



Primer on Public law and regulation

for nutritionists, public health experts, and others involved in food, health and nutrition-related activities

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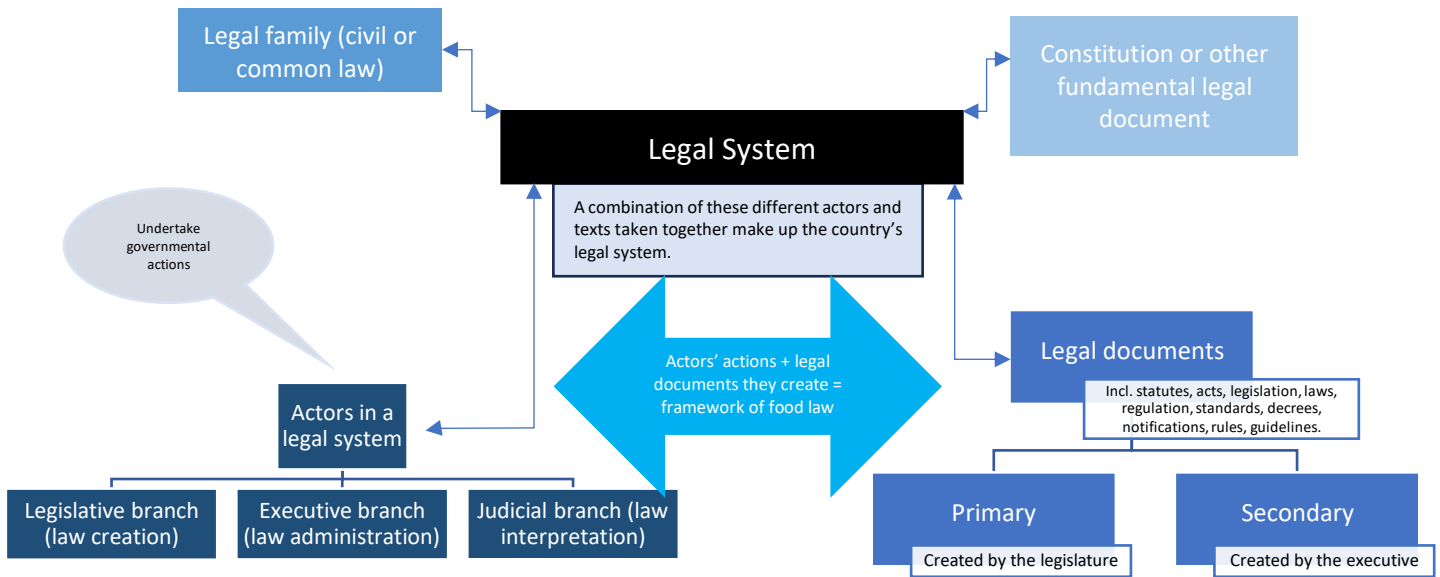
Executive summary

Food, health, and nutrition programs should be considered within the context of the legal system in which they function. The legal system is complex and varies across countries. Nonetheless, the success and efficacy of programs in food, health, and nutrition depends on creation, implementation, and monitoring by public sector bodies that derive their power and responsibility from law and the legal system. Therefore, understanding the background context of the legal system is integral to the success of such programs.

This primer is meant to provide a general yet nuanced view of issues that might be relevant to non-lawyers working in the food, health, and nutrition space. It is also important to ensure consistency in terminology and in the approaches used by different stakeholder groups towards the legal system for ensuring strong communication channels among stakeholders working in food, health, and nutrition.

To provide this understanding of the legal system, this primer discusses two main aspects that are important for non-lawyers to understand encapsulated in diagram 1 below. First, a general understanding of the legal system of a country to help appreciate how the system functions through legal families and the Constitution of a country. Second, a specific understanding of both the actors in the legal system and the legal documents that they create, with specific reference to food, health, and nutrition. Each of the different diagrams and tables as well as the terms used within them are also explained in the text of the primer itself. There is an appendix located at the end of the primer, which encapsulates all the diagrams and tables into a few pages for easy reference.

Diagram 1: a summary of main components of the legal system



1. Introduction

In any given country food, health, and nutrition programs aim to serve the population in many ways, including by increasing the quality of food available, adding micronutrients to staple food items, and increasing access of food for the vulnerable. The success and efficacy of such programs depends on creation, monitoring, and implementation by public sector bodies that derive their power and responsibility from law and the legal system. Therefore, understanding such programs requires an understanding of the background context that the legal system provides.

This primer provides commentary on the main components of the legal system, along with certain related aspects of policy that are necessary for understanding aspects of the legal system that tie into food, health, and nutrition-related issues. It provides a step-by-step description of the legal system through an explanation and analyses of legal terms (appearing in bold the first time). Accordingly, it describes the legal system’s components, actors and their functions—both generally and specifically in terms of the actions they undertake, including the legal documents that they create. In such a primer, it is necessary to keep things simple and yet provide sufficient nuance about law and governance to ensure a comprehensive understanding of the framework within which food, health, and nutrition programs occur. No primer can be completely exhaustive. However, care has been taken to account for the variations that occur from country to country by examining law and governance in a broad manner as well as by providing examples of key differences.

A. Reading this primer

Section 2 of this primer begins by providing an overview of the legal system in terms of legal families and the Constitution or basic document of the country. Section 3 adds to that by introducing the main governmental actors and their functions, including creating laws and regulations. Each of these sections also includes within it a subsection titled “why is this important”. This subsection aims to precisely discuss an expansive legal issue with specific reference to food, health, and nutrition-related issues to infuse the legal meaning that might at first glance be considered technical with function and make it easily usable. Section 4 then uses the discussions in sections 2-3 to explain the term ‘food law’ broadly. Finally, section

5 provides a conclusion in the form of a list of questions that a non-lawyer might want to consider when understanding food, health, and nutrition-related activities. Following the main primer is an appendix that summarizes the main diagrams and tables for easy reference.

A caveat: as in most social sciences, analyzing law could occur through several perspectives, e.g. feminist/gender lens, international law lens etc. This primer takes a functional approach to aid those working in fields related to food, health, and nutrition in the greatest number of countries. Accordingly, this primer aims to account for the variations in different countries by using a broad and expansive understanding of laws related to these three topics—food, health, and nutrition—and a comparative lens so as to be applicable in a large set of countries by considering the regulatory diversity among them.

2. LEGAL SYSTEM

The **legal system** in a country takes its cue from the **legal family** that it is a part of and its **Constitution**. Not only do these two issues—legal families and Constitutions—feed into the legal system of a particular country, but the legal system also feeds into these two issues forming a somewhat symbiotic relationship.

