



Food and Agriculture  
Organization of the  
United Nations

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# **The rights to social protection and adequate food**

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**Human rights-based  
frameworks for social  
protection in the context  
of realizing the right to food  
and the need for legal  
underpinnings**

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# **The rights to social protection and adequate food**

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## **Human rights-based frameworks for social protection in the context of realizing the right to food and the need for legal underpinnings**

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## PREFACE

The right to adequate food lies at the heart of the mandate of the Food and Agriculture Organization of the United Nations (FAO). That concept takes into consideration the availability, access and adequacy of food, and that individuals, alone or in community with others, may acquire food through their own production, through purchases with their own funds, or through social transfers.

The interface between the rights to social protection and to adequate food lies primarily in the 'transfers' that enable individuals to have physical and financial access to the food they need for an active and healthy life in dignity. The right to adequate food will not be realized through the right to social protection alone, but the latter can play a critical role, for those who are not able to earn a living or grow their own food because of their age, health or disability. Social protection can also be crucial for those who are able to work and do have some resources for food production, but are not able to optimize this because of poverty.

The human rights-based approach is an empowerment approach that can be expressed as a number of principles. Arguably, enabling legal frameworks for entitlements, accountability and the rule of law are essential for a human rights-based approach.

This paper intends to contribute to the evolving thinking about the interface between the right to social protection and the right to adequate food, and to advocate for the need for legal underpinnings.

## **ACKNOWLEDGMENTS**

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## ACRONYMS AND ABBREVIATIONS

CESCR	Committee on Economic, Social and Cultural Rights
CSD	United Nations Commission for Social Development
ECLAC	Economic Commission for Latin America and the Caribbean
FAO	Food and Agriculture Organization of the United Nations
ILO	International Labour Organisation
NGO	Non-governmental organization
SOFA	The State of Food and Agriculture
SPF	Social Protection Floor
UN	United Nations
UNICEF	United Nations Children's Fund
VGGT	Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WHO	World Health Organization

## 1. INTRODUCTION

It is vital to recognize social protection as a human right. Even where it is widely recognized, only a minority of the population are effectively protected. According to the International Labour Organisation (ILO) estimates, in 2012 only 27 percent of the working-age population and their families across the globe had access to comprehensive social security systems. In other words, almost three-quarters, or 73 percent, of the world's population, about 5.2 billion people, do not enjoy sufficient access to comprehensive social protection (ILO, 2014: 2).

The right to adequate food is another recognized human right; yet hundreds of millions of persons remain food insecure. Social protection can play a key role in the progressive realization of the right to adequate food for all.

What role does social protection play in this picture? The Report of the Social Protection Floor Advisory Group emphasizes that social protection “can play a pivotal role in relieving people of the fear of poverty and deprivation, delivering on the promises of the Universal Declaration of Human Rights. The extension of social protection, drawing on basic social floors, is a missing piece in a fairer and inclusive globalization” (ILO, 2011).

The primary goal of this document is to analyse the importance of a human rights-based approach to social protection with emphasis on the right to food. It explores the right to social protection under human rights treaties and standards arising from the United Nations. It describes the key issues that should be taken into account, in particular the importance of having legally enforceable rights, clear institutional responsibilities, transparency of eligibility criteria and application and termination procedures and recourse mechanisms.

In many cases, however, social protection programmes are implemented in the absence of an appropriate legal framework. They are based only on presidential decrees, policy statements or simply operational manuals and guidelines. The lack of a strong legal and institutional framework can seriously threaten the enjoyment of human rights by the programme's beneficiaries. In the absence of a well-established legal framework, programmes are more vulnerable to political manipulation, and benefits of programmes are not viewed as entitlements or as the right of the beneficiaries.

When governments implement programmes on a discretionary basis, or provide *ad hoc* benefits not anchored in national legislation there is a lack of predictability and sustainability of these programmes. When it is based on legislation, the delivery of social protection is not anymore just a government programme (that depends on temporary funds and/or donor-funded projects), but a “social contract” between the state and the people.

The integration of a human rights perspective may increase efficiency of programmes and long-term sustainability. The Food and Agriculture Organization of the United Nations (FAO) has proposed to use the PANTHER principles when applying a human rights based approach in the development of strategies related to food and nutrition security at all levels and in all stages of the process. PANTHER stands for the following human rights principles: participation, accountability, non-discrimination, transparency, human dignity, empowerment and the rule of law.

This paper seeks to contribute to the debate on whether social protection programmes should be statutorily founded and human rights-based and how to determine the need of adoption of social protection legislation.

## 2. WHAT IS SOCIAL PROTECTION?

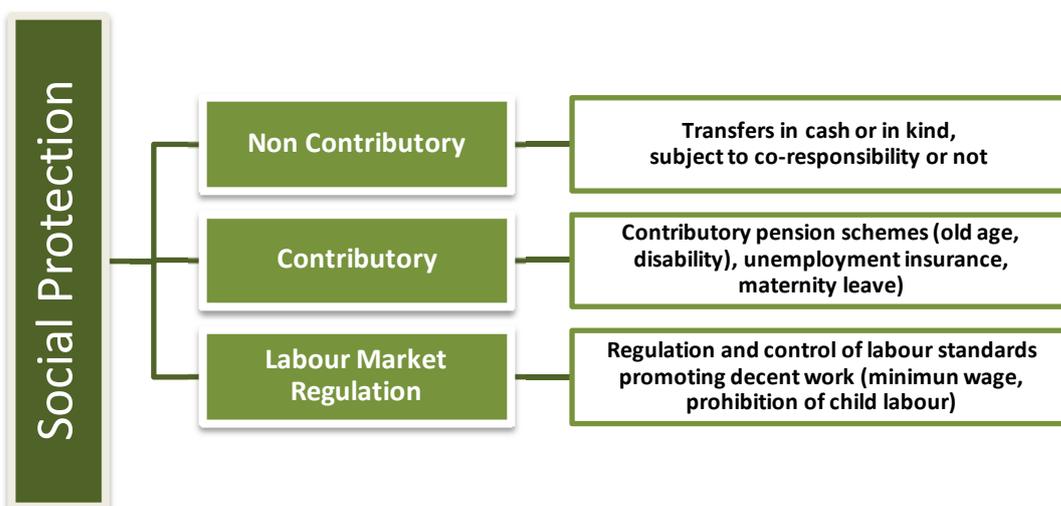
The 2015 State of Food and Agriculture (SOFA) report of FAO states that while there is no single definition of social protection, a broadly representative definition understands social protection as “all public and private initiatives that provide income or consumption transfers to the poor, protect the vulnerable against livelihood risks, and enhance the social status and rights of the marginalized; with the overall objective of reducing the economic and social vulnerability of poor, vulnerable and marginalized groups” (FAO, 2015, quoting Devereux and Sabates-Wheeler, 2004, p. 9).

Although there is some level of agreement about the meaning and purpose of social protection, there are different terminologies used in supporting literature. Therefore, there is often confusion among the terms ‘social protection,’ ‘social security,’ ‘social insurance,’ and ‘social safety nets’.

Social protection has traditionally been defined as a range of public institutions, norms and programmes aimed at protecting individuals and their households from poverty and deprivation. Broadly, these can be grouped under three main headings: non-contributory social protection (commonly referred to as social assistance, which can include both universal and targeted measures); contributory social protection (commonly known as social security); and labour market regulation, which consist of regulations and standards designed to promote and protect decent work.

Social insurance consists of programmes providing protection against life-course contingencies such as maternity and old age; or work-related contingencies such as unemployment or illness. Social assistance provides support for those in poverty. Normally, social insurance is financed by contributions from workers and their employers, whereas social assistance is tax-financed and/or donor-financed. Finally, labour and employment standards ensure basic standards at work, and extend rights to organization and voice (Barrientos, 2010: 1-2).

**Figure 1: Social protection programme classification**



Source: Adapted from (Cecchini and Martinez. 2012: 134).

There is a general consensus about the core functions of a social protection system (Devereux and Sabates-Wheeler, 2004: 10):

- Protective function: Aimed at providing relief from poverty and deprivation, protective functions include: social assistance for the “chronically poor”, especially those who are unable to work and earn their livelihood; and targeted resource transfers, such as disability benefit, single-parent allowances, and “social pensions” for the elderly poor.
- Preventive function: Aimed at providing social insurance for “economically vulnerable groups” —people who have fallen or might fall into poverty, and may need support to help them manage their livelihood shocks. Social insurance programmes refer to formalized systems of pensions, health insurance, maternity benefit and unemployment benefits. Strategies of risk diversification — such as crop or income diversification — are also considered as preventive measures.
- Promotive function: Aimed at enhancing real incomes and capabilities, which is achieved through a range of livelihood-enhancing programmes targeted at households and individuals, such as microfinance and school food and nutrition.
- Transformative function: Aimed at enhancing social and economic rights and empower the vulnerable to enjoy these rights (such as collective action for workers’ rights, or upholding human rights for minority ethnic groups). Transformative interventions may include changes to the regulatory framework to protect “socially vulnerable groups” (e.g. people with disabilities, or victims of domestic violence) against discrimination and abuse, as well as sensitization campaigns to transform public attitudes and behaviour and enhance social equity.

