemala

- Decree No. 16 of 2017 on School Feeding.

Honduras

- Decree No. 125/2016, Law on School Feeding.

Hungary

- Act XLVIII on Basic Requirements and Certain Restrictions of Commercial Advertising Activities (2008), Section 8.
- Ministerial Decree 20/2012 (VIII.31) on the operation of Public Education institutions and the Use of Names of Public Education Institutions (Section 130 (2)) establishing that food and beverages subject to the public health product tax may not be sold on school premises or at events organised for school children.
- Public Catering Act - EMMI Decree 37/2014. (IV.30) on the nutritional standards of public catering.

India

- The National Food Security Act No. 20 of 2013.
- G.S.R. 743 (E) Mid- Day Meal Rules, 2015 in exercise of the powers conferred by the national food security Act, 2013.
- Guidelines on food safety and hygiene for school level kitchens under mid-day meal (mdm) scheme, F.No. 14-2/2013-EE.5 (MDM-1-2), 13th of February, 2015.
- Food Safety and Standards (Fortification of Foods) Regulations, 2018. F. No. 11/03/Reg/Fortification/2014. Dated -10/08/2018 (Accessed on- 6/02/2019).

Japan

- Basic Law on Shokuiku (2005).
- The School Lunch Act (2008).

Latvia

- Cabinet Regulation No. 172 adopted 13 March 2012. Regulations Regarding Nutritional Norms for Students of Educational Institutions, Clients of Social Care and Social Rehabilitation Institutions and Patients of Medical Treatment Institutions, issued pursuant to Section 19, Paragraph 3.1 of the Food chain Surveillance Act.

Lithuania

- Order V-964. Lithuanian Ministry of Health sets catering standards for preschools and secondary schools based on food and nutrient-based standards.

Malta

- Healthy Lifestyle Act (2014) and Food and Beverage Standards for food consumed at schools (set in 2007 and amended in 2015).

Mauritius

- Food (Sale of Food on Premises of Educational Institutions) Regulations 2009 (G.N. No. 94 of 2009).

Mexico

- Mandatory food and beverage guidelines for elementary schools (2010, updated in 2014).
- General Education Law, 2019.

Paraguay

- Decree 1056/2013 establishing the Complementary Contracting Modality known as the Simplified Process for the acquisition of agricultural products from Family Farming.
- Decree n. 3000/2015 Establishing the complementary contracting modality known as the Simplified Process for the Acquisition of Family Agricultural Products and establishing criteria for the conduct of the contracting and selection processes applied for these selections.
- Law No. 6.277, 2019, which expands Articles 2 and 10 of Law No. 5210, School Feeding and Sanitary Control, 2014.
- Decree No. 1820 – By which Article 1 of Law No. 6277/2019 is regulated, expanding Articles 2 and 10 of Law No. 5210/2014, "On School Feeding and Health Control".
- Resolution DNCP 2915/2015 Resolution that establishes the mechanism for the application of the qualification requirements of the purchase to family farming products registered in the Ministry of Agriculture and Livestock.
- Resolution S.G. No. 17, 2020 establishing the requirements and conditions for the preparation or provision of food in the framework of school feeding and approving the sanitary surveillance plan, designating the authority responsible for monitoring it and establishing its powers.

Peru

- Resolution No. 016/13 / MIDIS approving the Directive No. 001-2013-MIDIS on General Procedures for the Co-Management Model for the Operation of the Food Service of the Qali Warma National School Feeding Programme, as amended.
- Law 30021 of 2013: Promotion of healthy food for children and adolescents.
- Rules establishing technical parameters for food and non-alcoholic drinks as a reference to Law 30021, 2014.
- Health Directive No.63 Promotion of Healthy Kiosks and School Canteens.
- Supreme Decree No. 008-2012-MIDIS, creating the Qali Warma National School Feeding Programme, as amended by Supreme Decree No 008-2019-MIDIS.

Philippines

- Republic Act No. 11 037 Masustansyang Pagkain para sa Batang Pilipino Act of 2017.
- Do 13, S. 2017 – Policy and Guidelines on Healthy Food and Beverage Choices in Schools and in Department of Education Offices.

Poland

- Act of 28 November of 2014 amending the Polish Act on Food and Nutrition Safety from 2006, to include rules for sale, advertising and promotion of food and nutrition standards for canteens in pre-schools, primary and secondary schools.

Republic of Korea

- Special Act on the Safety Management of Children's Dietary Life prohibiting the sale of sugary drinks within school premises along with other energy-dense and nutrient poor foods.

Romania

- Ministerial Order 1563/2008 setting maximum amounts for sugar, fat and salt in food sold in schools and pre-schools.