A. Legal Families: Common law and Civil law

‘Legal families’ is a term used to denote the set-up of a particular legal system by identifying certain basic aspects, such as the types of rules and practices that are particular to any group of legal systems. While each system would be distinct, it can be identified as belonging to a particular family if it possesses the features attributed to that family. Several legal families have been identified, but the most commonly discussed and acknowledged are common law and civil law.

Common law countries are generally those that base their legal systems on that of England. These countries would include any that were colonized by England, for e.g. India, Pakistan, Nigeria, or Kenya. In such countries, an important source of law is **case law** or the **judgment** of a court, which applies beyond the particular case where the judgment is made.¹ In other words, subject to rules of hierarchy, the judgment of the court in one case can be applied as a source of law in future cases and is also sometimes termed ‘**legal precedent**’.²

In contrast, **civil law** developed from the legal tradition of ancient Rome, with reliance on codified instruments that contained the applicable rules on various matters. The civil law tradition has been contextualised in various countries, including parts of Continental Europe and former European colonies and settlements, for e.g. Germany, Spain, Mexico, Indonesia. In such countries, **statutes** or **legislations**, also known as **codes**, are the main driver of the law and not case law as in common law countries.³

Legal systems are multifaceted, so this explanation should not be taken to mean that common law systems do not have statutes or that case law does not matter in civil law systems. Indeed, there are many ways to differentiate between these systems and only the key distinctions are mentioned here.⁴

¹ Heavily adapted from: Berkeley School of Law, *The Common law and Civil law Traditions*, 2010 the Robbins Collection, available at: <https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf>, accessed on 1 November 2024.

² Adapted from Bryan A. Garner (eds), *Black's law dictionary*, 9th ed., West A. Thompson, 2009.

³ See also section 4; Heavily adapted from: Berkeley School of Law, *The Common law and Civil law Traditions*, 2010 the Robbins Collection, available at: <https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf>, accessed on 1 November 2024.

⁴ Joseph Dainow, *The Civil Law and the Common Law: Some Points of Comparison*, 15(3) *American Journal of Comparative Law* 419 (1966).

i. Why is this important?

The understanding of civil and common law systems can help determine how to consider and design future interventions in different countries. Would it make sense to bring a case before the courts of a particular country or push for a change in the laws or regulations? How much emphasis is given to different legal documents? Whether a country has a common law, or a civil law system can help answer these questions and provide context for future interventions in a particular country.

B. Constitutions and other basic guiding documents

The main guiding document of a country is its Constitution—other terms for this document could be basic law, governing document, bill of rights, etc.⁵ Regardless of the terminology, the function of this document is important for the purpose of this primer. The following bullet points indicate some of the details that might be contained in such a document.

- An overview of the relationship between the three branches of government (**legislature, executive, judiciary**) and their respective roles. It might also detail the process of creating laws, including the actors involved in that process, and the status of a **ministry**—a key part of the executive branch of the government. Ultimately, the Constitution could facilitate an understanding about food, health, and nutrition-related subjects, in particular, which ministry looks after food, health, and nutrition-related matters.
- **Rights**, such as the guarantee of the right to food that might impact the creation of food policy and regulation.⁶ For e.g. in South Africa, the right to food is explicit in the Constitution.⁷
- Provisions determining the structure of the country: Are there states or provinces or counties or similar smaller subunits? For instance, India’s Constitution notes the number of states that make up the “Union of India”.⁸ Indeed, where they exist, **local governments**—“*governments other than a central government (e.g. states, provinces, Länder, cantons, municipalities, etc.), its ministries or departments or any body subject to the control of such a government in respect of the activity in question*”⁹—are integral for food, health, and nutrition-related activities.
- The exercise and delineation of law-making powers. For e.g., in a **federal** country, the Constitution would indicate the subjects or issues the central, union, or federal government might exercise law-making powers in relation to and those subjects or issues that are within the domain of the states, provinces, or other subunits in the country.¹⁰ Pakistan is a federal state, and food, nutrition, health are provincial subjects. This means that these subjects are within the purview of law-making by the province and not the central government.¹¹ In contrast, in a unitary system, there is no distinction between law making actors at the central or state level. For instance, in Bangladesh and Viet Nam, there is no state/provincial level law-making. However,

⁵ Heavily adapted from Bryan A. Garner (eds), *Black’s law dictionary*, 9th ed., West A. Thompson, 2009..

⁶ Rights are defined as: basic principles which are purported to protect people; agreement on the substance of the principles and application of the principles is subject to greatly divergent views, see James R. Fox, *Dictionary of International and Comparative Law*, 3rd ed., 2003 OUP.

⁷ Section 27, Constitution of South Africa (1996).

⁸ Article 1, the Constitution of India (1950).

⁹ World Trade Organization, Agreement on Technical Barriers to Trade, Annex 1 (1995).

¹⁰ Adapted from Bryan A. Garner (eds), *Black’s law dictionary*, 9th ed., West A. Thompson, 2009.

¹¹ Constitution of Pakistan (1973).

note that even in a unitary state some powers can be delegated to state or provincial level actors.¹²

These points above are not exhaustive, rather they are indicative of the types of details discussed in a Constitution or other basic governing document related to food, health, and nutrition-related matters.

i. Why is this important?

The importance of the Constitution or other basic governing document from a food, health, and nutrition perspective is that without understanding the governmental set up of the country, it would be difficult to determine the specific actor that might be responsible for a certain issue or the best channel for promoting a particular issue where there are several options.

3. Actors and their functions in a legal system

A. Who are the main actors?

The legal system in most countries comprises three different branches or organs of government, each tasked with different functions:

- i. the legislative branch creating law or legislature (law-making);¹³
- ii. the executive branch administering law (law enforcement);¹⁴ and
- iii. the judicial branch applying law (law interpretation)¹⁵.

The main reason for this separation of functions is to ensure that governmental power is not concentrated in one branch or organ of government. Each of these branches provides checks and balances on the others. For instance, the judicial branch might overturn a law made by the legislative branch because it does not adequately adhere to rights guaranteed in the Constitution. Note that these branches of government do not work in isolation to each other but work together on many issues. For instance, the legislature might create a **Food Act** in which it grants authority to an executive **regulatory agency** to oversee a food fortification program, and the judiciary might be called upon to help interpret the Act created by the legislature or the rules and regulations created by the regulator.

In general, **food law**—indeed most fields of law—are governed by two main types of actions: legislative and executive action, while the judiciary is called upon if there is a question of interpretation of a law.