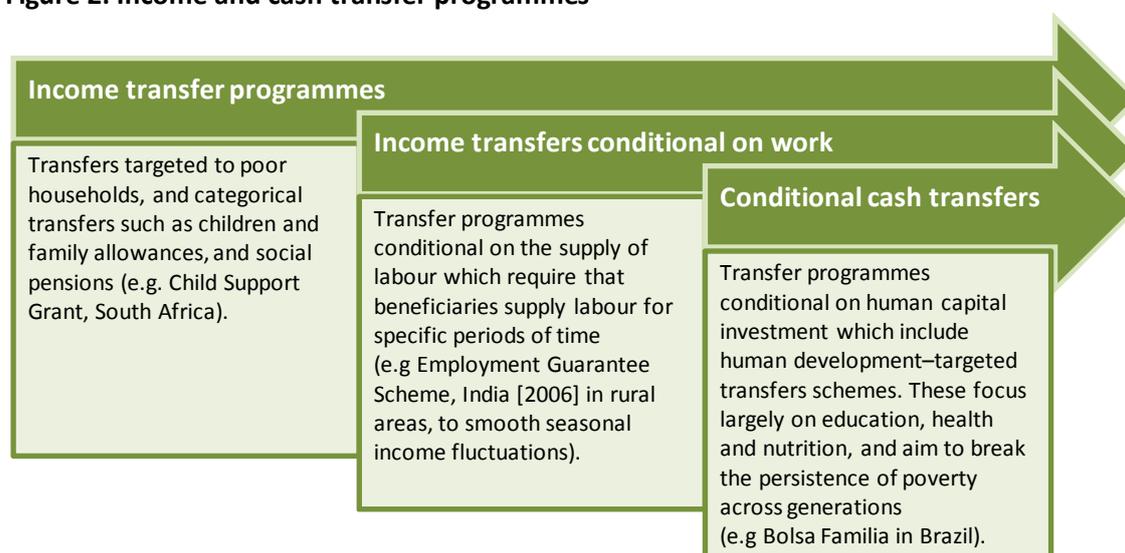
In its traditional meaning social protection is a very broad concept (Barrientos and Shepherd, 2003: 4-5). In its World Social Protection Report, the ILO states that there are varying definitions of the terms “social protection” and “social security.” The term “social protection” is used in institutions across the world with a wider variety of meanings than “social security.” Social protection is generally taken to be broader than social security, social insurance and social safety nets. Social security and social insurance are normally restricted to contributory programmes covering a specific range of contingencies. Social safety nets are mainly temporary interventions in response to food or income crises. However, in certain contexts, social protection might be interpreted in a narrower way, comprising only measures addressed to the poorest, most vulnerable, or excluded members of society. Thus, in many contexts the two terms, “social security” and “social protection,” may be largely interchangeable, and for the ILO, reference is made to “social protection” both as an alternative expression to “social security” and to denote the protection provided by social security in case of social risks and needs (ILO, 2014).

It should be noted that the concept of social protection has evolved and changed. For much of the 20th century, the social protection debate was linked to contributory social protection and a ‘labour-based society.’ This approach to protection was based on formal employment with the objective of putting mechanisms in place to protect workers from unforeseen circumstances—unemployment, illness or occupational accidents (Cecchini and Martinez, 2012:34). Furthermore, the objective was to address varying needs at different stages of the workers’ lives, such as through retirement and other pensions and survivors’ insurance for workers’ relatives (Cecchini and Martinez, 2012:34). However, the limited registration in social security systems and the restricted operation of such systems only through formal

employment channels in developing countries created barriers to access. This is particularly the case for female-headed rural households that have the least access to social protection through the contributory mechanism. In places where social insurance only covers a minority of the labour force, basic services are highly stratified. Often labour market regulations are thin and poorly enforced and the incidence of poverty and vulnerability are high. In these circumstances, social assistance is the primary — and sometimes the only — social protection instrument addressing poverty and vulnerability (Barrientos, 2010:10).

It is important to note that there has been a very a rapid extension of social assistance programmes in developing countries over the last 15 years. This has come in many forms: the introduction and extension of pure income transfers, such as non-contributory pensions or child-based transfers; income transfers conditioned on work, for example, public works or employment guarantee schemes; income transfers combined with services, such as conditional cash transfers or integrated social assistance schemes, and the development of integrated poverty reduction programmes (Barrientos, 2010:11).

**Figure 2: Income and cash transfer programmes**



Source: Adapted from Barrientos (2010:14).

Similarly, in a study about social protection in Latin America the World Bank states that modern social assistance systems comprise three core program types: cash transfers; in-kind transfers; and workfare. Cash transfers can be further subdivided into those that seek to mimic the benefits of social insurance systems in the absence of private contributions, and those that seek to promote certain positive behaviours by conditioning the transfers. The former category of transfers is dominated by non-contributory social insurance programs that include social pensions (universal or targeted), disability pensions, non-contributory health insurance, and unemployment assistance. The latter category involves mainly conditional cash transfers, which aim to promote investments in human capital (Ferreira and Robalino, 2010: 13).

Social protection can play a major role in creating access to full and productive employment and decent work for all, including women and young people, through cash transfers and insurance and family support policies. These have been shown to encourage labour market participation in low- and middle-income countries by guaranteeing public work opportunities, covering the costs of job seeking and supporting those with childcare

responsibilities (ILO, 2014:151). Indeed, the Recommendation 202 of ILO calls for the combination of preventative, promotional and active measures with benefits and social services, and the coordination of social protection policies with policies that promote, among other things, secure work within a decent work framework.

In view of the object and purpose, this paper will deal almost exclusively with non-contributory schemes aimed specifically at covering those with inadequate or no protection. In particular, social protection measures can include cash transfer schemes, public work programmes, school stipends and lunches, social care services, unemployment or disability benefits, social pensions, food vouchers and food transfers, user fee exemptions for health care or education and subsidized services.

**TABLE 1**  
**Some perspectives on social protection**

The ILO understands social protection as arising from rights. It is defined as the “entitlement to benefits that society provides to individuals and households — through public and collective measures — to protect against low or declining living standards arising out of a number of basic risks and needs” (Bertranou, van Ginneken and Solorio, 2006).

The Social Protection Strategy Paper from the World Bank moves beyond “traditional” social protection in defining a “social risk management” framework, adding macroeconomic stability and financial market development to typical social protection programmes. Social risk management views social protection as a set of public measures that support society’s poorest and most vulnerable members and help individuals, households and communities to better manage risk. Social risk management entails three strategies: informal, market and public. It also identifies public and individual responsibilities for social protection. Public responsibilities involve policymaking and regulation of market mechanisms, while individual responsibilities can be either formal (systematic savings, private insurance, employment in the formal sector of the economy and investing in children’s education) or informal (social and community networks) (Ferreira and Robalino, 2010).

The United Nations Children’s Fund (UNICEF) defines social protection as the set of public and private policies and programmes aimed at preventing, reducing and eliminating economic and social vulnerabilities to poverty and deprivation (2012). Social protection is essential to UNICEF’s commitment to the realization of the rights of children, women and families to an adequate standard of living and essential services.

The Economic Commission for Latin America and the Caribbean (ECLAC) has defined it with a view to devising social assistance, promotion and development responses to risks to the environment, taking a rights-based approach (2006).

The United Nations Commission for Social Development (CSD) defines social protection as “a set of public and private policies and programmes undertaken by societies in response to various contingencies to offset the absence or substantial reduction of income from work; to provide assistance to families with children as well as provide people with basic health care and housing” (CSD 2000).

FAO’s sees social protection as regards to FAO’s engagement, as comprising “a set of policies and programmes that addresses economic, environmental and social vulnerabilities to food insecurity and poverty, by protecting and promoting livelihoods, in line with FAO’s rights based approach.” (FAO, forthcoming)

## 2.1 Social protection and food security

Social protection plays an important and often vital role in supporting food insecure people. A well designed and well implemented social protection programme can contribute to addressing the causes of food insecurity.

According to the report on social protection by the High Level Panel of Experts on Food Security, each country should develop a comprehensive social protection portfolio and an action plan that addresses structural poverty and food insecurity (HLPE, 2012:16). The report establishes that one possible model for the social protection portfolio is the ‘Food Security Floor’, which would identify a minimum set of appropriate social protection measures, as well as other interventions, that would realize the right to food in each country. The design should start with a national food security assessment and should include: a mix of appropriate tools, goals and intended beneficiaries; targeting and registration methodologies; institutional arrangements; delivery mechanisms; accountability systems; sound monitoring; and evaluation that includes impact indicators for nutrition, funding requirements and funding sources. Ensuring inter-ministerial and cross-sectoral coordination is crucial to ensuring that social protection is integrated with broader food security programming (HLPE, 2012:16).

**TABLE 2**  
**Recommendations to Policy Makers by High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security**

1. Every country should strive to design and put in place a comprehensive and nationally owned social protection system that contributes to ensuring the realization of the right to adequate food for all.
2. Social protection systems should pursue a ‘twin-track’ strategy to maximize their positive impacts on food security, by providing essential assistance in the short-term and supporting livelihoods in the long-term.
3. Social protection needs to be better designed and implemented to address vulnerability to poverty and hunger, for instance by being accessible on demand to everyone who needs assistance, and by putting contingency financing in place for rapid scaling up when required.
4. Social protection for food security should be underpinned by the human rights to food and social protection at every level, from governments signing up to global agreements, to national legislation and programme implementation.
5. Since a large proportion of the world’s food insecure people earn their living from agriculture, mainly but not only as smallholder farmers, social protection for food security should support agricultural livelihoods directly.

(HLPE, 2012)

Social protection cannot ‘solve’ all the causes of food insecurity and its impact on nutrition on its own. Achieving food security in the short term requires not only household or individual access to adequate food, but also links to basic health care services, clean water and sanitation, and appropriate information, education and skills training to ensure that the food will also be utilized effectively in safe and wholesome daily diets for nutritional health and well-being. Achieving sustainable food security in the long term requires support to agriculture, employment creation, investment in infrastructure and favourable trade policies, among others (HLPE, 2012:51).