Sao Tome and Principe

- Law 4/2012 establishing the School Food and Health Programme (PNASE).

Slovenia

- School Nutrition Law (2010, amended in 2013).

Spain

- Law 17 of 2011 on Food Security and Nutrition.

Sweden

- Swedish Education Act (2011) requiring school meals to be nutritious and free of charge.

United Arab Emirates

- The School Canteen Guidelines for the Emirate of Abu Dhabi (2011-12).

United Kingdom of Great Britain and Northern Ireland

- School Standards and Framework Act of 1998, as amended.
- Nutritional Standards for School Lunches 2007 (Northern Ireland).
- Nutritional Requirements for Food and Drink in Schools Regulations 2008 (Scotland).
- Nutritional Standards for Other Food and Drinks in Schools 2008 (Northern Ireland).
- Healthy Eating in Schools (Nutritional Standards and Requirements) Regulations 2013 (No. 1984 (W.194) (Wales).
- Requirements for School Food Regulations 2014 (S.I. No. 1603 of 2014) applicable to school lunches and food provided to students on school premises (England).
- Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2020. The Regulations come into force on 8 April 2021.

United States of America

- Richard B. Russell National School Lunch Act; [Chapter 281 of the 79th Congress, Approved 4 June 1946, 60 Stat. 230] as amended through P.L. 116–94, Enacted 20 December 2019.
- Code of Federal Regulations. Title 7: Agriculture PART 210–National School Lunch Program, 2 August 1988 (as amended).
- Hunger-Free Kids Act (HHFKA) of 2010 setting nutrition standards in the National School Lunch and School Breakfast Programs.

Uruguay

- Law No 19.140 Healthy foods in schools (2013).
- Regulatory Decree 60/014 (2014).

Note: The English translation for the titles of legislation in Bahrain, Estonia, Malta and United Arab Emirates were taken from WCRFI NOURISHING framework database [online] at <https://www.wcrf.org/int/policy/nourishing-database>

ANNEXES

ANNEX 1 – CHECKLIST FOR A LEGISLATIVE DRAFTING PROCESS

This checklist accompanies the Legal Guide on School Food and Nutrition. Its aim is to assist countries in the process of drafting legislation for school food and nutrition.

The checklist should be used in combination with the Guide in order to understand the rationale of the questions that are included. It is not intended to be a model to be followed, but just a guiding tool for legal drafters and policy makers who are interested in legislating on school food and nutrition.

Table A1.1: Checklist for legislating on school food and nutrition	
1. Assessment	
1.1. A policy assessment	<ul style="list-style-type: none"> • Have national policies and strategies related to food security and nutrition been identified? • Have national policies and strategies related to social protection been identified? • Have national policies and strategies related to school food and nutrition (SFN) been identified? • Is there a specific policy or programme aimed at improving school food and nutrition in the country (school feeding programme/home-grown school feeding programme)? • Do legal drafters have a clear understanding of the objectives of the national policy related to SFN? • What are the main issues to tackle through policy and legislation?
1.2. Legal assessment	<ul style="list-style-type: none"> • What are the international human rights instruments that are relevant for SFN? Have those instruments been ratified by the State? • Has existing national legislation of relevance to SFN been identified and considered – laws and regulations that may have a direct or indirect impact on SFN? • Are there constitutional provisions protecting children’s rights and in particular their right to adequate food? • What are the current laws and regulations that directly or indirectly apply to SFN? • Have legal drafters undertaken a legal analysis identifying legislative gaps and conflicting provisions? • Does national legislation require revision? • Is there a need for a specific law on SFN to be drafted?
1.3. Regulatory impact	<ul style="list-style-type: none"> • What will be the impact of the proposed SFN law? • What resources are required for implementation and enforcement of the SFN law? • Have policy makers and legal drafters considered alternative solutions before initiating legislative drafting for SFN?

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2. Consultation

- Has a transparent process been launched to inform the general public about the legislative initiative?
- What are the concrete actions and mechanisms that were put in place to involve those affected by the proposed SFN legislation?
- Has an active consultation process been launched?
- Have government departments been consulted about the contents of the proposed SFN legislation?
- What are the national institutions and local authorities that will be involved in the implementation of the SFN law?
- Have their technical experts and legal advisers been invited to participate in the legislative drafting process?
- Who is the main public affected by the SFN law? Who are the main stakeholders? Are there other interested groups to be consulted?
- Has sufficient time been given to the preparation of the draft SFN legislation?

