

# Human rights and the governance of food quality and safety in China

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National governments carry major responsibilities with regard to food security. In China, most families are now able to obtain enough food either by producing their own or by being able to purchase food in the marketplace. The government has been turning more of its attention to issues of food quality and safety. While there are several different kinds of programs in place, more needs to be done to assure the quality and safety of the food supply in China. The programs can be strengthened by making them more explicitly oriented to the human right to adequate food, based on the idea that the people are entitled to safe food of good quality. Through the Consumer's Association and other arrangements, consumers should be given a more active role in monitoring the quality and safety of their food.

**Key Words:** China, governance, food security, safety, quality, human rights

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## Governance and human rights

The fundamental question of governance is, what is the proper role of the state, and thus of the government that represents it? Food security is a good, concrete test of the quality of governance generally. Which of the many issues relating to food and nutrition should be regarded as matters for government? And how far should governments, with their limited resources, be expected to go in addressing these concerns?

With good governance, there are *enabling conditions* that allow people to work effectively and productively, and thus provide for themselves. Governments should not need to pay much attention to food and nutrition, except for quality and safety measures, because most people take care of themselves, either by producing their own food or by being able to purchase food in the marketplace. With good governance, most people are not much concerned about their human right to adequate food because that right is not violated.

Like many other countries, China has faced serious challenges with regard to its food system. Historically, China's primary problem has been to assure that its people have enough food. However, now that China has made rapid advances in securing its basic food supply, the government has been able to turn more of its attention to assuring the quality and the safety of the food supply. Several programs have been developed to assure that food is good and safe, but more needs to be done. An approach based on the internationally recognized human right to adequate food could help to strengthen China's food quality and safety programs.

## Food quality and safety issues

Food quality and safety problems in China date back at least to the 1920s when the poisoning of a small number of people from contaminated vegetables was recorded.

The problem has grown steadily. From 1994 to 1995, contaminated vegetables poisoned 8,211 people, and many died. Pesticide residues account for a large proportion of the food poisoning events. In the first nine months of 1999, 78 episodes of food poisoning were reported, with 4,394 people poisoned and 79 killed.

The National Hygiene Ministry reports that in the first half of 2003 alone, there were 116 major food incidents in China. They resulted in 3646 persons suffering from food poisoning, with 89 deaths among them. Of the 116 incidents, 29 were micro-organic toxicosis, caused by epiphytes, bacteria, and viruses. These toxicosis incidents resulted in 1213 illnesses and 9 deaths. Forty-two of the incidents were cases of chemical poisoning, resulting in 977 illnesses and 52 deaths. Twenty-one incidents were due to poisonous animals or plants, causing 855 illnesses and 21 deaths; 21 incidents, whose causes could not be determined, resulted in 598 illnesses and 7 deaths. These incidents in 2003 resulted from contamination, improper freezing, improper usage of chemicals, consumption of poisonous animals or plants, and consumption of outdated foods.<sup>1</sup>

Incidents occur all over the country. For example, on January 11, 1994, in Hezhou City No. 1 High School in Guangxi, 332 people were poisoned as a result of eating green vegetables with residues of the methamidophos pesticide. In July 1999, in Zhengzhou, Henan province, about 50 people were poisoned by eating contaminated

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contaminated vegetables. In September and October of 1999, similar events occurred in Macheng and Xiaogan areas in Hubei province. In June 2000, peasants in Beihai town, Shunkou district, Lushunkou in Dalian city ate celery sprinkled with pesticide and were severely poisoned. Thirty-five villagers at two villages in Dongping town, Tianzhu County in Gansu were poisoned in June 2002 after eating illegally purchased inferior-quality salt from a local store.

In January 2001, 63 people in Hangzhou were poisoned by eating pork that contained clenbuterol hydrochloride. Naphthylacetic acid, which may speed up pig growth with relative increase in lean meat, was found in the pig fodders. Among specialized households engaged in the fodder processing industry and breeding industry in some parts of the country, this kind of fodder additive has turned out to be an open "secret".