A comprehensive social protection response to food insecurity and vulnerability requires a strategic approach and a coherent package of interventions, not just a single instrument or programme. It is also important to build policy links from social protection to other sectors – agriculture, education, health, nutrition – and to institutionalize social protection within government systems. Ideally this will be underpinned by legislation that confers justiciable claims to eligible citizens and residents (HLPE, 2012:73).

## 2.2 Social protection floor

The Social protection floor (SPF) emerged as a United Nations response to the global ‘triple F’ (food, fuel and financial) crises that peaked around 2008. It also built on the growing evidence-based momentum behind social protection as a powerful set of interventions that can protect household food security in the short-term, while contributing to economic growth and poverty reduction in the longer term (HLPE, 2012:58).

The SPF is a basic set of rights and transfers that enables and empowers all members of a society to access a minimum of goods and services. (ILO and World Health Organization [WHO], 2009:1). The SPF does not define new rights; it rather contributes to the realization of the human right to social security and essential services as defined in Articles 22, 25 and 26 of the Universal Declaration of Human Rights (1948). It also encourages the observance of ILO Convention 102 on Social Security (Minimum Standard) (ILO and WHO, 2009:1).

The main elements of the SPF have been defined as: 1) essential services, i.e. geographical and financial access to essential services (such as water and sanitation, adequate nutrition, health and education, housing, and other services including life and asset saving information); and 2) essential social transfers, i.e. social transfers, in cash and in-kind, paid to the poor and vulnerable to provide a minimum income and health security” (ILO and WHO, 2009:1).

The concept is part of a two-dimensional strategy for the extension of social security, comprising a basic set of social guarantees for all (horizontal dimension), and the gradual implementation of higher standards (vertical dimension), in line with the ILO’s Social Security (Minimum Standards) Convention, 1952 (No. 102) (ILO, 2011).

**TABLE 3**  
**Social protection floor**

The Social Protection Floor Initiative was launched by the United Nations system Chief Executives Board for Coordination in April 2009. It recognizes the importance of social protection as a necessary component of a comprehensive development strategy that addresses poverty, inequality and social exclusion and at the same time seeks to invest in people as a prerequisite for sustainable and fairly shared economic growth.

The ILO and WHO were jointly charged with leading the United Nations Social Protection Floor Initiative (UNSPF Initiative). Some 19 other UN agencies and a number of major bilateral donors and non-governmental organizations (NGOs) soon joined the initiative.

The outcome document of the Millennium Development Goals Summit adopted by the General Assembly by consensus on 22 September 2010 identifies the SPF concept as a successful policy and approach. It states that “promoting universal access to social services and providing social

protection floor can make an important contribution to consolidating and achieving further development gains.”

(ECA *et al.* 2012).

In resolution 25/11, the Human Rights Council acknowledged the importance of the joint United Nations Social Protection Floor Initiative for the realization of economic, social and cultural rights and referred specifically to ILO recommendation No. 202 (2012) concerning national floors of social protection.

At its 101<sup>st</sup> Session in June 2012, the International Labour Conference adopted a new international social security standard, the Social Protection Floors Recommendation, 2012 (No. 202), which completes the ILO’s social security strategy.

The SPF takes a holistic approach to social protection. On the one hand, SPF activities will work on means to ensure the availability of goods and services in the areas of health, water, sanitation, housing, education, food and related information. At the same time, the SPF will secure rights and transfers that guarantee effective access to these goods and services for all, throughout the life cycle: children, active age groups and older persons, paying particular attention to vulnerable groups by considering additional key characteristics across all age groups—gender, socio-economic status, ethnicity, disabilities, population exposed and/or highly sensitive to adverse external effects such as natural hazards, intense climate phenomena, etc. (ILO and WHO, 2009:1).

According to ILO Recommendation No. 202, social security is a human right of all people, regardless of where they live. It should be guaranteed at least a floor of basic social protection and a national SPF should comprise at least the following four social security guarantees, as defined at the national level:

- a) access to essential health care, including maternity care;
- b) basic income security for children, providing access to nutrition, education, care and any other necessary goods and services;
- c) basic income security for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and
- d) basic income security for older persons.

Such guarantees should be provided to all residents and all children, and be subject to existing international obligations. National laws and regulations should specify the range, qualifying conditions and levels of the benefits that give effect to these guarantees (ILO, 2012).

Benefits may include child and family benefits, sickness and health-care benefits, maternity benefits, disability benefits, old-age benefits, survivors’ benefits, unemployment benefits and employment guarantees, and employment injury benefits, as well as any other social benefits in-cash or in-kind. Schemes providing such benefits may include universal benefit schemes, social insurance schemes, social assistance schemes, negative income tax schemes, public employment schemes and employment support schemes (ILO, 2012).

The often overlooked aspect of the Recommendation is that it does not just deal with the floor of protection, but also requires countries to build higher levels of protection as soon as

possible, and hence guides the 184 member states on how comprehensive overall national social protection systems should be built on the solid basis of a floor (Cichon, 2014).

The Recommendation (Paragraph 3) lists principles that should govern national social protection systems, ranging from universality of protection, adequacy of protection, non-discrimination, gender equality and responsiveness to special needs. Entitlements to benefits should be prescribed by national law, and should also be accompanied by efficient and accessible complaint and appeal procedures.

### 3. A HUMAN RIGHTS-BASED APPROACH TO SOCIAL PROTECTION

The recognition that all human rights are interdependent and interrelated represents one of the main features of a human rights-based approach (UN General Assembly, 1993). From this view flows the necessity of looking at a number of human rights together, such as the right to food and the right to social protection. Such a holistic approach requires examination of economic, social and cultural rights and at civil and political rights. Principles such as participation and empowerment stem from the latter group of rights. As such, it is necessary to pay equal attention to the achievement of a goal (such as elimination of hunger and poverty) and the way in which that goal is achieved, i.e. focus on both the outcome and the process.

When new schemes are developed and implemented, it is essential that “duty-bearers,” such as local administrators, are aware of their obligations. This should aim to minimize mismanagement, corruption and abuse of power. Conversely, “rights-holders” need to have the capacity to claim their rights. Judges and other members of the judiciary should be educated about these rights and obligations, and the correct measures to ensure that there is proper redress for any breach (FAO, 2012).

#### 3.1 Is the right to social protection a new human right?

The right to social security is recognized in articles 22 and 25 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Economic, Social and Cultural Rights. It is also enshrined in the Convention on the Elimination of All Forms of Racial Discrimination, Article 11; Convention on the Rights of the Child, Article 26 and 27; Convention for the Protection of Migrant Workers and their Families, Article 27; and the Convention on the Elimination of All Forms of Discrimination against Women, Articles 11 and 14, and the Convention on the Rights of Persons with Disabilities, explicitly refers to the right to social protection. It also appears in regional human rights instruments (for example, Article 9, Protocol of San Salvador and Article 12, European Social Charter). These international human rights instruments recognize the rights to social security, labour, the protection of adequate standards of living for individuals and families, as well as the enjoyment of greater physical and mental health and education.

Several Conventions of the ILO are relevant to the right to social security.<sup>1</sup> The most prominent out of these is the Social Security (Minimum Standards) Convention, 1952 (No.102). It is the only international convention, which defines the nine classical branches of social security (medical care, sickness, unemployment, old-age, employment injury, family responsibilities, maternity, disability and survivorship). It sets minimum standards for each and sets standards for the sustainability and good governance of those schemes (ILO, 2010:12).

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1 Social Security (Minimum Standards) Convention, 1952 (No. 102); Employment Injury Benefits Convention, 1964 (Schedule I amended in 1980) (No. 121); Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); Medical Care and Sickness Benefits Convention, 1969 (No. 130); Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); and Maternity Protection Convention, 2000 (No. 183).

**TABLE 4**  
**Right to social security and social protection**

**Universal Declaration of Human Rights**

Article 22:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 25:

- (1) 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.
- (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.

**The International Covenant on Economic, Social and Cultural Rights**

Article 9:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

**Convention on the Rights of the Child**

Article 26:

States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

Article 27(2) and (3):

States Parties must, in accordance with national conditions and within their means, take appropriate measures to assist parents to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

**Convention on the Elimination of All Forms of Discrimination against Women**

Article 11:

The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old-age and other incapacity to work, as well as the right to paid leave... and the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

Article 14(2)(c):

Recognizes the duty of States Parties to eliminate discrimination against women in rural areas and, in particular, to ensure to such women...the right to benefit directly from social security programmes.

**Convention on the Elimination of All Forms of Racial Discrimination,**

Article 5(e)(iv):

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of...the right to social security and social services.

### **Convention on the Rights of Persons with Disabilities**

Article 28:

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
  - b. to ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes.

It is true that most international human rights instruments do not use the term social protection. Rather, they set out the right of everyone to social security, including social insurance. This non-exhaustive definition of social security led the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 19 (2008) to define the right to social security in a broad manner, as encompassing not only contributory or insurance-based schemes but also non-contributory schemes, such as universal schemes or targeted social assistance schemes, where benefits are received by those in a situation of need.

The CESCR further noted that all persons should be covered by the social security system; especially individuals belonging to the most disadvantaged and marginalized groups, without discrimination on any of the prohibited grounds. In order to ensure universal coverage, non-contributory schemes will be necessary (CESCR, 2008. para.23).

Moreover, the Committee has established that states who are parties to the International Covenant on Economic, Social and Cultural Rights have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to social security as follows:

- a) to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education;
- b) to ensure the right of access to social security systems or schemes on a non-discriminatory basis, especially for disadvantaged and marginalized individuals and groups;
- c) to take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups;
- d) to monitor the extent of the realization of the right to social security; and
- e) to adopt all appropriate measures such as legislation, strategies, policies and programmes to ensure that the specific obligations with regard to the right to social security will be implemented.