Table A1.2: Checklist for drafting a school food and nutrition law	
A. Contents of the proposed law	
1. Effectiveness	<ul style="list-style-type: none"> • How does the school food and nutrition (SFN) law contribute to achieve policy objectives? • Are the contents of the SFN law aligned with the SFN policy priorities in the country? • What are the benefits of the proposed law?
2. Legal clarity	<ul style="list-style-type: none"> • Is the law clear, accessible and understandable?
3. Compliance with international law	<ul style="list-style-type: none"> • Does the law comply with international treaties ratified by the State? • Does the law incorporate in its substantive provisions, a human rights-based approach in compliance with international human rights law?
4. Consistency with constitutional provisions	<ul style="list-style-type: none"> • Is the law consistent with the national Constitution?
B. Specific provisions of the proposed law	
1. Opening provisions	<ul style="list-style-type: none"> • Does the SFN law include the purpose of the law? • What are the regulatory objectives established in the SFN law in response to the priorities and problems identified? • What is the scope of application of the SFN law? • What are the terms and key concepts defined in the SFN law? Do they refer to international law or existing national legislation? • Does the law establish guiding principles to orientate its implementation?
2. Rights and entitlements	<ul style="list-style-type: none"> • Does legislation explicitly recognize rights and entitlements to ensure the accomplishment of the regulatory objectives stated in the law? • What are the procedures and mechanisms established by the SFN law to enable right-holders to claim all goods and services related to SFN? • Does the SFN law define clear, objective, reasonable and transparent criteria for targeting approaches to SFN? • What are the institutional and procedural mechanisms established by the SFN law to enforce the substantial provisions contained in the law? How does the SFN law refer to existing mechanisms to protect children's rights, including the right to adequate food?

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3. Institutional framework	<ul style="list-style-type: none"> • Does legislation define the role of national and decentralized institutions with regard to SFN? • Does legislation designate a specific ministry or agency that will have primary responsibility for implementing the SFN legislation, as well as the related programmes? • What is the role of the competent authority in regard to SFN? What functions, duties and enforcement powers are established by the law? • Does the SFN law refer to or create an inter-ministerial agency or a coordination board where several ministries can coordinate actions around SFN? • Does legislation define the role of the coordination body and depending on its role (advisory, consultative, executive), does it define its composition and tasks? • Does legislation determine the duties of national government and decentralized authorities? • To what extent does the law promote and guarantee civil society participation in SFN decision making? • How does the SFN law avoid overwhelming parents and teachers with excessive tasks and responsibilities in relation to SFN?
4. Nutrition and school food environment	<ul style="list-style-type: none"> • To what extent does national legislation shift food systems and make them nutrition-sensitive at schools? • Does the SFN law unambiguously limit the exposure of children to highly processed foods or other low nutritional value foods at schools? • Does national legislation establish mandatory nutritional standards that are applicable to schools? Does the SFN law require compliance with those standards? • Does national legislation restrict the development of hot food take-away outlets, fast-food outlets and other energy-dense nutrition-poor food retailers, within a certain perimeter of school grounds? • Does national legislation regulate public planning or commercial licensing to set incentives and rules for a healthy retail and food service environment within and around schools? • Does national legislation establish rules on nutrition labelling to improve the health status of children by providing them with the information necessary to make healthy nutrition choices?
5. School-based food and nutrition education	<ul style="list-style-type: none"> • Does the SFN law include provisions on school-based food and nutrition education? • To what extent does the SFN law aim at influencing behaviours and developing children's capacities to engage in and maintain healthy food-related practices from a young age? • Does national legislation promote a skill and practice-based approach, making use of children's own experiences and build on motivations? • Does the SFN law include provisions to develop capacities of front-line educators (teachers, NGO staff, etc.)? • Does the SFN law set explicit linkages between food provision and food environment interventions (school meal nutrition standards, regulation and sale of marketing, etc.) ? • Does the SFN law include provisions on school gardens? • Does the law explicitly refer to food safety legislation as the applicable legal instrument for guaranteeing food safety through growing, harvesting and storage practices?

