

HAVE BEEN GUARANTEED THE HUMAN RIGHT TO ADEQUATE FOOD IN THE BRAZILIAN LEGAL AMAZON REGION?

by

Claudia Ribeiro Pereira Nunes- PhD

*Instituto de Ensino Superior de Rondônia/Faculdades Associadas de Ariquemes
(IESUR/FAAr) – Ariquemes (RO)*

Universidade Veiga de Almeida (UVA) - Rio de Janeiro (RJ)

Abstract: As one of the largest food-exporting countries in the world, Brazil's development is dependent on this commercial activity. The Brazilian Federal Constitution guarantees the Human Right to Adequate Food for the Brazilian population created by the National Food and Nutrition Security Act. Against this background, in which food has a dual aspect – as a law and economic development instrument – the hypothesis is to investigate whether there is adequate food and nutrition security for single-parent families headed by women from 18 to 25 years of age, with at least 3 to 4 children and receive a State income family program distribution, called “bolsa família.” Methodologies used are: (i) theoretical – law, economic and sociology literature review; (ii) secondary data – official websites; and (iii) field aiming to investigate the identity group known as "impoverished families." The field sample was delimited to the Brazilian legal amazon region.

Keywords: Human right, Adequate food Act, Brazilian Legal Amazon Region.

INTRODUCTION

Given man's behaviour in relation to the production, use and waste of food, as well as in relation to history, sociology, anthropology and law, we have studied the impacts of these human practices in a social, economic and environmental context, among others.

Within this context, this paper analyses whether there is adequate food and nutrition security for single-parent families headed by women from 18 to 25 years of age, with at least 3 to 4 children, who undergo degrading working conditions and receive a state income family program distribution (“bolsa família”) - "impoverished families."

The general aim of this research is to study whether or not Brazil has a legal system for protection of the Human Right to Adequate Food and has produced a public policy for food security in the 21st century. The special aims are: (i) analyse the institutionalisation direction of the Human Right to Adequate Food in Brazil; and (ii) investigate if the Brazilian Program for the Adequate Food and Nutrition Security Act merely creates a survival strategy as a supplementary income for "impoverished families."

The justification for this research is that Brazil is one of the largest food exporting countries in the world whose economic development depends on this activity. In addition, the Brazilian Constitution/1988 guarantees the Adequate Right to Food for the Brazilian population under the National Food and Nutrition Security Act.

Methodologies include: (i) theoretical – law, economics and sociology literature review; (ii) secondary data – official websites; and (iii) field aiming to recognise and investigate the identity group "impoverished families." The field sample was delimited to the Brazilian Legal

Amazon Region (Acre, Roraima, Amazonas, Pará, Rondônia, Mato Grosso, Amapá, Tocantins, Maranhão).

1. General Aspects of the Food Concept as Commodity or Right in the 20th and 21st Century

The majority of developing countries are dependent on primary commodities for export revenues. This society has created standards for the regulation of life in a respectful manner which protects "real property" and "productive property." When there is high international demand, prices rise and production companies profit.¹ From the perspective of developing countries, as Brazil as, food production is a necessary strategy for national development as an economic asset. For development of the concept of food as a commodity, it is necessary to understand that the intention of agricultural development is to preserve land and stimulate trade.²

Since commodities are traded on commodities represented by futures exchanges, their prices are set globally by international market. There are four types of commodities:

- *Agricultural commodities: soybeans, frozen orange juice, wheat, cotton, rubber, coffee, etc.;*
- *Agricultural commodities: soybeans, frozen orange juice, wheat, cotton, rubber, coffee, etc.;*
- *Mineral Commodities: ore, aluminium, oil, gold, nickel, silver, etc.;*
Financial Commodities: Currencies traded in multiple markets, government bonds from federal governments, etc.; and
- *Environmental Commodities: carbon credits.*³

On October 16th, 1945, the Food and Agriculture Organisation of the United Nations – FAO/UN – was created which leads an international effort to eradicate hunger and food insecurity, basing their actions on the following lines:

- *Technical assistance and cooperation for developing South Americancountries: supports developing countries in the formulation and implementation of policies and technical assistance projects in support of the programs for food, rural agricultural areas, forestry and fisheries development and cooperation;*
- *Information available to everyone: FAO/UN serves as a knowledge network and also publishes newsletters and books, distributes magazines and has created electronic media; and*
- *Advice to governments: FAO/UN shares its experience with member countries advising on policy and agricultural planning, developing legislation and creating national strategies.*⁴

Even so, it was only a few years later that the first Human Rights to Adequate Food Act - HRtFA - were recognised as a right in Article XXV of the Universal Declaration of Human

¹ Summary extracted from Brown et al (2008), p. 13-15.