(CESR, 2008, para 59)

Philip Alston, UN Special Rapporteur on extreme poverty and human rights, explains in his recent report:

“Social protection is a human right, enshrined in multiple sources of international law. In other words, no claims are needed for novelty, nor is it necessary to argue that the whole is more than the sum of the parts. The right to social protection is thus no more than a combination of the

right to social security and the right to an adequate standard of living. Nevertheless, the packaging of those two rights into a single concept is important, both because it highlights the synergy between them and facilitates the development of a package of measures to achieve their shared objectives.”

(“Special Rapporteur”, 2014. para.34)

### 3.2 Links between the right to social protection and the right to food

The right to food is the right of every individual, alone or in a community with others, to have physical and economic access at all times to sufficient, adequate and culturally acceptable food that is produced and consumed sustainably, and preserving access to food for future generations. Individuals can secure access to food: (a) by earning income from employment or self-employment; (b) through social transfers; or (c) by producing their own food, for those who have access to land and other productive resources (emphasis added). Social protection is the means of providing social transfers that can contribute to the realization of the right to adequate food and the fundamental right to be free from hunger. In this sense, the right to social protection can be seen as an instrumental right to the right to food.

The normative content of the right to food can be summarized by reference to the requirements of availability, accessibility, adequacy and sustainability, all of which must be built into legal entitlements and secured through accountability mechanisms (“Special Rapporteur right to food”, 2014: para. 2 and CESCR, 1999: paras. 6 and 7).

**TABLE 6**  
**The right to adequate food**

#### **Universal Declaration of Human Rights (1948)**

Article 25:

1. 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.

#### **International Covenant on Economic, Social and Cultural Rights (1966)**

Article 11:

1. 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:
  - (a) to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

**Convention on the Elimination of All Forms of Discrimination Against Women (1979)**

Article 12:

2. ...States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

**Convention on the Rights of the Child (1989)**

Article 24:

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.  
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:  
(c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

Article 27:

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition.

**Convention on the Rights of Persons with Disabilities (2006)**

Article 28:

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

The link between food security and social protection has been recognized by the CESCR which provided a detailed interpretation and elaboration of the content of the right to food and the corresponding state obligations in its General Comment No. 12 (1999). This General Comment states that the right to adequate food is inextricably linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights. It is inseparable from social justice, requiring the adoption of appropriate economic and social policies oriented to the eradication of poverty. Moreover, the Committee clearly requires that each state party to the International Covenant on Economic, Social and Cultural Rights take the necessary steps for ensuring that everyone is free from hunger and can enjoy the right to adequate food as soon as possible. This requires the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks. The strategy should address critical issues and measures in regard to all aspects of the food system, as well as parallel measures in the fields of health, education, and social security.

There are powerful synergies between social protection and food security. Effective social assistance programmes can alleviate chronic food insecurity or hunger, while demand-driven or scaled social insurance and safety net programmes can address transitory food insecurity

caused by seasonality or vulnerability to livelihood shocks. Social protection programmes with food security objectives relate to different aspects of the right to food (e.g. food subsidies, school food and nutrition, supplementary feeding, cash transfers).

**TABLE 5**  
**Right to Food Guidelines**

In 2003, an Intergovernmental Working Group was established under the auspices of the Food and Agriculture Organization of the United Nations (FAO) in order to prepare a set of guidelines on the implementation of the right to food. The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines) were adopted unanimously by the 127th Session of the FAO Council in November 2004 (FAO, 2005).

The objective of the Right to Food Guidelines is to provide practical guidance to states in their implementation of the progressive realization of the right to adequate food in the context of national food security, in order to achieve the goals of the World Food Summit Plan of Action. The Right to Food Guidelines is a human rights-based practical tool to combat hunger and poverty and to accelerate attainment of the Millennium Development Goals.

The Right to Food Guidelines provide a thoughtful overview of actions that need to be taken in a coordinated fashion to address the underlying and root causes of hunger. They are seen by many as the most authoritative and complete guiding document available for building a sound, national human rights-based food security and nutrition framework. The Right to Food Guidelines discuss the impact of international commitments, measures and actions on national level efforts to realize the right to food. Moreover, they promote a process for developing a national food security and nutrition strategy through adherence to a set of human rights principles that include participation, accountability, non-discrimination, transparency, human dignity, empowerment and the rule of law.

(FAO, 2014b and 2005)

The Right to Food Guidelines can help governments design appropriate policies, strategies and legislation. Guidelines 5, 7, 17 and 18 offer states practical guidance for developing effective institutional and legal frameworks to guarantee the right to adequate food. They also address social protection in relation to food security, calling on states to accompany food assistance in safety nets schemes with complementary activities including access to health care and education (FAO, 2005). The Guidelines recommend social protection in the form of food and social safety nets, as well as measures to promote livelihoods through provision of resources and assets. In general, social transfers with general poverty reduction objectives or specific food security objectives both can enhance access and availability of food (FAO, 2014a).

It is clear that the right to food and the right to social protection are complementary human rights and that the creation of appropriate safety nets is one way of fulfilling the obligation to provide food and achieve food security. The ultimate aim of social protection systems must be to ensure the right to an adequate standard of living for everyone, including the right to food.

Clearly, if people cannot meet their subsistence needs through the use of their own resources, then public resources must cover the deficit. This is the defining role of publicly provided social protection. But social protection should not be only about providing social

assistance to people living in poverty. It should also be transformative by addressing the social or structural causes of poverty and vulnerability. The broader challenge is to conceive social protection interventions in ways that will affect this range of relationships that either support or constrain peoples' own efforts to achieve wellbeing.

From the standpoint of social protection, improving access to food is not just a matter of increasing income or providing food. To a large extent, the obligation to fulfil the right to social protection and the right to food can be met by adequate facilitation measures, i.e. by the creation of living conditions that allow individuals to feed themselves by their own means. Facilitating the realization of these rights thus requires more far-reaching measures on the part of state authorities intended to strengthen people's access and utilization of resources and means to ensure their livelihood, including food security.

Whenever individuals are unable to feed themselves either because they have lost their pre-existing sources of food security due to a sudden and unexpected event or because they cannot ensure their food security due to sickness, disability or other reasons beyond their control, public authorities are obliged to take care of them directly. In such situations, the state should provide food, or the means to procure food, in a quantity and quality that ensures food and nutrition security. As a minimum the state is always required to provide assistance so as to ensure freedom from hunger (FAO, 2009: 104).

There are a variety of options aimed at developing synergies with development policies in the medium and long term, protecting other human rights that are fundamental to the right to food (for example, health and education). This is the case with school feeding programmes which have several objectives: reducing hunger and improving food security, particularly for children; and increasing human capital accumulation by providing incentives for children, particularly girls, to attend school and by providing food which helps children to concentrate and improve learner performance (HLPE, 2012:13). These programmes, in turn, can promote purchases from family farming, thus combining food distribution in schools with support for small producers in order to improve livelihoods of rural families living in poverty and food insecurity (FAO, 2012).

**TABLE 7**  
**A school feeding model from Brazil**

Brazil successfully linked school feeding with the food production of family farmers, delivering outcomes both for the children and for the small-scale farming sector and local economies (WFP, 2013).

The Brazilian school feeding programme (Programa Nacional de Alimentação Escolar – PNAE) reaches 47 million students every year. The Brazilian example shows that it is possible to link food production, school meals, nutrition education and community participation.

In 2009, the School Feeding Law was adopted and it institutionalized the school feeding programme at a federal government level. The 1988 constitution states a universal right to free school meals for children in public primary schools. This new law, however, expanded the reach of the programme to all students in basic education.

Since 2009, by virtue of the School Feeding Law, at least 30 percent of the resources must be used to procure food from family farmers. One of the cornerstones of the Brazilian battle against

hunger and poverty is the Food Acquisition Programme (Programa de Aquisição de Alimentos – PAA), an agricultural programme established to promote purchases of food products directly from family farmers for the government’s different food-based Programmes. PAA’s prior experience helped create the link between small-scale farmers and school feeding in Brazil. Buying locally from family farms led to lower school meal costs and an increase in the availability and consumption of fruits and vegetables (WFP, 2013).

The implementation of the programme is heavily regulated. It is the responsibility of the National Fund for Development of Education. The strong legal framework that has been put in place provides for operational regulations and allows for consistent, high quality service delivery. Civil participation was a key element in formulating the legislation. Representatives of different levels of government, NGOs, universities and other civil society organizations joined together to express their views on proposed legislative plans before the bill was presented to National Congress (Sidaner, 2012).

### 3.3 Implications of a human rights-based approach to social protection

The analysis in this paper is framed by the recognition that the right to social protection is a human right under international law, and therefore social protection should be considered as an entitlement rather than merely a relief provided by governments (Blank, Devereux and Handa, 2011 and Roelen and Sabates-Wheeler, 2012). The human rights approach reinforces this aspect of claims and entitlements, which needs to be developed and made operational.<sup>2</sup>

Most countries in the world have ratified the basic human rights treaties, civil and political and economic, social and cultural rights. One of the fundamental additional benefits of the human rights approach is that the focus on rights and obligations helps improve accountability, as responsibilities are defined in terms of the specific legal obligations of “duty-bearers” and those who are entitled to make claims are identified as “rights-holders.” This is a fundamental shift from a charity or needs-based approach, towards a concentration on rights and entitlements, which in turn give rise to obligations on the part of the state. Therefore, a focus on rights and obligations helps by ensuring that the people at the centre of social protection policies and programmes are not passive beneficiaries, but rights holders who can exercise their entitlements by holding those behind such policies responsible.