<p>6. Food safety and quality</p>	<ul style="list-style-type: none"> • What are the existing institutional and regulatory mechanisms to ensure food safety in your programme? • Does SFN legislation establish the necessary linkages between the school feeding authorities to ensure food safety at schools and the food safety authorities (at the national and the local level)? • Does the SFN law refer to national food safety and quality standards and legislation as the benchmark for all food products produced, purchased, prepared and provided in schools? • Does the SFN law define the roles and responsibilities of the different actors involved in SFN programmes? • Does the SFN law designate a responsible authority in the school to monitor and verify compliance with food safety and quality legislation, including compliance with training and certification requirements? Does this authority have the necessary mechanisms to achieve this purpose? • Does the law include the necessary provisions to ensure that the needs of children with special food vulnerabilities (such as food allergies) are addressed?
<p>7. Public food procurement</p>	<ul style="list-style-type: none"> • Does the law include provisions establishing the linkage between school feeding programmes and local smallholder production? • Does the law prescribe a specific percentage goal of the procurement budget that should (or must) be spent for the procurement of food directly from the defined target beneficiaries? • Does the law establish clear eligibility criteria for target beneficiaries (e.g. smallholder or family farming producers)? • Does it build on existing legislation or other regulatory frameworks, policies and/or programme documents? When these are inexistent, does the law create its own definition of target beneficiaries? • Does the law ensure alignment with a public procurement regulatory framework? • Does the law build on existing legal tools (such as reservation, preferencing and indirect procurement schemes) – or stipulate the development of specific new legal tools – to support the access of smallholder farmers (and/ or other target beneficiaries) to schools' public food markets?
<p>8. Monitoring and evaluation</p>	<ul style="list-style-type: none"> • Does the SFN law establish or define a monitoring mechanism at central and decentralized levels to evaluate the implementation of SFN programmes and SFN policies? • If the law does define a monitoring mechanism, what is its composition, mandate and authority? • Does the SFN law define the standards against which the programme should be monitored? • Does the SFN law provide for participatory mechanisms of stakeholders in monitoring systems? • Does the SFN law require the publication of the results achieved by SFN programmes and the corrective action taken to ensure transparency?

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9. Accountability	<ul style="list-style-type: none"> • Does the law define the responsibility of public and private entities or persons? Does it establish reporting obligations and procedural requirements? • Does the law establish sanctions for non-compliance? • Does the law establish -or refer to- impartial, participatory, non-discriminatory, accessible and effective grievance redressal mechanisms for the beneficiaries of the programme (or rights-holders) at the national as well as local levels? • Does the SFN law establish participatory, transparent and accountability mechanisms to determine financial resources to be allocated and spent in an effective, efficient, equitable and sustainable manner?
10. Budget allocation	<ul style="list-style-type: none"> • Does legislation provide allocation priority for the realization of children's rights in budgets? • Does the SFN law establish the financing arrangements necessary for the implementation of SFN programmes? • Does the SFN law stipulate the principles that govern the allocation and spending of resources on SFN? • Does the SFN law include provisions that: <ul style="list-style-type: none"> • Require the minister of finance to allocate in the annual budget specific and sufficient resources for the purposes of the implementation of SFN? • Reaffirm that the obligation to ensure every child's right to adequate food at school can never be deviated from by temporary or permanent cutbacks? • Specify other possible sources of financing for SFN, such as special funds or tax interventions? • Does the SFN law establish monitoring mechanisms to ensure the budget is being respected and adequately implemented?
11. Compatibility review	<ul style="list-style-type: none"> • Have all the necessary amendments to existing legislation been completed? • Does the SFN law provide for the review of sectoral legislation?
12. Subsidiary law	<ul style="list-style-type: none"> • If subsidiary law (regulations) is authorized by the SFN law, is the delegated power appropriately included? • What are the aspects to be developed by subsidiary law?

ANNEX 2 – PROVISIONS OF A SCHOOL FOOD AND NUTRITION LAW

Table A2.1: Provisions of a school food and nutrition law
Scope and objectives
Definitions
Guiding principles
Rights and entitlements
Institutional arrangements
Food procurement
Preference clause for small-scale farmers / local procurement
Compliance with food safety legislation / food safety requirements
Compliance with nutritional guidelines and standards
Responsibilities and procedures related to the design of the menu
School food and nutrition education
School gardens
Food advertisements at school
Food retailing rules affecting school food and nutrition
Student, parent and community involvement
Accountability mechanisms
Sanctions and penalties
Budget provisions
Final and transitory provisions (including amendments to other laws)

Legal Guide on school food and nutrition

Legislating for a healthy school food environment

A solid international consensus has emerged on the importance of nutrition for children's development and well-being. At the Second International Conference on Nutrition (ICN2), the Member States of the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO) committed to developing policies, programmes and initiatives to ensure healthy diets throughout the children's life cycle, emphasizing the potential of schools as platforms for integrated action.

This Guide promotes a holistic and human rights-based approach to school food and nutrition, in which legislation is an indispensable tool to ensure the sustainability of public policy goals set by a country. In light of international law and standards, it provides practical information and guidance to develop or strengthen national legislation to improve food security and nutrition in schools as well as community development. The Guide presents a range of regulatory options and legislative examples of state practice that may contribute to building sound and coherent legal frameworks for school food and nutrition. It is a useful resource for law practitioners, policy makers, parliamentarians, and all actors who are involved in the design, implementation or monitoring of school programmes and policies and most particularly, for those interested in taking legislative action (law-making or law reform).

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