B. What do these actors do?

There are two main types of legal documents discussed in this primer: primary and secondary legislation/texts ('texts'). The category of legal documents including **laws, acts, statutes, legislation or codes** enacted by legislative bodies is collectively known as a primary text. Whereas other legal documents, including **decrees, guidelines, rules and regulations, or standards** generally created by the executive branch and officials, are known as secondary texts. The terms '**subordinate legislation**' or '**subsidiary legislation**' are also sometimes used to collectively reference secondary texts.

¹² See section IV.

¹³ Adapted from Bryan A. Garner (eds), *Black's law Dictionary*, 11th ed., 2019, West Group.

¹⁴ Adapted from Bryan A. Garner (eds), *Black's law Dictionary*, 11th ed., 2019, West Group.

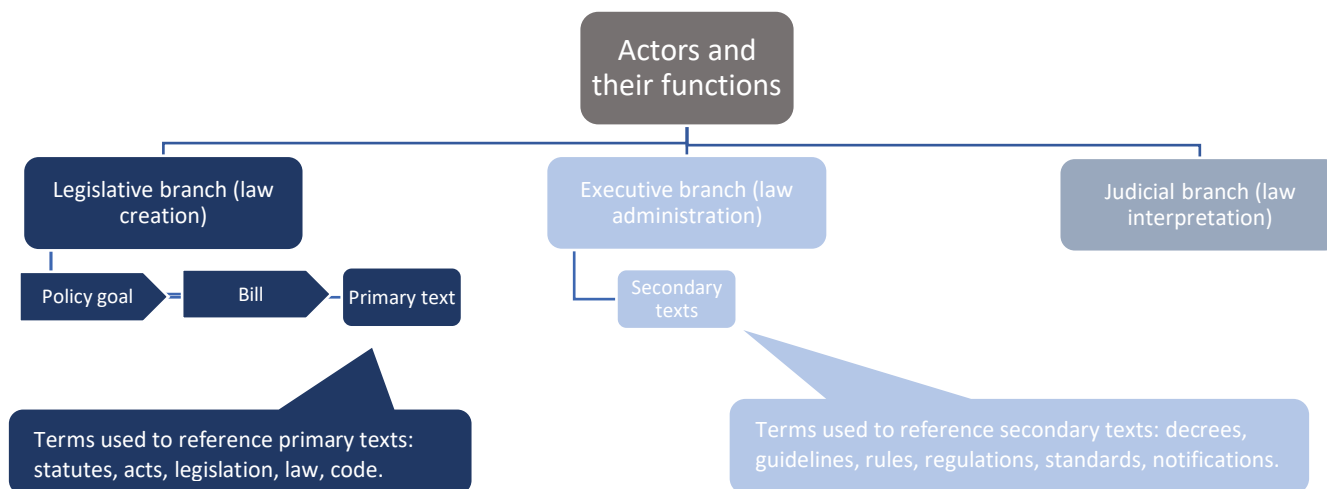
¹⁵ Adapted from Bryan A. Garner (eds), *Black's law dictionary*, 9th ed., West A. Thompson, 2009.

There are two main distinctions in these types of texts. First, the actor that creates the legal document; and second, the function of the legal document—see table 1 below. Keeping in mind these two points about any legal document would make it simpler for those trying to understand that document.

Table 1

	Primary text	Secondary text
Terms for legal documents	Law, statute, act, legislation, code	Decrees, guidelines, rules, regulations, standards, notifications.
Creating Actor	Legislature	Executive
Function	The creation of a law, statute, act, legislation, or code that is legally binding and subject to judicial action.	Implementation or support of primary text through an additional legal document. For instance, if a primary text in the form of a law creates a food authority with certain powers and responsibilities, a regulation would see the authority exercise those powers with direct application to specific circumstances. ¹⁶

Diagram 2



While there is variation in the terminology across countries, this primer introduces the general meaning of the terms then provides examples to discuss the specific application of a term in a particular country. For instance, what in one country is called an Act might in another be called a Law. At their core these are all the same types of legal documents in terms of their function; they differ only in name. However, there is a higher degree of variation in secondary texts. Whereas the overarching function of secondary texts is similar—implementation—the way in which different legal documents undertake implementation and what they implement might be different. For instance, in India what has been termed a regulation is in the US termed a rule. That variation may be more difficult to discern but there is a similar underlying objective—to delegate legislative function to the executive for specificity and efficiency. Consequently, it would be unnecessarily burdensome to provide an exhaustive overview of each type of secondary text and the variation among them. For this reason, this primer aims to mainly discuss four main types of secondary texts: decrees, guidelines, rules/regulations, and standards.

¹⁶ Heavily adapted from Bryan A. Garner (eds), *Black's law Dictionary*, 11th ed., 2019, West Group.

In short, a primary text is enforced by the courts. Whereas, in general, enforcement of secondary texts occurs through the authority responsible for creating the text. For instance, in the case of a violation of the Food Fortification Act in the Philippines, courts would be called on to adjudicate the dispute as it is a legislation.¹⁷ Whereas the resolution of a dispute under the food fortification regulations in India would be by the Food Safety and Standards Authority of India (FSSAI), where the courts would only get involved at later stages (in appeals) as it is a regulation.¹⁸

C. Why is this important?

So far, this section has discussed two important questions: who are the main actors? And what do they do? But why is understanding the answers to these two questions in detail—in subsequent subsections D and E—important to non-lawyers involved with food, health, and nutrition-related activities? Actors in a legal system undertake different roles and functions, all of which contribute to **food law** or also considered the **legal system’s framework of food** and its comprising elements. Understanding the actors and their activities can lead to a stronger appreciation of the different facets that comprise law and regulation on food, health, and nutrition in a country. In turn, leading to stronger interventions on food, health, and nutrition-related activities by knowing exactly which actor to approach on a particular issue.

D. The Legislative Branch: Actions in detail

The legislative branch in a country comprises elected representatives of a particular country at federal, provincial, or municipal level. These representatives are responsible for creating laws, or primary texts.

Table 2

Actor	Legal document	Function and explanation
Elected representatives in federal / state/ or municipal level legislatures	Policy	A policy is a general set of principles, values, or goals that is generally non-binding, created to ensure consistent decision making on a particular subject. ¹⁹ For example, reducing malnutrition might be a policy goal.
	Bill	A bill is a document introduced in parliament that serves the purpose of either amending primary texts or seeks to create a new primary text. It is debated in the parliament before being enacted. The Constitution of the country explains the process by which a bill might become a law. The bill itself is one step in the creation of a law but is not binding. ²⁰
	Legislation / act/ statute/ law/ code	Once enacted by the parliament a bill becomes a primary text and is an enforceable law. In other words, if provisions of the primary text are violated or contravened, they can be enforced, including by way of fines or punishment or a court case. A primary text comprises multiple clauses , known as articles or sections . There are general provisions or clauses in a law, which provide specific guidance. E.g. a clause might grant authority to a particular department or authority to make secondary texts for the implementation and enforcement of primary texts.