The adoption of a human rights-based approach to social protection not only responds to international obligations and commitments but also improves the effectiveness of social security systems in reducing poverty, inequality, and social exclusion, and aligns them with the holistic perspective required to tackle the various dimensions of poverty. Those most in

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2 In the United Nations Programme for Reform that was launched in 1997, the Secretary-General called on all entities of the UN system to mainstream human rights into their various activities and programmes within the framework of their respective mandates. Since then, a common understanding has been developed among UN departments, agencies, funds and programmes as to what constitutes a human rights-based approach. The common understanding serves to guide processes and outcomes with regard to human rights mainstreaming, and in particular highlights the following: a) all programmes of development cooperation, policies and technical assistance (including social protection schemes) should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments; b) human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights, guide all development cooperation and programming in all sectors and in all phases of the programming process; and c) development cooperation contributes to the development of the capacities of “duty-bearers” to meet their obligations and/or of “rights-holders” to claim their rights.

need of assistance are more likely to be reached through a human rights-based social protection programme, and the assistance they receive is more likely to be appropriate and effective in addressing their deprivations. Poverty reduction consequently becomes more effective and sustainable, as participatory and accountability mechanisms ensure that the voices of social protection beneficiaries are taken into account and programmes are designed to respond to their needs accordingly. Effectiveness and efficiency are key concerns in practice, given the constant shortfalls in funds. This paper argues that while there are other ways of improving efficiency and effectiveness, human rights-based approaches can also support that goal and ensure at the same time compliance with human rights standards.

The human rights approach to social protection also assists in building social consensus and mobilizing durable commitments at the national and international level, facilitating a more efficient use of resources by promoting access to information and fighting corruption, and empowering those living in poverty.

In his recent report, the UN Special Rapporteur on extreme poverty and human rights, Philip Alston, states that the universal promotion of the right to social protection, through the adoption of social protection floors and closely related initiatives taken within an overall human rights-based framework, should become a central goal for all actors within the human rights and development contexts (“Special Rapporteur”, 2014: para.6).

When designing, implementing, monitoring and evaluating social protection (and other development) programmes states must ensure compliance with the human rights “PANTHER” principles including: a) participation; b) accountability; c) non-discrimination; d) transparency; e) human dignity; f) empowerment; and g) rule of law (FAO, 2009:29).

**Figure 3: Right to social protection and PANTHER principles**



## **Participation**

Human rights obligations relate not only to the final outcome of social protection programmes, but also to the process through which such programmes are implemented. Participation is key element of the human rights-based approach. In order to fulfil their human rights to food and social protection, those affected by social protection interventions should have the right and opportunity to participate proactively in the design, implementation, monitoring and evaluation of social protection programmes and policies that may affect their lives.

Effective participatory channels allow policy-makers and programme administrators to seek and receive feedback from beneficiaries and, in turn, to improve the effectiveness of social protection programmes.

The design of participatory channels must take into account the existing asymmetries of power within the community; otherwise they risk perpetuating, rather than eliminating, abuse of power by local elites, while continuing the exclusion of marginalized groups — especially women — in the participation process. For this reason, particular attention must be paid to mitigating gendered power relations. Specific measures must also be taken to actively encourage and enable the participation of groups who suffer from structural discrimination, such as people with disabilities, indigenous peoples, ethnic minorities and older persons (Sepulveda and Nyst, 2012: 58, 59 and "Special Rapporteur", 2013).

From a human rights perspective the focus of poverty alleviation efforts is fundamentally shifted from a charity or needs-based approach, towards a rights and entitlements. This in turn empowers beneficiaries to use accountability mechanisms and claim their rights. In Brazil, *Bolsa Familia* integrates around 5 500 social control committees at the local levels. These committees can consider a range of issues related to the social protection programme, from inclusion and exclusion errors to the existence of adequate health and education services for the fulfilment of conditions (Sepulveda and Nyst, 2012: 61).

The most important stage of the participation process is the monitoring and assessment of the success or failure of these strategies and policies so that the state and other duty-bearers can be held accountable for their obligations. This process should be an on-going cycle so that the proposed and adopted solutions can be constantly evaluated by those whom they are designed to benefit.

## **Accountability**

A human rights framework also demands accountability and redress mechanisms. This is in line with human rights standards that state that everyone has the right to an effective remedy when his or her rights have been violated or neglected. States must ensure that persons living in poverty are able to exercise their right to an effective remedy through judicial, quasi-judicial, administrative and political mechanisms, in the event that actions and omissions undermine or jeopardize their human rights. This includes public service delivery, poverty reduction programmes and resource allocation. Persons living in poverty should be fully informed about the remedies available to them, and mechanisms should be physically and financially accessible to all.

When social protection systems are not accompanied by accountability and redress mechanisms, they are less likely to be understood in terms of entitlements and rights.

Rather, social protection may be viewed as an instrument of clientelism, which can be manipulated by political actors or local elites (Sepúlveda et al., 2012:60).

To have built-in mechanisms in place for collecting and processing complaints is also essential for preventing the abuse of authority. Such mechanisms are crucial, in particular for the review of eligibility for the programme and its maintenance. Complaints procedures should include an appeal process that is independent, accessible, simple, fair, and effective. Appeal mechanisms are especially crucial when targeting methods are used, as it is likely that many eligible poor households have been excluded from the programme. The complaints and appeal processes must be an integral part of the social protection programme (Sepúlveda *et al.*, 2012:61).

Complaints procedures should include an appeal process that is independent, accessible, simple, fair and effective. Appeal mechanisms are especially crucial when targeting methods are used, as it is likely that many eligible poor households will have been excluded from the programme. Where people are entitled to benefits, but have been excluded, there must be a final recourse to a judicial body. The complaints and appeal processes must be an integral part of the social protection programme.

### **Non-discrimination**

Non-discrimination and equality are core components of the international human rights normative framework. A rights-based approach starts from the principles of universality and equality: every human being is equally entitled to social protection. The universality of human rights means they are applicable to each and every person within a state without discrimination. No condition of any kind (race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) may be linked to a person's right to exercise his or her rights freely. This principle of non-discrimination is among the most fundamental elements of international human rights law. This is because there are some persons and groups that have more difficulties in enjoying their human rights (FAO, 2009: 21).

Also an emphasis here is on universality of access for all to effective social protection. This implies a preference for schemes that are universal over those that only benefit a specific category of persons, such as contributory insurance schemes. However, this does not necessarily imply that the nature of the benefits should be identical for all population subgroups and that schemes which are universal in their application must be put immediately in place in every country. Clearly, many countries are not able to afford a complete range of social security and protection benefits reaching the entire population immediately.

It is, of course, important to work towards the universality of access for individuals to formal systems of social protection where those schemes are designed to achieve the widest coverage. Universal protection should be stated as a clear objective that may have to be achieved progressively. The notion of universal benefits, payable without distinction to all qualified members of a scheme, does however fit well into the concept of a rights-based scheme. While keeping the principle of universality in mind, it may be necessary to focus on the most vulnerable and need targeted interventions. In addition, special measures may also be required to ensure that everyone benefits equally from rights related to social protection. This requires policy decisions that favour affirmative action measures until such a time when they are deemed no longer to need such special protection.

A human rights-based approach to social protection requires that states give special attention to those persons who belong to the most disadvantaged and marginalized groups in society. Whereas everyone has the right to social security, states parties should give special attention to those individuals and groups who traditionally face difficulties in exercising this right, in particular women, the unemployed, workers inadequately protected by social security, persons working in the informal economy, sick or injured workers, people with disabilities, older persons, children and adult dependents, domestic workers, minority groups, refugees, asylum-seekers, internally displaced persons, and returnees (CESCR, 2008, para. 31).

Implementing the principles of equality and non-discrimination also means that all services and benefits are accessible and available. There are many specific obstacles to the accessibility of services, related to the conditions of particular groups, such as old people, persons with disabilities, and women. Finally, states must remove barriers and make more flexible the administrative requirements that may prevent people from accessing social protection, such as requiring identification documents for registration when such documents are costly or may not exist insofar as many people are not registered at birth or asking for unreasonable periods of residence for migrants.

When applied to social protection programmes, the principles of equality and non-discrimination should be incorporated in their design, implementation and evaluation, ensuring that they are universal and accessible by all. However, most often, social protection programmes are not universal, and are instead targeted towards certain groups based on their demographic category or level of poverty. There are many ways to identify eligible beneficiaries for a social protection programme, such as means testing: proxy means tests, community-based targeting and geographical targeting, among others. From a human rights perspective, inclusion errors (providing the benefit to someone who is not in the target group) and exclusion errors (failure to provide the transfer to those targeted) do not have the same significance; exclusion errors are much more serious, constituting a violation of beneficiaries' right to social security (Sepúlveda *et al.*, 2012: 41).

While targeting mechanisms may be seen as one way of reaching those most in need (particularly when resources are limited), from a human rights perspective, caution is required. In principle, human rights standards are not compromised by the use of targeted schemes as a form of prioritization of the most vulnerable and disadvantaged groups. However, in accordance with human rights standards, the methods of targeting must comply with the principle of non-discrimination, which requires not only that all eligibility criteria must be objective, reasonable, and transparent but also entails an obligation to give priority to the poorest of the poor and to avoid stigmatizing beneficiaries. Targeted protection should be implemented with the intention of progressively providing universal coverage (Sepúlveda *et al.*, 2012: 38). Reaching the poorest sections of the population requires proactive efforts to register them, as information asymmetry may often prevent them from taking advantage of entitlements. In addition, close attention need to be paid to those who are just above a given eligibility threshold and whether they then become worse off than those targeted.