Food hygiene in restaurants and other food service establishments is a major concern, as illustrated by the fines imposed on them. For example, in the Westlake District in Hangzhou, during the period 1998 to 2000, 637 fines were issued. Over 60% of the fines were due to incorrect food producing processes. About 16% were for violation of health directives. Violations of the Hygiene Permit accounted for about 12% of the fines. About 8% were for producing forbidden food. Some of the fines were for misleading or deceptive food labels, and some were for food poisoning.<sup>2</sup>

While many food safety problems, such as those relating to sanitation in restaurants, get little public notice, there have been some large-scale incidents. For example, in a fake wine incident in Shanxi Province, during the Spring Festival of 1998, 140 people were poisoned and 49 died. From March to September 2001, 484 people in Hebei Province were poisoned by meat containing excessive clenbuterol hydrochloride. Food poisoning incidents of this sort happen frequently, all over the country, often without systematic reporting of the illness and deaths that result.<sup>1</sup>

China's large-scale use of fertilizers and pesticides has resulted in substantial increases in agricultural production. However it has also resulted in many problems, such as increasing pesticide-resistance in pests, decreasing fertility in the soil, and increasing reliance on fertilizers and pesticides. The biological environment is seriously contaminated. The quantities of pesticide residue, heavy metals and nitrate in the agricultural products have already reached dangerous levels. While there have been efforts to limit it, the usage of pesticides seems to be out of control. One major result has been frequent food poisoning accidents. Pesticide residues in agricultural products do not decompose completely, and they cannot be completely washed off. The chlorine residue is most dangerous because it can cause disorders in human secretion and neurological systems, destruction of genital and immune systems, and cancer.

There are also serious problems of food contamination from industrial wastes. Food scientists and bio-environment scientists in China have long been aware that the constant direct discharging of industrial, agricultural and civil waste water is resulting in increasing pollution of rivers, seas, lakes and ponds with heavy metals,

pesticide residue and biological toxins. Much of the fruit and vegetable supply in China is produced with irrigation water drawn from polluted bodies of water. The fruits and vegetables absorb the pollutants and carry them into consumers' bodies. Government agencies tested 181 samples of vegetables in 23 large and mid-sized cities in China and found that 47.5% had pesticide residues exceeding acceptable limits. The pesticide residue in some samples greatly exceeded the limits.<sup>3</sup>

The Agriculture Science Institute in Fujian Province found that 34% of samples of vegetables it tested had excessive nitrate content, some exceeding the limitation value by 7-8 times. Pesticides with high residue content and hypertoxicity, such as methamidophos, Rogor and sulfuric acid, are still used extensively in growing vegetables. Many weed killers, insecticides, and germicides are used. Among the insecticides, hyper-toxic organophosphorus dominates, accounting for 35% of the gross output of pesticide in China.

The misuse of chemicals in farming is a major concern. In order to accelerate the growth and increase productivity of vegetables, producers use large quantities of growth hormones like triacantanol, naphthaleneacetic acid, and gibberellin. Chemical reagents like indoleacetic acid, indolemetacetic acid and 2,4-D, are widely used to produce large plants, grow strong roots and strengthen vegetables' disease and cold resistance. Because of concerns such as these, in the Fifth Plenary Session of the Fifteenth Communist Party of China, in 2000, the Central Committee adopted a resolution that spoke about food safety for the first time, calling upon the government to "speed up the formation of agricultural product market information system, food safety system and quality system."

National authorities prohibit the use of growth promoting hormones, antibiotics and chemical synthetic drugs in fodders, but a survey of fodder producers, dealers and breeders in eight provinces, areas and cities detected banned medications in almost one fifth of the cases.<sup>4</sup> Apart from outright poisoning, there are clear indications that the quality of fruits and vegetables has deteriorated as a result of the overuse of chemicals. Fruits and vegetables may look good, but their taste is inferior. In order to get fruits and vegetables to market sooner, some vegetable growers regularly apply chemical agents and hormones to shorten the growth cycle. Tomatoes can be made to turn red 12 days ahead of time, but the sweetness fades. Immature bananas transported from the south to north are sometimes coated on the surface with a ripening accelerator containing sulfur dioxide.