¹⁷ Philippine Food Fortification Act, 2000.

¹⁸ India Food Safety and Standards (Fortification of Foods) Regulations, 2016.

¹⁹ Adapted from Bryan A. Garner (eds), *Black’s law Dictionary*, 11th ed., 2019, West Group.

²⁰ Adapted from Cornell Law School, Legal Information Institute, *Legislation* available at: <https://www.law.cornell.edu/wex/legislation>, accessed on 1 November 2024.

i. Commentary, visualization, and examples

In a type of parliamentary system of government, such as in the United Kingdom, some of those elected representatives involved in the introduction or debating of a bill to turn it into a primary text might also have been granted a portfolio of a particular ministry, like defence, or environment, or health. For instance, Jane Doe was elected to the parliament on behalf of voters in her constituency, and due to her background, the head of the government (Prime Minister/President/Chancellor) decided to grant her a special position in the cabinet as a minister granting her the portfolio of the health ministry. When Jane debates a bill in the legislature she is working in the capacity of a legislator and performing legislative actions. When Jane oversees the health ministry and makes decisions about nutrition programs, she is working as an executive and is performing executive action.

The two examples below are not meant to be comparisons but a demonstration of variety within legislative frameworks: Kenya where food is a federal subject on which the federal or central government can make laws. And Pakistan where food is a provincial subject, and provinces can make laws on food.

- Kenya: In 2011 The National Food and Nutrition Security Policy had goals related to food security and mentioned that the existing 1965 Food and Chemical Substances Act was not in consonance with international standards.²¹ Leveraging this goal, federal law makers in the 10th parliamentary session (2008-2013) introduced a bill in parliament to amend the 1965 Food and Chemical Substances Act. After debates, this bill was passed into law, overhauling the 1965 Act to create the Food and Chemical Substances Act, 2012.²² This Act contains 42 general provisions called sections. Sections 27 and 28 empower a Public Health Standards Board—an executive body—to create regulations to implement the legislation. These regulations—created by the executive body—would be technical and specific and contain provisions that build on the general provisions of the Act, for e.g. creating specific regulations on fortification.
- Pakistan: The provincial parliament is known as the Provincial Assembly. In 2021 in the Province of Balochistan, a bill was introduced on food fortification. The Provincial Assembly debated the bill, and the Balochistan Food Fortification Act became law in November 2021.²³ The law grants provincial level executive bodies (Authorities and Departments) the responsibility to undertake implementation of this law. The food authorities and departments in turn should create specific regulations to implement the law, for instance by creating a regulation on labelling.

From table 2 above, it is important to note two points: First, that policy goals, such as the reduction of malnutrition could be leveraged through a variety of legal documents, including bills that become primary texts, or could influence secondary texts discussed in the next section. Second, the primary texts created by the legislative branch are normally general in nature rather than specific or indicating specific processes. Nonetheless, some legislations might incorporate standards created by the standard setting body of the country within the legislation itself. This general nature of primary texts occurs for two key reasons: A. it would be inefficient for the legislature to spend time debating each and every aspect of process. The creation of primary texts from bill to statute with debates in parliament takes time, and therefore once a law is created, it is meant to remain in force for a longer period of time than secondary texts. B. executive bodies are usually technically defined and comprise experts in a specific field.

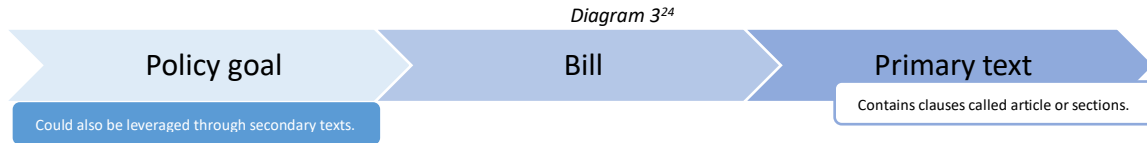
²¹Kenya National Food and Nutrition Security Policy (2011).

²² Kenya Food and Chemical Substances Act, 2012.

²³ Balochistan Food Fortification Act, 2021.

Therefore, they have the power and the responsibility to create specific, comprehensive, and effective regulations detailing processes on food related matters.

Diagram 3 provides a simplified explanation of the trajectory of legislative action.



E. The Executive Branch: Actions in detail

There are generally two key actors within the executive branch: first, the ministry and its officials and second, the regulatory body and its officials. Such officials have many different names: public officials, civil servants, administrators etc. These officials are not elected and are in charge of implementing and administering laws. In many cases the laws created by the legislative branch might require secondary texts or specific rules and regulations for their implementation.

i. The ministry and related officials

The minister is the highest decision-making authority in a ministry and is responsible for the day-to-day functioning of the ministry. In addition, the minister might also have specific decision-making powers related to technical aspects of the relevant sector they oversee.

Such decision-making powers of the executive are connected to the idea that although, unlike courts, the executive branch of the government is not called on to interpret law, they create secondary texts that might require interpretation and therefore exercise—in relation to such texts—the power to make decisions similar to courts. These powers are collectively known as ‘quasi-judicial’ power.²⁵ This power and the related functions can be seen in the case of requiring evidence or samples in the investigation of food adulteration and similar instances. On occasion, interpretation might require specialized judicial action to review or interpret the decisions of the executive, which is when the courts might get involved.

Table 3

Actors	Role	Function and explanation
Ministry	Comprises unelected officials that oversee the day-to-day functioning of the ministry.	There could be several unelected officials in a ministry with specific functions, including drafting guidelines on how the ministry undertakes its functions, which in itself is executive action, and these internal policies and guidelines might also be considered secondary texts.
Minister	Head of the ministry.	A minister might have two roles, one a minister has an executive function to head the ministry that administers and oversees the implementation of laws or primary texts created through legislative action; two, as an elected representative with the capacity to introduce bills and debate them in a parliament-type body (if this were the case it would be considered a legislative function). ²⁶

²⁴ See relationship clarified in diagram 2.

²⁵ Like judicial powers.