Therefore, targeting methods must be reasonable, objective, transparent, gender sensitive and child sensitive. For instance, since many social protection programmes are explicitly targeted towards women, it is often assumed that gender issues are already addressed. Such targeting, however, does not mean that gender dynamics have been adequately taken into account in the design, implementation and evaluation of such programmes. States must

acknowledge that the impacts of social protection programmes are not gender neutral, and accordingly, should design and implement social protection strategies, which recognize the multiple forms of discrimination that women experience, as well as ensuring that programmes address women's specific needs throughout the different phases of their life cycle (childhood, adolescence, adulthood and old-age) (Sepúlveda and Nyst, 2012: 36 and "Independent Expert", 2010).

According to General Comment 20 of the CESCR, states must adopt an active approach to eliminating systemic discrimination in practice. Tackling such discrimination will usually require a comprehensive approach with a range of laws, policies and programmes, including temporary special measures. CEDAW requires states parties not only to ensure that women enjoy their right to social security on an equal basis to men, but also in order to close the gender gap where it exists to undertake appropriate special measures so as to provide women with equal opportunities in public life, education, employment, health care, economic, and social life, access to productive resources, land, assets and marriage and family relations. In order to redress disadvantages associated with gender, both contributory and non-contributory social protection programmes should be made gender-sensitive. This means contributory programmes taking into account the factors that prevent women from making equal contributions, such as intermittent participation in the workforce on account of care responsibilities and unequal wage outcomes. Meanwhile, non-contributory programmes should consider that women are more likely to live in poverty than men and often have sole responsibility for the care of children.

CEDAW points out that states must take appropriate measures to modify the social patterns that accord differential status to men and women. Although the Convention only refers to sex-based discrimination, interpreting Article 1 together with Articles 2(f) and 5(a) indicates that the Convention covers gender-based discrimination against women. The term "sex" here refers to biological differences between men and women. The term "gender" refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community. This would mean that identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face (CEDAW 2010, para. 5).

### **Transparency**

States must guarantee transparency and access to information regarding social protection programmes. They should ensure that programmes have the mechanisms in place to provide transparency and access to information with respect to all core components of the programmes, including targeting mechanisms, eligibility criteria, benefit levels, and the existence and nature of complaints and redress mechanisms. Individuals should be able to easily recognize and understand eligibility criteria, the specific benefits that they will receive and the redress mechanisms provided. Without these mechanisms in place, there is a higher risk that social protection schemes will reinforce and perpetuate unequal power relations, excluding those most in need of assistance (Sepúlveda and Nyst, 2012:52).

From a human rights perspective, effective access to public information is a precondition for exercising other human rights. Ability to exercise the right of participation depends on transparency and access to complete, up-to-date and comprehensible information. People must have the capacity and opportunity to use the information, understand their entitlements and be able to evaluate the quality of the services, policies, or programmes in question. Transparency is essential to ensuring that rights holders are fully aware of the aims and scope of the process, the other actors involved and their role and level of influence.

### **Human dignity**

Human dignity constitutes the basis of fundamental rights in international law. Human dignity refers to the absolute and inherent worth that a person has simply because they are human, not by virtue of any social status or particular powers (FAO, 2009:82).

The Universal Declaration of Human Rights of 1948 states in its Preamble that “the inherent dignity” of all members of the human family is “the foundation of freedom, justice and peace in the world.” Thereafter, the idea of human dignity has been at the heart of the major human rights instruments, beginning with the two international covenants on human rights adopted in 1966: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as in most treaties banning torture, slavery, inhuman and degrading treatments and discriminations of all sorts.

### **Empowerment**

The principle of empowerment means that people should have the power, capacities, capabilities and access needed to change their own lives, including the power to seek from the state remedies for violations of their human rights (FAO, 2009).

In particular, the right to participation (discussed above) is strongly linked with empowerment, which is a key human rights goal and principle. Effective participation can build capacity and rights awareness. It allows those living in poverty to see themselves as full members of society and autonomous agents, rather than subjects of decisions taken by others who see them as objects of assistance or mere statistics (“Special Rapporteur”, 2013: 6).

### **Rule of law**

The rule of law means that governmental authority is legitimately exercised only in accordance with written, publicly disclosed and accessible laws adopted and enforced in conformity with established procedures. The principle is intended as a safeguard against arbitrary use of state authority and lawless acts of both organizations and individuals (FAO, 2009). The rules themselves should conform to internationally recognized human rights.

The implication of this principle here is that social protection should be organized in accordance with law – have legal underpinnings, and should have sufficient safeguards to avoid arbitrary decisions in programming.

### **Progressive realization**

In addition to the above principles, concerning social rights and given the resource restraints faced by many countries, the Covenant on Economic, Social, and Cultural Rights recognizes the fulfilment of economic and social rights can only be achieved over time, and calls for their progressive realization. It provides that states parties are required to take steps to

ensure the progressive realization of the rights recognized by the Covenant to the maximum of their available resources, including through international assistance and cooperation (art. 2(1)). Although the concept of “progressive realization” affords states some latitude in achieving the full realization of social rights, they cannot use the “progressive realization” provision as a pretext for non-compliance. The CESCR, in General Comment No. 3 (1990) on the nature of states parties’ obligations, establishes that a minimum core obligation to ensure the satisfaction of, at the very least, the basic essential levels of each of the rights is incumbent upon every state party.

The minimum core content of each right constitutes a baseline, below which conditions should not be permitted to fall in any state party. Consequently, the CESCR suggests that the failure by a state to satisfy a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights be regarded as a violation of the Covenant. In this regard, resource scarcity does not relieve states of certain minimum obligations respecting the implementation of the right to social security (ILO 2010:13).

**TABLE 8**  
**Core obligations for the right to social security**

Para. 59. States Parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant. This requires the State Party:

- a) to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. If a State Party cannot provide this minimum level for all risks and contingencies within its maximum available resources, the Committee recommends that the State Party, after a wide process of consultation, select a core group of social risks and contingencies;
- b) to ensure the right of access to social security systems or schemes on a non-discriminatory basis, especially for disadvantaged and marginalized individuals and groups;
- c) to respect existing social security schemes and protect them from unreasonable interference;
- d) to adopt and implement a national social security strategy and plan of action;
- e) to take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups; and
- f) to monitor the extent of the realization of the right to social security.

Par. 60. In order for a State Party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, these minimum obligations.

(CESCR, 2008)

The CESCR, in General Comment No. 19 (2008), acknowledges the constraints owing to the limits of available resources. However, it also states that the Covenant imposes on states parties various obligations which are of immediate effect in relation to the right to social security. An example is that the right will be exercised without discrimination of any kind

and ensuring the equal rights of men and women and the obligation to take deliberate concrete steps, targeted towards the full realization of the right to social security.

In practice states should demonstrate that they are moving as expeditiously and effectively as possible towards that goal. Progressive realization also implies that the states should generally avoid “any deliberate retrogressive measures” which reduce the coverage or level of benefits provided under the social security system.

**TABLE 9**  
**Retrogressive measures**

There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State Party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State Party.

The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.

(CESCR, 2008, para. 42)

There is a presumption that retrogressive measures taken in relation to social rights are not permissible. If any deliberately retrogressive measures are taken, the state has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified in the context of the full use of the state party's maximum available resources.

When a state intends to introduce retrogressive norms or public policies, the burden of proof is inverted; it is the state's responsibility to prove the need for the proposed measures and that they are justified within the totality of rights, in particular recognized in the Covenant on Economic, Social and Cultural Rights.

Finally, the CESCR underscores that even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society must be protected (General Comment 3, par. 12).

## 4. ENSURING AN ADEQUATE LEGAL FRAMEWORK FOR SOCIAL PROTECTION PROGRAMMES

A key aspect of the human rights-based approach is that a social protection policy and system must be enshrined and defined in national legal frameworks and supported by a national strategy and plan of action. The requirement for legal underpinnings can also be based on principles of good governance, including the rule of law.

The UN defines the rule of law as:

“A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency”.

(UN Security Council, 2004)

According to the CESCR (2008. para. 11), the realization of the human right to social security, under human rights instruments would require that a social security system be established under domestic law, and that public authorities take responsibility for the effective administration or supervision of the system. The schemes should also be sustainable, in order to ensure that the right can be realized for present and future generations.

Social protection systems need to be put into a legal framework, based on a sustainable financing/fiscal strategy and adequately monitored to achieve the desired increased resilience of households and individuals against a range of endogenous and exogenous shocks and serve as a basis for the build-up or strengthening of more comprehensive and self-sustained national social protection systems (ILO-WHO, 2009:4).

States parties therefore have the duty to adopt legislative measures with a view to progressively achieving the full realization of the right to social security. Referring to ILO Convention No. 102, the CESCR considered that legislative measures should cover the nine contingencies included in the international definition of social security:

- Health care
- Sickness
- Old-age
- Unemployment
- Employment injury
- Family and child support
- Maternity
- Disability
- Survivors and orphans

Through the adoption of specific statutory provisions the state must demonstrate its commitment to implementation, that is, in more detail, the obligations to protect, respect and fulfil.