² Summary extracted from Rodrigues (2008), p. 42-43.

³ UNCTAD, Handbook of Statistics 2013, w/p.

⁴ FAO/UN, 2002.

Rights, enacted on December 10th, 1948.¹ Furthermore, the International Treaty on Economic, Social and Cultural Rights was not signed in 1966 and was only signed by Brazil on November 12th, 1991.

One of the most important moments in history in the 21st century was the signing of the Declaration of the Voluntary Right to FAO/UN recognised by Brazil, on October 28, 2002. On this date, the Brazilian federal government assumed the political, social and economic commitment to protect the right to adequate food; the right of every human being to have access to healthy and nutritious food in Brazil.²

In 2008, another important historical event was the promotion of the World Hunger Summit which brought together heads of state and government, and members of the United Nations. On this occasion, world representatives involved in the discussions (including Brazil), reviewed commitments made in the document called the Millennium Development Goals.³ Outlined below are some of the actions of the FAO/UN, developed in Brazil in partnership with Brazilian programs, along the lines of actions of the international organisation from 2002 to 2010:

- *Supporting the Zero Hunger Program, in partnership with the Ministry of Social Development and Fight against Hunger.*
- *Support for the National Program for Strengthening Family Agriculture, in partnership with the Ministry of Agrarian Development.*
- *Support Program for Productive Organisation of Communities, in partnership with the Ministry of National Integration.*
- *Supporting the National Forest Program, in partnership with the Ministry of Environment.*
- *Support for the National Program of Rural Environmental Management, in partnership with the Ministry of Environment.*
- *Support for the National Development Plan for Fisheries and Aquaculture, in partnership with the President's Ministry of Fisheries and Aquaculture.*
- *Support for the National School Food Program, in partnership with the National Fund for Education Development, Ministry of Education.*
- *Support for the Program of Degraded Areas in the Amazon, the Ministry of Agriculture, Livestock and Supply and related regional and sub-regional initiatives, Animal Health, Plant Protection, Biofuels and Food Security.*
- *FAO/UN works in partnership with the Organisation of the United Nations System, the World Bank, European Mission, Global Development Fund, Inter-American Institute for Cooperation on Agriculture, among other agencies.*
- *Also works with civil society as the Brazilian Small Business Association, National Confederation of Agricultural Workers, National Confederation of Agriculture, the Organisation of Brazilian*

¹ Article XXV of the Declaration of Human Rights of 1948: 1. Everyone has the right to a standard of living adequate for himself and his family's health and well-being, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

² FAO/UN, 2002.

³ FAO/UN, 2010.

*Cooperatives, Brazilian Institute of Social and Economic Analyses, universities and others.*¹

In 2010, it was proven that access to food which meets the caloric needs for an adult female to survive is a minimum of 800 calories per day, and 1,200 calories for an adult male, and, to live with health and dignity, requires 1,200 calories per day for an adult female, and 2,000 per day for an adult male.²

Thus, it appears that only 20% of Brazil's food production is actually being used for the purpose of ensuring the survival of the Brazilian people, i.e., for a life with health and dignity.³ Moreover, the international market of agricultural production is a developed market. It is noted that, in macroeconomic terms, food and the necessary elements for meeting human needs for survival or life with health and dignity, in the category of law, can be understood as commodities.⁴

It is in this context that, according to the latest census of the Brazilian Institute of Geography and Statistics, approximately 16.2 million Brazilians are in the range of "extreme poverty".⁵ According to the National Secretary for Food and Nutritional Security of the same Ministry, and under Policy Coordination on Food and Nutrition of the Ministry of Health, Brazilians located in this range do not have daily access to adequate food for a minimum of 800 calories per day, for an adult female, and 1,200 calories per day for an adult male.