²⁶ Adapted from Bryan A. Garner (eds), *Black's law Dictionary*, 11th ed., 2019, West Group.

a. Ministerial decrees and orders

Ministerial decrees or directives are one type of secondary text. They are generally made under the authority of a minister for the purpose of quick decision-making by the minister and ministry as they forego the general requirements to create rules, regulations, or standards.²⁷ They might be in force only for short periods and might not be as detailed as a standard or regulation. For instance, the Ministry of Finance in Ethiopia lifted the requirement for foreign exchange permits on food items.²⁸

ii. Regulatory body and its officials

Under the aegis of the ministry whose functions have been discussed above are various **departments, agencies, or authorities**, collectively termed **regulatory bodies**. Regulatory bodies on food, health, and nutrition have generally been granted the power and responsibilities by the government to ensure that food is safe, accessible, and nutritious for the population being governed. These bodies undertake a host of different functions, ranging from **standard setting** to **standard implementation**, including food inspections, advocacy efforts, and primary text enforcement. For example, in India the central government has granted the responsibility of health to the Ministry of Health and Family Welfare.²⁹ Under their supervision lies the main food authority in India is the FSSAI. It creates regulations on a variety of issues related to food, including lab analysis and labelling.³⁰

It should be noted that a ministry might not exist in every country. For instance, in the US, there is a Secretary of Health and Human Services, playing an equivalent role to a minister in charge of a ‘ministry-like’ body—the Department of Health and Human Services. The Food and Drugs Agency (FDA) is the regulatory body that reports to the Secretary. The FDA also creates and implements the standards.

Table 4

Actor	Role	Function and explanation
Regulatory body	Has routine implementation power and responsibilities. This department or authority could be at the federal / state provincial / municipal level.	The regulatory body might create regulations to implement specific parts of laws created by the legislative body. For example, a department or authority might create regulations, rules, guidelines, or standards that directly addresses a designated function under a primary text with express specifications.

a. Types of secondary texts

The executive branch in a country administers or executes law by implementing it through different actors and their actions—ministry or regulator. To do so, the executive creates secondary texts. There is great variation among the set-up of executive branches in different countries and the way in which they conduct their functions. Some of the specificities of the set up in a particular country may be delineated in the Constitution or basic law of the country and how the separation of functions among the three

²⁷ Adapted from Bryan A. Garner (eds), *Black's law dictionary*, 9th ed., West A. Thompson, 2009.

²⁸ US Department of Agriculture report, The Ethiopian Government Lifts Foreign Exchange Permit Requirements for Food Commodity Imports through Franco-Valuta, 18 April 2022, available at: https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=The%20Ethiopian%20Government%20Lifts%20Foreign%20Exchange%20Permit%20Requirements%20for%20Food%20Commodity%20Imports%20through%20Franco-Valuta%20_Addis%20Ababa_Ethiopia_ET2022-0016.pdf

²⁹ India FSSAI about page: <https://www.fssai.gov.in/cms/about-fssai.php>

³⁰ India Food Safety and Standards (Labelling and Display) Regulations, 2020; India Food Safety and Standards (Laboratory and Sampling Analysis) Regulation, 2011.

branches of government is detailed. In most countries, the executive branch performs an extraordinary amount of work and is likely the branch that any individual interacts with the most in their lives. Activities could range from issuing driving licenses or passports to overseeing social welfare programs like the social safety net programs and food fortification programs in many countries.

There are numerous terms used to indicate secondary texts that are created by the executive: rules, regulations, standards, guidelines, notifications, orders, decrees etc. While it is not feasible to go into all of these terms and exhaustively define them; it is, however, important to understand the most significant terms. Two main types of secondary texts are discussed here: rules or regulations and standards; ministerial decrees and orders were discussed above. Moreover, it is important to understand that there is variation in the use of these terms within the category of secondary texts. For instance, in India what is termed a 'regulation' is in the US termed a 'rule'. This kind of variation of terminology is normal.

Three points should be noted by non-lawyers. First, executive actors undertake 'quasi-legislative' actions³¹ to make legal documents that are not primary texts. Instead, these are secondary texts often made to support or supplement primary texts, e.g. regulations. Second, in most countries, executive actors are in charge of implementing legal documents on specific issues related to specific sectors, such as food, health, and nutrition, through the different types of executive action that they undertake. Third, these secondary texts are also routinely enforced through executive action undertaken by regulatory bodies. In sum, secondary texts are created, administered or implemented, and enforced or interpreted by executive action. In this way, for secondary texts the executive combines the role of all three actors in a legal system (legislature, executive, and judiciary) into one. Nevertheless, this does not preclude the exercise of power by other branches of government. For example, the Courts can enforce a secondary text, where there are complex legal issues involved. So, if a food regulation makes the use of certain toxic substances as food additives a crime, the courts might enforce the relevant provisions of that regulation.

It is important to understand that on occasion secondary texts work in conjunction with each other rather than separately. For instance, whether a standard is mandatory or voluntary or how it could be implemented might be the subject of regulations. And thus, it is exceedingly important to read these secondary texts together as well as in conjunction with the primary texts that authorise or enable them.

Rules and regulations³²

Due to the variation between rules and regulations, it is pertinent to talk about them together. In some countries, rules and regulations are routinely interchangeable terms. In other countries rules might be considered subordinate to regulations. In yet other countries there might be either rules or regulation. To take into account this variation that they are being discussed together.

In general, both rules and regulations have two core functions: (a) implementing primary texts and (b) facilitating consistent decision making. (a) As mentioned above, primary texts created by the parliament or similar body might be general. For instance, they might say that "food should be properly labelled". To implement this provision, a food regulatory body might create regulations that go into the specifics of labelling, including the font of a label, the font size, the logo, where on package the label might be placed, whether licences are required, and the consequences of non-compliance with the regulations. Consequently, it might be understood from the primary text that a label is required but the specifications of this requirement are present in the implementing regulations. (b) Rules and regulations are also

³¹ Like legislative action.

³² Rules and regulations can be defined as: An official rule or order, having legal force, usually issued by an administrative agency, adapted from Adapted from Bryan A. Garner (eds), *Black's law Dictionary*, 11th ed., 2019, West Group.

created for making the day-to-day working of an executive actor uniform. For instance, there might be rules about how to make a decision, or rules about the powers and duties of a food safety officer.³³

The creation of rules and regulations might require multiple steps in the executive branch, including consultations, public comment periods, etc. While these steps may be contained in the primary text, they are usually subject to further specifications to be determined by the implementing regulatory body. For instance, the Standards Organization of Nigeria (Establishment) Act provides for the process of creating a standard.³⁴ However, there is a more detailed process laid out in the standard operating procedures developed and applied internally at the Standards Organization of Nigeria that modify the way in which the requirements of the Act on a day-to-day basis. In other words, the Standards Organization of Nigeria may set up operating procedures and rules that facilitate the execution of the relevant provisions of the primary text.

Standards

The World Trade Organization provides a comprehensive definition of standards: *“document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”*³⁵ In other words, standards are generally instruments that provide specifications for products or processes where for example fortification is one of those specifications that might in some cases come under the broader umbrella of food standards.