There are many cases of deceptive practices with regard to the labelling of foods. Many markets alter the release dates, expiration dates and "sell by" dates on the labels. Additives are not acknowledged. Some markets mislabel the quality of food. Many foods are sold without being labelled as genetically modified.

In some cases watermelons are injected with chemicals to accelerate their ripening after shipment. This liquid turns the flesh bright red, and also adds to the melons' weight. This is a regular practice used by illicit peddlers to increase their profits. Farmers in many areas deliver fruits and vegetables sprinkled with chemical fertilizers

and irrigated with industrial waste water to the markets, but reserve high quality fruits and vegetables grown with natural manures and well water for their own use.

Food additives are another hazard to food safety. Currently, there are more than 1500 kinds of food additives in China. Benzoyl peroxide bleach is added to Fuqiang Flour (a flour with strong wheat gluten) to boost the whiteness; antiseptics and antioxidants are added to instant noodles; coloring agent and nitrites are added to meat products; and antioxidants are added to edible oils. In 1994, only 51% of the oil and food products in wholesale markets inspected by the National Foodstuff and Oil Quality Supervision and Checking Center met the standards.

In 2002, China's General Administration of Quality Supervision, Inspection and Quarantine carried out a special investigation focused on five kinds of food: rice, flour, oil, soy sauce and vinegar. Only 59% passed inspection. Most of the enterprises producing these kinds of food are small ones, some of which are based in the owner's own house, and lack the techniques and facilities to assure high quality.

### China's food quality and safety system

China has systems in place to assure food quality and safety, such as the arrangements for inspecting the hygiene practices of restaurants. Chinese quality inspection departments check nearly 700,000 food producing companies a year. The inspection and testing department in China's customs service inspects over 300,000 lots of exported and imported food every year.

The government is developing clear principles and sound systems for assuring food quality and safety. The "market admittance system", developed by the General Administration of Quality Supervision, Inspection and Quarantine, assures the quality of food in three main steps. First, under the food production license system, any enterprise without the necessary qualifications to assure the product's quality is not allowed to engage in food processing. Second, obligatory checks of products prevent sub-standard foods from being sold. Third, by attaching market admittance signs, also called Quality Safe (QS) signs, to the food that passes the inspections, the governments make a quality-safe promise to the society. This system initially focused on rice, flour, oil, soy sauce and vinegar, but from the second quarter of 2003 the General Administration of Quality Supervision, Inspection and Quarantine extended the market admittance system to also cover meat, milk, tea, beverages, and condiments.

In August 2003, the Ministry of Commerce announced a new campaign:

Sun Xiaokang, deputy director of the State Commission for Administration of Standardization, said priorities were the reduction of pesticide residue in agricultural products, standards on animal feed sanitation and use of additives, evaluation and test criteria for genetic modified products and standards for environment-friendly products and organic products.<sup>5</sup>

China is now working to modernize its food safety system by adopting internationally accepted methods

based on Hazard Analysis and Critical Control Points (HACCP). Apart from the work undertaken directly by government, there is a Consumer's Association, supported by the government, which works very vigorously to educate consumers and to protect consumers' interests by speaking in their behalf to business and to government agencies. There are many laws in place regarding food quality and safety,<sup>6</sup> but implementation remains inadequate. Much more needs to be done to widen and deepen China's food quality and safety systems.

### The human right to adequate food

Increasing ordinary people's expectations with regard to food safety could strengthen all aspects of China's food safety system. That could be driven by clear recognition by all concerned that the people have a right to safe food.

In terms of international law, the human right to adequate food is rooted in the *Universal Declaration of Human Rights* of 1948. Article 25, paragraph 1, says:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

This was elaborated in article 11 of the *International Covenant on Economic, Social and Cultural Rights*, which came into force in 1976. Paragraph 1 says:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

On May 12, 1999 the UN's Committee on Economic, Social and Cultural Rights released its *General Comment 12* on the right to adequate food.<sup>8</sup> This statement by the committee constitutes a definitive contribution to international jurisprudence. The first sentence of paragraph 6 presents the core definition:

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.