Fundamental social rights are those rights whose normative basis is such that they are established or assigned in Constitutional law. As such, the Brazilian legislature raised the HRtFA to the category of a fundamental social right.⁶

2. Development of the Human Right to Adequate Food in Brazilian Law as a Fundamental Social Right

2.1 Review of "food security"⁷ in the Constitution of the Federative Republic of Brazil, promulgated in 1988.

In Brazil, the main Constitutional framework of the Human Right to Adequate Food – HRtFA - in the legal system is Constitutional Amendment n° 64, dated February 4th, 2000.⁸ Its

¹ FAO/UN, 2010.

² For didactic purposes, it is sufficient, in the context of research, since it is presented as an example and this is a mining survey and not applied to social sciences or health sciences. In surveys of healthcare for every age group of adult and child, caloric variations for the development of the human being or his well-being in the elderly phase are indicated. The data presented above are not complete.

³ IBGE, 2010, Statistical Report.

⁴ Rodrigues (2008), p. 40.

⁵ The Ministry of Social Development defines "impoverished families." They have R\$ 70.00 (seventy reais – thirty dollars and forty cents in August, 2014) per capita per month. Brazilian economic database was obtained from the official Brazilian Institute of Geography and Statistics website – IBGE 2010, Statistical Report.

⁶ Comparato (2003), p. 56.

⁷ Food security has two meanings to be used dogmatically: (i) the first refers to the minimum essential conditions that allow humans to survive; and (ii) the second has to do with the conditions that allow men to have adequate food, meaning a dignified human being.

⁸ Constitutional Amendments are the normative species authorising the amendment of the Constitution itself. Article 60 of the Constitution of Brazil/1988, stipulates that the power derived from the design of law by: (i) the quorum of one third of the members of the House or Senate; (ii) the President; or (iii) the representative quorum of more than half of the legislatures of the States of the Federation and the adoption by relative majority quorum (for the proposal to vote whose only change occurs in Congress). The proposed amendment must be voted twice in each house of Congress (Chamber of Deputies and Senate), and shall only be approved if the two votes gets the quorum of three fifths of the members. No one appreciates a proposed amendment which has for its object

sustainability is the horizontal effect of “fundamental rights”¹ having a tendency for direct application. Article 6² of the Constitution of Brazil/1988 is based on promoting healthy food practices which respect sustainable cultural diversity for all Brazilians. That Constitutional Amendment was processed in Congress over a seven-year period as the Proposed Constitutional Amendment - PEC n° 047 - May 13rd, 2003.

During that time, Brazil improve a strategy to eradicate extreme poverty notably by promoting food and nutrition security as well as the access of the most vulnerable population to citizens' rights.³

Due to the institute's evolution, it was replaced by principles and guidelines in the Brazilian budget as the Multi-Year Plan, which enshrines the right to adequate food as one of the most important institutions in Brazil with the goal of helping to eradicate poverty, defined as one of the objectives in Article 3⁴ of the Constitution of Brazil/1988.

The HRtFA is a recognised category of Fundamental Social Rights.⁵ Moreover, it is inserted between the entrenchment clauses in the Constitution of Brazil/1988, and is regarded as one of the essential duties necessary for the survival of human beings, in view of “the existential minimum”⁶.

Sarlet explains that brazilians have to acknowledge that the existence of these factual and legal limits, i.e., possible reservation and parliamentary reservation in budgetary matters, imply certain relativization within the efficacy and effectiveness of rendered social rights, which, incidentally, end up conflicting with each other when one considers that public resources should be distributed to meet all basic fundamental social rights, we uphold the understanding, which will appear here in brief, in the sense that where we are always faced with provisions of an emergency nature, whose rejection would cause the reversible impairment or even sacrificing of other essential goods, especially – in caring for one's own health and life – physical integrity and human dignity, we shall recognize a subjective right of the individual to the benefit claimed in court.⁷

the abolition of federative form of the Brazilian state of direct, secret, universal and periodic voting system, the separation of powers and individual rights and guarantees (summary extracted from Bonavides (2008) 104-106).