A standard might, for instance, detail the amount of potassium iodate to be used to iodize salt. The standard on its own is just that, a standard. Whether the standard is mandatory or not will likely be found in separate rules or regulations or other legal document, whether a primary or secondary text. In other words, the primary text that supplies the power to an executive body to make the standard will define the status of the standard. For example, the primary text may state who should make a standard, how the standard should be made, and what the consequences of not adhering to the standard are. Another option could be that the implementation or enforcement of a standard might also be in another secondary text, such as a regulation. For example, in Nigeria, the regulations and the standards align with each other demonstrating coherence between these different legal documents and the regulations help specify the character of the standards, i.e. whether the standards themselves are binding or not.

Standards are also an important legal document because in some jurisdictions, such as France, the standard-setting body is a private body and not a governmental body.³⁶ However, such bodies may be government approved or have some government participation, such as with CODINORM in Côte d’Ivoire.

F. Visualization

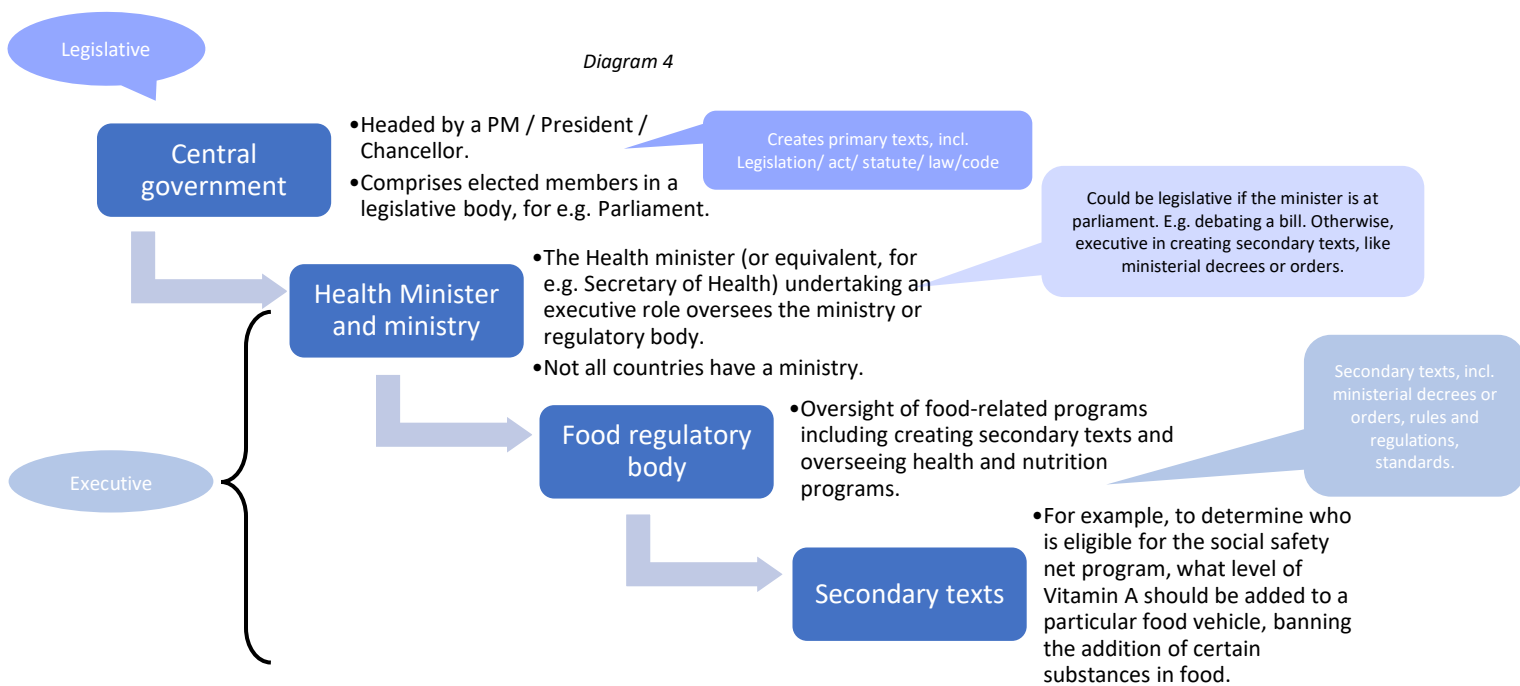
The diagram below is a visualization of the most common hierarchy in the legal system. It is not meant to be exhaustive and there will be countries where this is not necessarily the case. Nonetheless, it demonstrates the predominant way in which the legal hierarchy functions.

³³ Rule 2.2 Indian Food Safety and Standards Rules 2011.

³⁴ Standards Organization of Nigeria Act, 2015.

³⁵ WTO, Agreement on Technical Barriers to Trade, Annex 1.

³⁶ ANSES, About us, Available at: <https://www.anses.fr/en/content/governance>.



4. Legal System’s framework on Food or Food Law

To consider it simply and broadly, food law is the summation of the primary and secondary texts created or administered by the legislature or executive respectively as well as governmental actions on these issues, and cases adjudicated by courts on the topic of food, health, and nutrition-related issues. To understand food law holistically also requires understanding the legal system of a particular country broadly as the context within which food law functions. Such an understanding would include food fortification laws and regulations, food safety law and regulation, standards on these issues and other issues within the legal framework that have an impact on food, health, and nutrition-related matters. Moreover, apart from food-related issues, there are a host of issues related to businesses and how they conduct their activities in food and related matters. For example, a food processor needs to import premix into the country to abide by a regulation requiring certain micronutrient requirements, that relates to customs regulations, and the requirement of import permits etc. This example demonstrates the need to examine these issues by adopting a broad lens.

While such an expansive overview of food law might be overwhelming, it is necessary. Trying to understand the application of a law or regulation by only relying on the literal meaning of that law or regulation can be problematic, as it loses the surrounding context of the legal system and can lead to mistaken applications. For instance, without understanding that Pakistan is a federal legal system where regulations on food, health, and nutrition are created by provincial authorities or departments, it might be inaccurately understood that a law that applies to one province may apply to the entirety of Pakistan. Or it would omit the idea that a law on salt iodization created in the late 1960s could be altered by a law on food fortification written in the 2000s. Moreover, it must also be understood that different countries might approach the same issue in different ways. For example, in Philippines there is a food fortification Act,³⁷ whereas in Nigeria food fortification is the subject of regulations.³⁸ This type of variation is normal and is often seen in different countries. Indeed, many times it is also imperative to understand the unwritten role that stakeholders might play in food fortification as well as political tensions that may exist

³⁷ Philippine Food Fortification Act Of 2000. This is not to say that there aren’t also regulations in Philippines that are relevant to food fortification.
³⁸ Food Fortification regulations, 2021.

in a particular country amongst different agencies or regulators to be able to develop a food fortification program or to enhance an already existing one. It is for this reason that it is important to understand the legal system and set-up holistically rather than looking at a primary or secondary text in isolation.