*General Comment 12* makes it clear that food quality and safety is an important part of the human right to adequate food. In paragraph 8 the text says:

The Committee considers that the core content of the right to adequate food implies: The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;

This is explained, in part, in paragraph 10:

*Free from adverse substances* sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout

the food chain; care must also be taken to identify and avoid or destroy naturally occurring toxins.

Paragraph 14 says:

Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.

Paragraph 23 speaks about the importance of openness and participation as part of good governance:

The formulation and implementation of national strategies for the right to food requires full compliance with the principles of accountability, transparency, people's participation, decentralization, legislative capacity and the independence of the judiciary. Good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all.

Paragraph 25 describes elements of the national strategy to assure realization of the right to food:

The strategy should address critical issues and measures in regard to *all* aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food, as well as parallel measures in the fields of health, education, employment and social security. Care should be taken to ensure the most sustainable management and use of natural and other resources for food at the national, regional, local and household levels

China has been a strong supporter of the *Universal Declaration of Human Rights* from the outset. It ratified the *International Convention on Economic, Social and Cultural Rights* on June 27, 2001. It also ratified the *Convention on the Rights of the Child*, which has provisions regarding the right to food, on April 1, 2002. Thus, the ongoing international efforts to articulate the implications of the human right to adequate food under human rights law are highly relevant for China. China's national policies generally support the human right to adequate food, but the government has not explicitly framed its positions in these terms.

### Recommendations

China's policies with regard to food issues in general, and food quality and safety in particular, could be made more coherent and more effective if they were reformulated in terms of explicit recognition of the human right to adequate food. The basic principle, derived from the definition of the right to food in *General Comment 12*, quoted above, is that every single individual is entitled to physical and economic access at all times to adequate food or means for its procurement.

This means, among other things, that every individual is entitled to food that is safe and of good quality. As we have shown, China is already undertaking a variety of measures to assure the quality and safety of its food supply. However, these measures often do not go deep enough, and they are not sufficiently extensive. The programs tend to focus mainly on cities, and give little attention to suburban and rural areas. The programs need to be strengthened if every individual is to be assured of good, safe food.

This goal could be achieved more effectively by recognizing another major principle of human rights work: participation. In general, people should have the opportunity to participate in formulating and carrying out the policies and programs that affect their lives. Thus, food quality and safety programs should not be carried out over people's heads, and treat them as passive beneficiaries, but should fully engage the people in their activities. Governments may have food quality and safety policies and programs that protect their people, but if the people are not actively involved in making it work, they cannot be said to have a *right* to safe food.

Certainly, some aspects of food quality and safety programs are too technical for non-specialists. But there are aspects of food quality and safety in which anyone can be engaged. For example, a common complaint is that there are not enough inspectors available to monitor what is going on in every restaurant and marketplace. That problem can be addressed by giving every individual a role in monitoring. Ordinary people could be educated regarding the relevant standards, and they could be given opportunities for reporting when they suspected that violations were taking place. Similarly, employees on farms and in food processing plants could be educated about the relevant standards, and given opportunities to report. In some cases it might be important to make sure that reports could be made anonymously (perhaps by telephone) to mask the individual's identity and protect those who report from retribution. In other cases, it might make sense to publicly recognize and honor those who call violators to account. Having a right to something means not only that you ought to get it, but also that there should be something you can do about it if you don't get it.

A program of this sort could go beyond food safety to include consumer protection in the broader sense. For example, consumers need to be protected from unscrupulous merchants who use dishonest scales or fill their products with water or other substances to make them heavier. They also need to be protected from misrepresentation, such as false claims about the contents or benefits of particular products. While products sold under false pretenses may not directly endanger the consumer's health, there is a need for protection from such frauds. Consumers should have some means for making official complaints, and being compensated, when they feel they have been cheated.