¹ This research uses the horizontal effect of the fundamental rights theory from Hans Carl Nipperdey, judge of the Federal Court Judge of German Labor. On occasion, Nipperdey argued that certain fundamental rights not only had direct application to the individual's relationship with the state, but also in any power relationship, with a slight inclination to the direct or immediate effect. Thus, in Germany, the Federal Constitutional Court (Bundesverfassungsgericht) has the understanding that the immediate application of fundamental rights to private relationships, is not possible, being that their implementation by the legislature is required, so that their application in private affairs, only takes place by another standard (summary extracted from Mendes (2012) 122 - 128).

² Art. 6. In this Constitution, social rights are defined as education, health, food, work, housing, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute (emphasis added).

³ Historically, this fight was begun by Josué de Castro in 1946, when his book, *Geography of Hunger*, alleged that hunger is not a natural phenomenon or divine will, but the result of social inequality and political neglect. The Brazil Government has assigned high priority to social development program that promoting food and nutrition security. Zero Hunger Program was achieved by Brazil civil society organisations and was institutionalised as government policy in 2002.

⁴ Article 3. The fundamental objectives of the Federative Republic of Brazil:

[...]

III - to eradicate poverty and marginalisation and to reduce social and regional inequalities (emphasis added).

⁵ Portanova (2005), p.58.

⁶ For Torres, the existential minimum is defined as the indispensable conditions for the exercise of freedoms. In the 21st century, the status of minimum necessities for man to survive involves "the right to food, health and education" (2009, p. 56). The existential minimum is a dynamic concept which develops year by year. "May not be legal principle by not having the weighting feature and thus has final validity because it constitutes the essential content of fundamental rights, being irreducible and unquestionable in the balance of judgment (Torres (2009) 56 - free translation by author.

⁷ Summary extracted from Sarlet (2010), p. 53-56.

Such an argument grows in relevance considering that our constitutional order (rightly so) expressly prohibits the death penalty, torture and imposition of inhuman and degrading punishment, even for convicted heinous crime, for the most elementary requirements of reasonableness and one's own sense of justice – which, based on an alleged (and even proven) lack of resources – virtually condemns to death the person whose only crime was to be a victim of harm to his own health and was not able to afford the cost of treatment.¹

Thus, the protection of the fundamental social right to adequate food, based on the existential minimum, is based on the Constitutional principle of human dignity (Article 1, section III of the Constitution of Brazil/1988²). This, in turn, constitutes a reference for both the requirement to provide, and define, “the existential minimum” in the Brazilian infra legal system.

2.2 Review of "food security" in the Brazilian infra Constitution legal system

It should be noted that the Brazil government remained part of the policy already in place, and provided the sequence control phase, which is so necessary to the socio-economic return required by Brazilian society.

It is emphasised, in the case of the Human Right to Adequate Food – HRtFA -that two legal documents were used in Brazil: (i) Law n° 11.346 of September 15th, 2006; and (ii) Presidential Decree n° 7.272, of August 25th, 2010.

Law n° 11.346 of September 15th, 2006, creates the National System for Food and Nutrition Security Act with a view to HRtAF and other provisions relating to the FAO/UN.

The legal parameters of coverage on nutrition security are established in Article 4 of Law n° 11.346 of September 15th, 2006:

Article 4: The Food and Nutritional Security Act covers:

I - the expansion of conditions for access to food through production, especially traditional family farming, processing, industrialisation and commercialisation, including international agreements, supply and distribution of food, including water and the generation of employment and income redistribution;

II - biodiversity conservation and sustainable use of resources;

III - health promotion, nutrition and feeding of the population, including specific groups and populations in vulnerable social situations;

IV - the guarantee of biological, health, nutritional and technological quality of food as well as its use, stimulating eating habits and healthy lifestyles which respect the ethnic, racial and cultural diversity of the population;

V - The production of knowledge and access to information; and

VI - the implementation of public policies and strategies for sustainable and participatory production, marketing and consumption of food, respecting the multiple cultural characteristics of the country.