**TABLE 10**  
**Extracts from CESCR General Comment No. 19: The right to social security**

67. States Parties are obliged to adopt all appropriate measures such as legislation, strategies, policies and programmes to ensure that the specific obligations with regard to the right to social security will be implemented. Existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the right to social security, and should be repealed, amended or changed if inconsistent with Covenant requirements.
72. States Parties may find it advantageous to adopt framework legislation to implement the right to social security. Such legislation might include: (a) targets or goals to be attained and the time frame for their achievement; (b) the means by which the purpose could be achieved; (c) the intended collaboration with civil society, the private sector and international organizations; (d) institutional responsibility for the process; (e) national mechanisms for its monitoring; and (f) remedies and recourse procedures.
77. Any persons or groups who have experienced violations of their right to social security should have access to effective judicial or other appropriate remedies at both national and international levels.
79. The incorporation in the domestic legal order of international instruments recognizing the right to social security can significantly enhance the scope and effectiveness of remedial measures and should be encouraged. Incorporation enables courts to adjudicate violations of the right to social security by direct reference to the Covenant.

(CESCR, 2008)

In its General Comment 19, the CESCR (2008) invited states parties to adopt a framework law as the main instrument to implement the right to social security and protection. The term “framework law” refers to a legislative technique used to address cross-sectoral issues and facilitate a cohesive, coordinated and holistic approach to them. Insofar as it establishes a general frame for action, framework legislation does not regulate the areas it covers in detail. Instead, it lays down general principles and obligations but leaves it to implementing legislation and competent authorities to determine specific measures to be taken to realize such obligations, possibly within a given time limit. Such measures include subsidiary instruments, regulations and administrative decisions, changes in state policies and financial measures. In designing the measures required for implementation, the authorities have to act in compliance with the principles and conditions set out in the framework law (FAO, 2009: 57).

Obligations and entitlements to social protection benefits should be specified in a precise manner, so as to clearly delineate the rights and duties of residents and contributors. To ensure the predictability and sustainability of social protection provisions, laws and regulations should be designed and enforced to support all social protection schemes and services. Many countries have provided social protection for several years without any legal basis (UNDG Asia-Pacific, 2014: 26).

The lack of a strong legal and institutional framework can seriously threaten the enjoyment of human rights by the programme’s beneficiaries. In the absence of a well-established legal framework, programmes are more vulnerable to political manipulation, and in the long

term, the involvement of state authorities in all stages of the programme cannot be guaranteed (Sepúlveda *et al.*, 2012:27).

Adequate legal frameworks clarify the responsibilities of duty bearers, which is an essential requirement for accountability. In order to ensure a strong, effective, transparent and accountable social protection system, beneficiaries must be able to identify those actors who bear responsibility for allocating the entitlement that they receive. A legal framework may also reduce the risk of political changes jeopardising existing social protection programmes, which in turn, protects beneficiaries from potential violations of their right to social protection.

Roles and responsibilities that are clearly established in all levels of government and involved institutions are critical for making accountability relationships work. Clear, simple, transparent, and consistent rules increase the predictability of benefits, by reducing room for bias, arbitrariness, error, fraud and corruption. Accountability mechanisms support the enforcement of rules, and thus contribute to programme equity by ensuring that all the eligibility criteria are applied fairly.

Within the framework of the efforts related to the social protection floor, this is predicated on the belief that social protection should reflect a social contract between governments as duty-bearers and citizens or residents as rights-holders. This is in contrast to 'instrumentalist' views that see social protection primarily as sets of tools for achieving poverty reduction and economic growth (ILO and WHO, 2009).

There is a risk that where social protection programmes are implemented without clear institutional and legal frameworks, the necessary protection of human rights standards may be lacking. This risk increases in the case of small-scale initiatives and pilot projects, because, on their culmination, beneficiaries may be left in a more difficult situation than before the establishment of the programme, or suffer from an abrupt loss of income. Without a strong legal and institutional framework and a long-term strategy, beneficiaries are not in a position to defend their rights to benefits ("Independent Expert", 2009: 11).

Below are some recommendations to be considered as minimum standards in the adoption of legislation on social protection. It should be noted that these recommendations are by no means conclusive or extensive as to the best legislative strategies to ensure the right to social protection.

**TABLE 11**  
**Elements of a social protection model legislation<sup>3</sup>**

<p><b>Scope — purpose and objectives<sup>4</sup></b></p>	<ul style="list-style-type: none"> <li>• Define the scope of the law.</li> <li>• Define the purpose and objectives of the law.</li> <li>• Define those who are governed by the law (duty bearers and right-holders).</li> <li>• Recognize social protection and others (e.g. right to food) as human rights as further reflected in substantive provisions of the law.</li> <li>• Preferably specify the various dimensions of the right to social protection in order to facilitate the role of the authorities in charge of applying the law and would also allow individuals to better understand their entitlements under this right and claim them in case of denial.</li> </ul>
<p><b>Definitions<sup>5</sup></b></p>	<ul style="list-style-type: none"> <li>• The definition section explicates those terms that appear in the law and ensures an agreed, specific meaning of certain terms throughout the text.</li> <li>• For those definitions related to rights and human rights principles it is advisable to use accepted international human rights standards and definitions as provided by treaties and treaty monitoring bodies.</li> </ul>
<p><b>Responsible institutions/duty bearers<sup>6</sup></b></p>	<ul style="list-style-type: none"> <li>• Define obligations of public authorities (duty bearers) in charge of the implementation of social protection system and programmes.</li> <li>• Identify the roles and responsibilities of all governmental institutions (at both the national and local level).</li> <li>• Establish which public (and private) institutions are responsible for fulfilling the rights included in the legislation.</li> <li>• Define clearly which obligations (functions and mandates) are within the competence of each institution.</li> <li>• Designate the competent public authority/authorities regulating in detail the implementation of the law that could elaborate rules and criteria applicable to the functioning of the social protection system.</li> <li>• Establish a coordinating ministry/institution/joint committee for the</li> </ul>

3 The FAO Guide on Legislating for The Right to Food served as an invaluable reference to this proposal of minimum standards in the adoption of legislation on social protection.

4 The framework law will need to outline its scope, i.e. who is governed by the law and what activities and subject matters it covers. Under international human rights law, states are the duty bearers with respect to the realization of the right to social protection, food, as well as other human rights. Within a state, the obligations under the right to social protection and food are binding on all branches of government – executive, legislative and judicial – and other public or governmental authorities, at national, regional or local level (FAO, 2009: 69).

5 The definitions section ensures an agreed, specific meaning of certain terms that may recur throughout the text. At base, the definitions section serves as a reference point for terminology about which doubts may arise in the enforcement of the law. The framework legislation can employ definitions from a number of international instruments related to human rights or to definitions proposed by the relevant international agencies dealing with food and social protection such as FAO, WHO, WFP, ILO, UNICEF (FAO, 2009: 71).

6 The proper implementation of a right – including the right to social protection and the right to food – is not possible without interdisciplinary collaboration across sectors and institutions. The Right to Food Guidelines require states to “ensure the coordinated efforts of relevant government ministries, agencies and offices” (Guideline 5.2) (FAO, 2009, 135).

	<p>implementation of the provision of the law at the national and local level.</p> <ul style="list-style-type: none"> <li>• Preferably provide for some level of decentralization as local authorities are closer and may be more accessible to individuals and thus better able to assess their needs and preferences (e.g. local authorities can make assessments about eligibility and managing the registries or handle the actual delivery of benefits).</li> <li>• Provides for convergence of delivery at the local level, to simplify access for rights holders and also for efficiency; local officials can thus be responsible for smaller geographical areas.</li> <li>• Establish an information system, which allows sharing information (lists of beneficiaries, etc.) across all sectors and levels of government (national and local).</li> </ul>
<p><b>Beneficiaries/ rights holders</b></p>	<ul style="list-style-type: none"> <li>• Define criteria for the scope and application of the law regarding right-holders.</li> <li>• Define the level of discretion in decision-making, with respect to the eligibility of intended beneficiaries and provide for the need of additional regulations and implementation decrees to determine additional eligibility criteria.</li> <li>• Establish targeting mechanisms which are open to scrutiny and assessed on a regular basis.</li> <li>• Define application procedures that are simple and accessible and accompanied by proper safeguards in order to allow for independent review and adjudication of complaints.</li> <li>• Establish a transparent, fair and non-discriminatory eligibility or certification criteria.</li> <li>• Regulate for the loss of benefits accompanied by proper safeguards, access to independent review and adjudication of complaints.</li> <li>• Provides for safeguards to ensure that receiving social protection is done in full respect for the human dignity of the rights holders and is not stigmatizing in any way.</li> </ul>
<p><b>Non-discrimination clause and special measures</b></p>	<ul style="list-style-type: none"> <li>• Explicitly include the right of persons not to be discriminated.</li> <li>• Prohibit both direct and indirect discrimination.<sup>7</sup></li> <li>• Enumerate prohibited grounds of discrimination in accordance with international human rights instruments.</li> <li>• Leave the list of discriminatory grounds open by adding the phrase “based on any other status”.</li> <li>• The prohibition of discrimination should apply to public and private sector.</li> <li>• Mandate the obligation to take positive actions/special measures to achieve formal and substantive equality and to enable access to social</li> </ul>

7 Direct discrimination occurs where one person is treated less favourably than another is, has been, or would be, treated in a comparable situation, because of any of the grounds previously referred to (e.g. sex, age, religion) while indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age or other status at a disadvantage compared with other persons (FAO, 2009: 92).