Some food products are not inherently dangerous, but have a high likelihood of being used in ways that make them dangerous. For example, breastmilk substitutes such as infant formula can be used safely only under certain conditions. The World Health Assembly adopted an *International Code of Marketing of Breastmilk Substitutes* in 1981, and many governments have adopted national laws to prevent the inappropriate promotion of breastmilk substitutes.<sup>7</sup> China adopted its *Rules Governing the Administration of Marketing of Breastmilk Substitutes* in 1995. In many countries, nongovernmental organizations monitor the behaviour of the corporations that sell breastmilk substitutes. With the opening of China to outside corporations that have various kinds of food to sell, it becomes increasingly important that

China's consumers become equipped to understand what is good for them and what is not, so that they can protect themselves from excessive advertising and other social and economic pressures. The obesity epidemic that is starting in China is a clear indication that the concerns should not be limited to food safety in the narrow, technical sense.

China's law already says that consumers have the right to know the real status of the goods and services they buy, but more needs to be done to assure that they are in fact well informed. Beyond that, they must also have the means to act on their information when they find that their goods and services are unsatisfactory. Government simply cannot do all that needs to be done to protect the people from the dangers associated with food. The people must be supported through education and appropriate institutional arrangements so that they can protect themselves.

The Consumer's Association and other measures for assuring food quality already accomplish a great deal, and function in ways that conform with human rights requirements. China's food policies are strongly oriented toward assuring adequate livelihoods for its people. However, these policies are not yet based on a clear and explicit recognition that every individual has certain rights with regard to these issues. It would be useful to acknowledge explicitly that—in accordance with the international human rights law that China supports—individuals are entitled to good, safe food, and they should have a substantial role in helping to assure its quality and safety. China's existing rules regarding food quality and safety should be reviewed and reframed in terms of the rights of individual consumers. At the same time, programs should be created to inform consumers of their rights, and they should be provided with means to insist on the realization of those rights.

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## 人权发展关照：中国食品消费者权益保障的实践发展与理论认识

### Human rights and the governance of food quality and safety in China

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本文以国际大视野的眼光，讨论了食品安全消费者利益保障实践发展过程中的得失，进而把食品安全消费者利益上升到基本人权保障的高度，从理论与实践结合的角度分析了食品安全保障发展的前途、潜力、阻力与解决方法。文章认为：从国家政治、社会安定和基本人权保障高度认识并无条件解决食品安全问题，是各国政府在经济全球化时代的首要大事；是世界食品消费者权益保障发展的时代趋势。基本人权内涵与社会保障具有与时俱进不断发展的时代要求，同时也存在着因社会发展程度不同的国别差异；当今时代，免除饥饿、保障基本食物供求，是基本人权保障的底线；自中国政府实行改革开放、发展经济的政策以来，广大民众基本实现了“吃饱”目标，并且有越来越多的人开始过上了“吃好”的生活；但食品安全问题突显在经营消费领域，而症结却主要在生产加工过程中，食品安全已经成为严重的社会问题；“无法可依”、“有法不依”、“执法不严”和管理失效，是食品安全问题长期存在的重要原因；食品安全问题的根本解决不能仅仅依靠政府职能部门，应当建立健全有广大消费者直接参与的食品安全保障公众监督组织和机构，形成公民大众的权威监督机制；要造成自国家立法机构、政府职能部门到消费者一致认同的消费者基本人权尊重与保障意识。

National governments carry major responsibilities with regard to food security. In China, most families are now able to obtain enough food either by producing their own or by being able to purchase food in the marketplace. The government has been turning more of its attention to issues of food quality and safety. While there are several different kinds of programs in place, more needs to be done to assure the quality and safety of the food supply in China. The programs can be strengthened by making them more explicitly oriented to the human right to adequate food, based on the idea that the people are entitled to safe food of good quality. Through the Consumer's Association and other arrangements, consumers should be given a more active role in monitoring the quality and safety of their food.

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