¹ *Op. Cit.* Sarlet (2010), p. 57.

² Article 1. The Federal Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, constitutes a democratic state and is founded on:

[...]

III - the dignity of the human person(emphasis added).

This Law was regulated by Presidential Decree n° 7.272, of August 25th, 2010, wherein the institutionalisation of the National System of Food Security and Nutrition Act, with a view to ensuring the HRtAF: (i) the establishment of the National Food and Nutrition Security Act; (ii) the establishment of parameters for the elaboration of the National Plan for Food Security and Nutrition; and (iii) other matters relating to the theme.

The National System for Food and Nutrition Security Act provides that the above is the realisation of everyone's right to regular and permanent access to quality food in sufficient quantity.

In Section I, the interpretation requires that expansion of the conditions of access to food through production necessitates implementation of logistics:

- *The supply and distribution of food, in the first stage of production, refers to the organised use of water. And, in the second stage of production, the storage of food for the maintenance of prices when seasonal production or some devastating event occurs in the productive fields;*
- *The mechanisation of the steps of processing and marketing, with regard to educational policies, which give the farmer the ability to develop mechanised agriculture and the politics of funding, especially for traditional and family agriculture, aiming at sustainability of food production;*
- *The impact of implemented policies should qualitatively and quantitatively increase the generation of employment and income redistribution, and these indices shall be applied in both logistics alluded to above; and*
- *The production of knowledge and access to information on food policy.¹*

According to Section II of the National Food and Nutrition Security Act, which deals with the conservation of biodiversity and sustainable use of resources, it is essential to maintain production growth in line with population development of a particular region or country.

In Section III, it follows that it is also essential to promote health, nutrition and feeding of the population, including specific groups and populations in situations of social vulnerability of the HRtFA Act.

Moreover, when breached, this feature of food safety directly affects Sections IV and V, which guarantee the biological, health, nutritional and technological quality of food, and its use, stimulating healthy eating habits and lifestyles which respect the ethnic, racial and cultural diversity of the population.

Finally, Section VI establishes the need for the implementation of public policies, sustainable strategies and democratic participation, in the production, marketing and consumption of food, which respects multiple cultural characteristics of the country.

Brazil has underlined the human dimension of development and stressed the great importance it attaches to human rights in their democratisation processes.

3. The Hypothesis: “Is there Adequate Food and Nutrition Security in the Brazilian Legal Amazon Region?”

Within this context, this empirical research studies if there is adequate food and nutrition security for single-parent families headed by women from 18 to 25 years of age, with at least

¹ FAO/UN, 2010.

3 to 4 children, who undergo degrading working conditions and receive a State income family program distribution, called “bolsa família.”

This Research Report is the institutional research of the Centre for Scientific Research in Law, called NUPES DIR of the Instituto de Ensino Superior de Rondônia/Faculdades Associadas de Ariquemes (IESUR/FAAr). NUPES DIR of IESUR/FAAr prepared and executed the empirical research project.

The research sample interview was suggested by the staff of NUPES after analysis of secondary data and theoretical studies, and discussion of the works cited in the theoretical approach. The structure of the script is based on *Methods and Techniques of Social Research* by Antônio Carlos Gil, and *How to Develop Questionnaires* by Sonia Vieira.¹

The agenda of issues and the questions were prepared by research students and Professors in order to conduct interviews with the “impoverished families.”

The time frame of fieldwork took place between May 12nd, 2013 and June 20th, 2014.

The field sample was delimited to the Brazilian Legal Amazon Region (Acre (AC), Roraima (RR), Amazonas (AM), Pará (PA), Rondônia (RO), Mato Grosso (MT), Amapá (AM), Tocantis (TO), Maranhão (MA) in the map:



Figure 1 - Brazilian Legal Amazon Region Map. Available at: <http://portalamazonia.com/noticias-detalle/atuallidades/amazonia-amazonia-legal-e-regiao-norte-saiba-a-diferenca/?cHash=4f72c8e7f3c6c6859e6784fc87eab57d> (Accessed 7th March 2015).