Diagram 5 below visualizes this broad understanding of food law by considering both the issues directly related to food, health, and nutrition and those with a more ancillary connection, including business regulation components.

BACKGROUND CONSIDERATIONS

Business law and regulation

components:

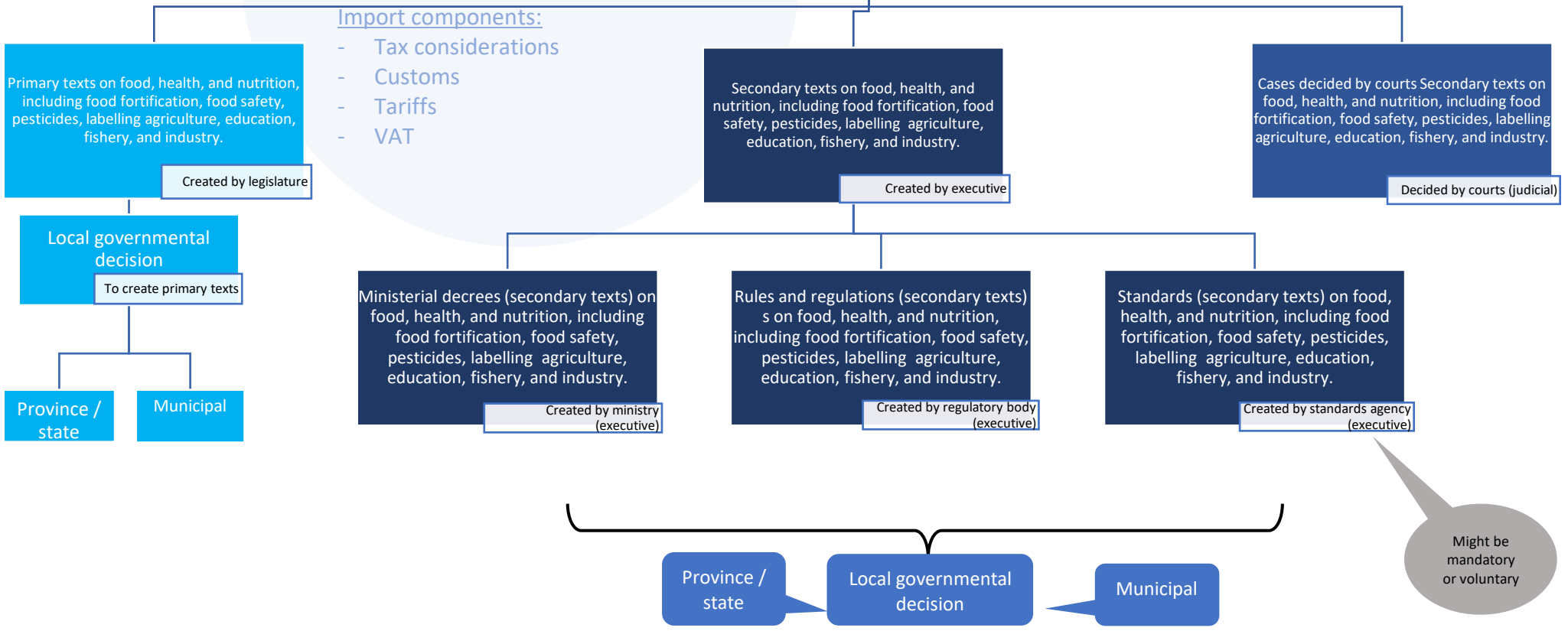
- Business registration
- business license and permits (incl. import permits)
- business inspections
- Enforcement sanctions

Import components:

- Tax considerations
- Customs
- Tariffs
- VAT

Legal system's Framework on Food

All governmental action



5. Conclusion

Parts of this primer might seem daunting. But stepping into specialized knowledge often is, which is why on occasion, those working in food, health, and nutrition might need assistance of someone with this specialized knowledge in a particular country. The aim of this primer is not to create an exhaustive document but to provide a general yet nuanced understanding of the legal system for non-lawyers, especially those working in food, health, and nutrition-related fields. As such, this primer has discussed four key points in relation to the legal system: legal families, Constitutions or other basic legal documents, actors in a legal system, and legal documents they create.

A series of questions is laid out here to familiarize a non-lawyer with a legal system. Answering these questions will facilitate a greater understanding of the legal system especially as based in these four components:

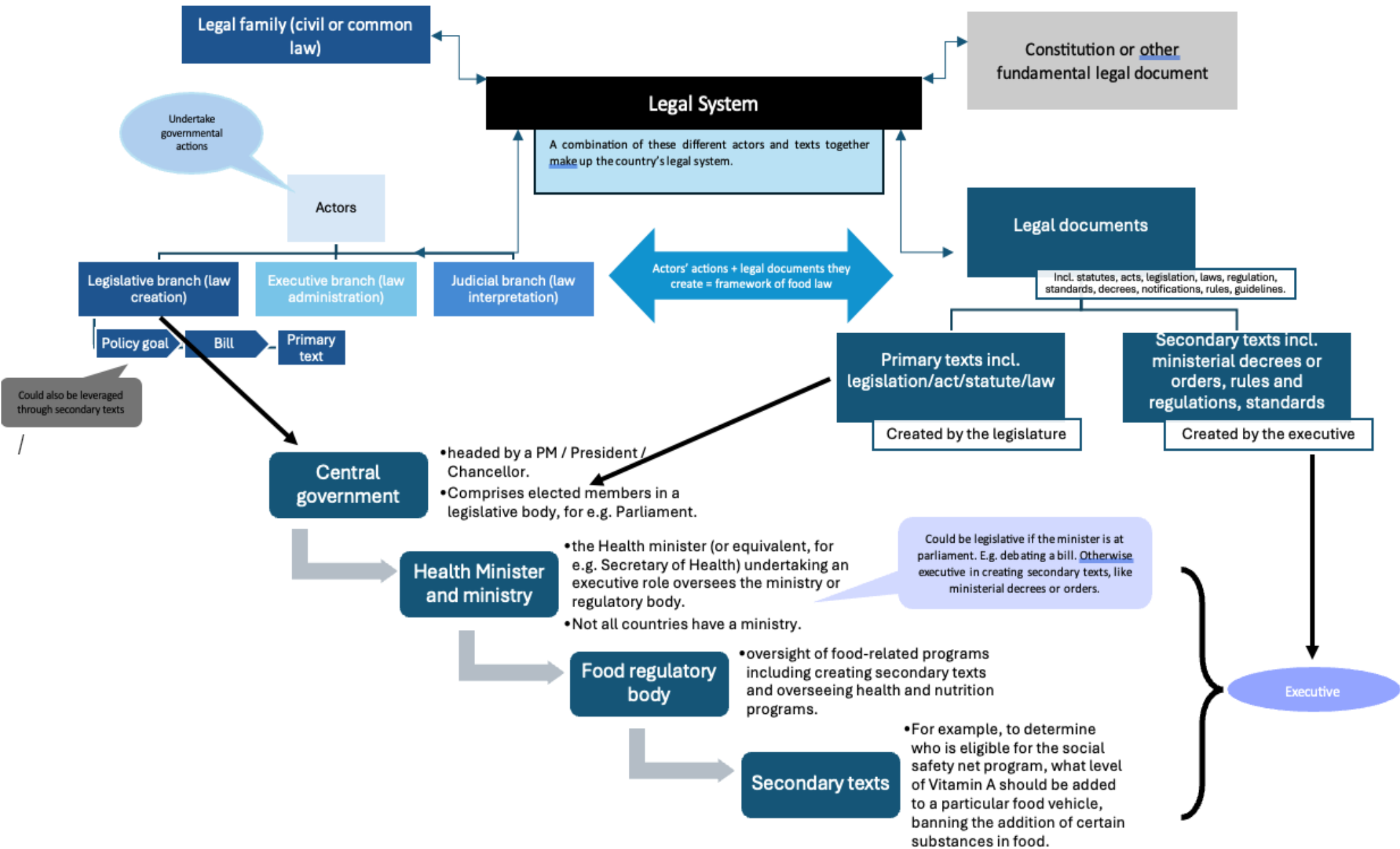
- What legal family does the country belong to?
 - Common law or civil law?
- What has been provided for under the Constitution or other basic legal documents of that country?
 - What is the structure of the country in terms of the separation of functions and powers among the three branches of government?
 - Are there sub-units / local governments with specific powers, like states or provinces?
 - Who has the responsibility of creating laws on food, health and nutrition? The federal government or one of the local governments?
 - Is there a right to food, right to social welfare or other similar rights in the country?