	<p>protection by those who suffer from structural discrimination such as women, persons with disabilities, indigenous peoples, minorities and older persons (from a human rights perspective such special measures are not considered discriminatory with regard to individuals or groups that face additional difficulties in fully exercising their right when they have been taken to undo existing discrimination and to establish equitable opportunities).</p> <ul style="list-style-type: none"> <li>• Acknowledge multiple forms of discrimination that women experience, and their specific needs throughout their life cycle (childhood, adolescence, adulthood and old-age).</li> <li>• Acknowledge children rights and best interest of the child principle in adopting any decision that may affect children.</li> <li>• Acknowledge the special situation of asylum seekers, refugees, migrant workers and their families who may find themselves in the territory or subject to the jurisdiction of the State.</li> </ul>
<p><b>Transparency and the right to be informed</b></p>	<ul style="list-style-type: none"> <li>• Recognize the right to individuals and organizations to seek, receive and impart information about social protection programmes, application procedures and eligibility criteria.</li> <li>• Recognize that right-holders must be provided with essential information about the decision-making process and who is accountable and responsible for the implementation of the law and available administrative, quasi-judicial and judicial remedies in case of its violation.</li> <li>• Provides for outreach and communication activities to increase awareness of rights holders about entitlements through media and other means.</li> </ul>
<p><b>Right to privacy and the confidentiality of information</b></p>	<ul style="list-style-type: none"> <li>• Ensure privacy and confidentiality of all information belonging to beneficiaries that is collected and processed by the authorities for social protection purposes.</li> <li>• Mandate that information must not be disseminated to other authorities or private institutions and use it for other purposes without the consent of the beneficiaries.</li> <li>• Contains provisions about how this should be assured in the context of unified registries.</li> </ul>
<p><b>Administrative and judicial reviews<sup>8</sup></b></p>	<ul style="list-style-type: none"> <li>• Establish substantive provisions on remedies in case of violation of the provisions of the law.</li> <li>• Establish or designate administrative, quasi-judicial and judicial mechanisms.</li> <li>• Include in the mandate of National Human Rights Institutions where they exist the monitoring of the provisions of the law and the right to social protection.</li> </ul>

8 The application of the principle of rule of law and access to justice requires clear provisions on recourse mechanisms in case of an alleged violation. Such provisions would also contribute to the application of the principle of accountability of the competent public authorities for the respect and enforcement of the framework law provisions. Ideally, such provisions would include administrative appeals, judicial appeal and also quasi-judicial mechanisms such as human rights commissions or an ombudsperson (FAO, 2009: 165).

	<ul style="list-style-type: none"> <li>• Recognize the right to a remedy in case of violation of the provisions of the law and preferably enumerate the types of possible remedies available.</li> <li>• Identify with which authority administrative complaints can be lodged.</li> <li>• Mandate that administrative decisions regarding entitlements should be subject to judicial review before the competent courts.</li> <li>• Grant access to justice for anyone whose rights are violated as well as the guarantee of due process in all legal proceedings.</li> </ul>
<b>Participation<sup>9</sup></b>	<ul style="list-style-type: none"> <li>• Establish mechanisms to ensure full and transparent participation (beyond mere consultation) of civil society, in particular representatives of the groups most affected by poverty and food insecurity.</li> </ul>
<b>Budget provisions<sup>10</sup></b>	<ul style="list-style-type: none"> <li>• Establish specific provisions on financing arrangements for the implementation of the law.</li> <li>• Preferably mandate for progressively greater resource allocation.</li> <li>• Preferably mandate for a special fund to make social protection programmes sustainable.</li> </ul>
<b>Progressivity and non-retrogressive principle</b>	<ul style="list-style-type: none"> <li>• Preferably establish the progressive realization of the right to social protection. This also means that it will not be possible to adopt retrogressive measures that would reduce social protection (any deliberately retrogressive measures with regard to a right would require the most careful consideration and would need to be fully justified by reference to the totality of the rights and in the context of the full use of the maximum available resources according to CESCR [1990]).</li> </ul>
<b>Monitoring systems<sup>11</sup></b>	<ul style="list-style-type: none"> <li>• Provide for an appropriate monitoring and evaluation mechanism and for the duty of the designated competent authority to report to other national authorities (e.g. parliament).</li> <li>• Provide for a participatory system of monitoring that may include civil society representation and consultations with beneficiaries.</li> </ul>

9 Civil society participation in decision-making is meant to improve transparency, efficiency and effectiveness of government. It also lends credibility and legitimacy to government decisions. Active involvement of all stakeholders interested in the realization of their rights would provide information “from the ground” and ensure that policies are based on real needs and that local concerns are put on the agenda. It would also bring the perspectives and ideas of those affected directly into the discussion (FAO, 2009: 158).

10 The progressive implementation of state obligations as defined by the framework law and its monitoring will require adequate financial resources. The framework law could stipulate the financing arrangements necessary for the implementation of rights, as well as the principles that will govern the allocation and spending of resources. The framework law could also include provisions relating to other possible sources of financing for right to social protection, such as special funds, tax interventions, etc. (FAO, 2009: 177).

11 Insofar as a law sets out goals and mechanisms for monitoring and controlling the implementation of rights, it can also significantly contribute to decreasing favouritism and corruption (FAO, 2009: 180).

## 5. CONCLUSIONS

The analysis and recommendations that have been made take into close consideration the contents of the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) that are most directly relevant to the forestry sector. The analysis shows that the current framework does include many provisions that are in line with the VGGT. Others will be needed, along with an evolution of customary rules and practice, to achieve full compliance with the VGGT.

According to the latest (2014) report of the Special Rapporteur on extreme poverty and human rights, the most recent analysis on the extent to which social protection is currently available worldwide concludes that 73 percent of the global population is either not covered at all or is only partially covered by comprehensive social security systems. Following a human life-cycle approach, an ILO report (2014) notes that 75 countries have no child and family benefit programmes mandated by legislation and that the global average spending on such programmes is only 0.4 percent of the gross domestic product. For working-age adults, the comparable figure is 2.3 percent. While 28 percent of workers worldwide are eligible for unemployment benefits under existing legislation, only 12 percent of unemployed workers actually receive such benefits (ranging from 64 percent in Western Europe to 3 percent in the Middle East and Africa). Employment injury, disability and maternity benefits are also available on only a very limited basis globally. Some 48 percent of people above retirement age do not receive old-age pensions and, even where some pensions are available, levels are often inadequate. Finally, 39 percent of the world population lacks health coverage, a figure that rises to 90 percent in low-income countries (“Special Rapporteur”, 2014. para. 9).

Combating exclusion from social protection requires that benefits be secured through an effective guarantee. In some countries such a guarantee forms part of a social contract, which may be explicit and stated in the national constitution (general recognition of the right to social protection) or take other legal forms (framework law or specific laws).

When it is based on legislation, the delivery of social protection is not anymore just a government programme (that depends on temporary funds and/or donor-funded projects), but a “social contract” between the state and the people. It should be noted that while legislative action is thus essential to implement the right to social protection at national level, legal solutions alone are not sufficient to achieving its full realization. Effective enjoyment of social protection is not possible without effective policy and programme follow-up and political and financial commitment.

Importantly, if the right to social protection is formalized in laws defining eligibility criteria, then these rights become justiciable, and both actual and potential beneficiaries can appeal decisions taken by the government denying access to or terminating benefits.

However, many governments implement programmes on a discretionary basis, or provide *ad hoc* benefits not anchored in national legislation. Social protection programmes are introduced as discretionary projects that deliver benefits (for example, cash transfers, or school meals) or work opportunities (in public works schemes) to limited numbers of people for a fixed period of time, with no guarantee that the project will be scaled up and institutionalized as a permanent, claims-based entitlement for all eligible residents. To give effect to the right to social security and social protection, detailed national legislation is required that determines the design, administration, management, delivery, financing and monitoring arrangements of the entitlements provided by the social security and social protection system.

On the other hand, the existence of legislation may also guarantee equal treatment statutory rights for men and women as well as other groups that may suffer from discrimination. This emphasizes the importance of equality and non-discrimination as a general principle underpinning a social protection system and safeguarded in national legislation. This may be complemented by legal provisions to cover specific groups who share distinctive characteristics and take into account and reflect their special needs.

This paper sought to demonstrate that social protection should be underpinned by the human right to social protection and other human rights at every level, from governments signing international conventions, to national legislation and programme implementation. The right to social protection, as recognized in international human rights law, should be incorporated into national legislation, in order to enshrine the duty of governments to implement and deliver these basic human rights, and residents have a legal basis for making claims on the state. This could take the form of a framework law, which spells out the targets or goals to be achieved, the timeframe for achievement of those targets, institutional responsibility for the process, national mechanisms for monitoring, as well as possible recourse procedures. Social protection programmes should include accountability mechanisms such as grievance procedures, which effectively upgrade social protection from charity or welfare to an enforceable entitlement, leading to improved service delivery and greater effectiveness, while building a human rights-based approach into social protection programming.

Below are some suggestions to be considered as minimum standards in the adoption of a human rights based approach to social protection:

- ✓ Explicit recognition of the human right to social security and social protection.
- ✓ Grounding in an adequate legal and institutional framework. A sound legal framework, following a rights-based approach, is one where social protection rights are clearly stipulated and their beneficiaries identified, without discrimination, and which sets out benefit levels and entitlements conditions that are reasonable, proportional, and transparent.
- ✓ Perception of beneficiaries of social protection programmes as ‘rights-holders,’ making legitimate claims on the allocation of resources and availability of services.
- ✓ Clarification of legal and institutional frameworks over the various roles and responsibilities of all stakeholders (government, development agencies, civil society and beneficiaries) necessary for accountability purposes. Moreover, this provides legal certainty and reduces the risk of political change jeopardizing existing social protection programmes.
- ✓ Identification of a set of minimum state obligations in relation to social security and social protection rights, which implies a focus on the provision of, at least, minimum levels of social services, and a focus on equal access to these goods and services.
- ✓ Setting up adequate mechanisms for the effective delivery of benefits by ensuring that people are informed of their rights, entitlements, and recourses, and by ensuring their physical and financial access to justice.
- ✓ Circumscription of termination, reduction or suspension of benefits, on the basis of reasonable grounds, subject to due process, and contemplated in national law.

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