¹ Gil (2008); Vieira (2009).

This justifies the sample because the Brazilian Legal Amazon region is one of increased agricultural productivity and suffers from a process of social deconstruction of citizenship based on socio-economic inequality, as well as blatant disregard for human dignity.

3.1 The Empirical Research Results

The results of the analysis and evaluation of annotated and/or recorded interviews and reports of perceptions and impressions were as follows:

A) Research subjects

The study sample was limited to 156 women from the Brazilian Legal Amazon Region between the ages of 18 to 25 with at least 3 to 4 children who agreed to be interviewed.

88% feel comfortable when they receive money from “BOLSA FAMÍLIA.”

B) About the “impoverished families” work

They feel that the work is bad, hard and heavy, and consider themselves prey to the contractor. They consider the work as normal in order to receive a plate of food, without receiving any other compensation.

C) State income family program distribution - “bolsa familia”

The primary income of these families is the Family Program. When children reach working age, they perform cleaning or counter services. The mother works, and the children work after coming home from school, which is an obligated activity when enrolled in the Family Program.

D) The government must adopt policies and actions that are necessary to promote and ensure food and nutritional security

They have no idea who they are and believe themselves to be mothers and servants. They don't feel they will ever have what they want.

E) Analysis of these women and the existential profile they have for life

These women accept a simple way of life and do not understand why it is necessary to be happy. The main leisure activity is watching television, however, due to functional illiteracy most do not understand what they watch. Normally, they eat the leftovers of their bosses and give the children what remains. They wear their boss's old clothes, when this service is provided, and work every day in activities indicated by the boss. They consume little, and have no desire to acquire cell phones or new TV.

F) Consolidated results

*30% do not believe they can achieve anything.
70% think they will be saved by meeting someone else.*

The perception of conformity is the primary feature in this range of investigated subjects within the qualified research profile - "impoverished families."

Efforts are being made to improve the efficiency of the State income family program distribution – “bolsa família” - is a solution for “impoverished families” made tangible by virtue of the content of the legal provisions themselves.

The “impoverished families” are socially vulnerable people who need the HRtFA.

As a result, this empirical research studies proves that Brazil has developed legal mechanisms to ensure Human Right to Adequate Food – HRtFA - as a right of human dignity.

CONCLUSION

The world is going through a paradigm shift. Food has a dual aspect – as a law and economic development instrument (food as a financial asset and instrument of wealth production). Market players seeking the production of wealth at any cost with the financial commodity model. Even, this context, Brazil Government has assigned high priority to social development some programmes.

The Human Right to Adequate Food – HRtFA -, as well as other Fundamental Social Rights under Article 6 of the Constitution of Brazil/1988, are of the nature of fundamental social rights as evidenced in this article, and are therefore part of the essential core of the Brazilian Constitution and strengthening the cultural dimension, in particular as part of the overall objective of promoting cultural diversity and adversely affected Brazil’s trade balance.

In the infra constitutional legal system, Law n° 11.346 of September 15th, 2006, regulated by Presidential Decree n° 7.272 of August 25th, 2010, establishes rights and compels the State to ensure the material conditions for obtaining an existential minimum. Adequate nutrition and inherent dignity are fundamental social rights, and are essential to the realisation of the rights enshrined in the Constitution of Brazil/1988, and the population.

It is noted that the HRtFA in the Brazilian Legal Amazon Region has two aspects: (i) the public policies of this part of the country are politically established; and (ii) are under the execution of management (program planning), achieved through budgetary indications and distribution and control - performed according to Brazilian law.

In fact, Brazil has streamlined the existing social transfer program into a unified conditioned social cash-transfer for the most disadvantaged families, which offers financial subsidies as well as a combined access to basic social rights. The HRtFA rules are able to achieve one of the goals of the instruments of democratic rule of law, which is personal human dignity.

Brazil government’s priorities are very much focused on social development in 21st century. The HRtFA in Brazil is essential, fundamental, undeniable, public, subjective and effective, and can never be subject to any restriction, either formal or material, especially for “impoverished families.” Everyone has the right to nutrition.

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