Answering these questions will provide general context about the legal system. Once these general questions are answered, it is important to focus on the specifics on food, health, nutrition in the form of different legal actors and documents.

- Who are the specific actors in the executive branch of the government that work on food, health and nutrition-related issues? And what are their functions?
 - Is there a minister and ministry? What is their function?
 - Is there a regulatory body? What is their function?
- What kind of legal documents exist on food, health, and nutrition?
 - Are there primary texts?
 - Are there secondary texts?
 - What types of secondary texts? Are they enforceable by the regulatory body?
 - What is detailed in these different texts?

Answering these various questions will provide a broad understanding of the legal system with a focus on food, health and nutrition-related activities.

Appendix: A summary of diagrams and tables for easy reference



	Primary text	Secondary text
Terms for different legal documents	Law, statute, act, legislation	Ministerial decrees or orders, rules and regulations, standards, guidelines etc.
Creating Actor	Legislature	Executive

Function	The creation of a law, statute, act, or legislation that is legally binding and subject to judicial action.	Implementation or support of primary text through an additional legal document, e.g. if a primary text in the form of a law creates a food authority with certain powers and responsibilities, a regulation would manifest the exercise of those powers with direct application to specific circumstances.
Examples	<p>Kenya: In 2011 The National Food and Nutrition Security Policy had goals related to food security and mentioned that the existing 1965 Food and Chemical Substances Act was not in consonance with international standards.¹ Leveraging this goal, federal law makers in the 10th parliamentary session (2008-2013) introduced a bill in parliament to amend the 1965 Food and Chemical Substances Act. After debates, this bill was passed into law, overhauling the 1965 Act to create the Food and Chemical Substances Act, 2012.² This Act contains 42 general provisions called sections. Sections 27 and 28 empower a Public Health Standards Board (an executive body) to create regulations to implement the legislation. These regulations (created by the executive body) would be technical and specific and contain provisions that build on the general provisions of the Act, for e.g. creating specific regulations on fortification.</p> <p>Pakistan: The provincial parliament is known as the Provincial Assembly. In 2021 in the province of Balochistan, a bill was introduced on food fortification. The Provincial Assembly debated the bill, and the Balochistan Food Fortification Act became law in November 2021.³ The law grants provincial level executive bodies (Food Authorities and Departments) the responsibility to undertake implementation of this law. The food authorities and departments in turn should create specific regulations to implement the law, for instance by creating a regulation on labelling.</p>	<p>Ministerial decree: Ministry of Finance in Ethiopia lifted the requirement for foreign exchange permits on food items.⁴</p> <p>Rules and regulations: To implement a provision that ‘food should be labelled’—in a primary text— a food regulatory body might create regulations that go into the specifics of labelling, including the font of a label, the font size, the logo, where on package the label might be placed, whether licences are required, and the consequences of non-compliance with the regulations. Consequently, it might be understood from the primary text that a label is required but the specifications of this requirement are present in the implementing regulations.</p> <p>Standards:</p> <ul style="list-style-type: none"> - Amount of potassium iodate to be used to iodize salt. - The primary text that supplies the power to an executive body to make the standard will define the status of the standard. For example, the primary text may state who should make a standard, how the standard should be made, and what the consequences of the standard are. - Another option could be that the implementation or enforcement of a standard might also be in another secondary text, such as a regulation. For example, in Nigeria, the regulations and the standards align with each other demonstrating coherence between these different legal documents and the regulations help specify the character of the standards, i.e. whether the standards themselves are binding or not.

¹Kenya National Food and Nutrition Security Policy (2011) available at: https://extranet.who.int/nutrition/gina/sites/default/filesstore/KEN%202011%20National%20Food%20and%20Nutrition%20Security%20Policy%5B1%5D_0.pdf pg. 24.

² Kenya Food and Chemical Substances Act, 2012.

³ Balochistan Food Fortification Act, 2021.

⁴ US Department of Agriculture report, The Ethiopian Government Lifts Foreign Exchange Permit Requirements for Food Commodity Imports through Franco-Valuta, 18 April 2022, available at: https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=The%20Ethiopian%20Government%20Lifts%20Foreign%20Exchange%20Permit%20Requirements%20for%20Food%20Commodity%20Imports%20through%20Franco-Valuta%20_Addis%20Ababa_Ethiopia_ET2022-0016.pdf

BACKGROUND CONSIDERATIONS

Business law and regulation components:

- Business registration
- business license and permits (in import permits)
- business inspections
- Enforcement sanctions

Import components:

- Tax considerations
- Customs
- Tariffs
- VAT

Legal system's Framework on Food

