

# Web annex to the HLPE report #4

Further exploration of norms, principles and procedures

to underpin a human rights based approach

to social protection for food security

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# FURTHER EXPLORATION OF NORMS, PRINCIPLES AND PROCEDURES TO UNDERPIN A HUMAN RIGHTS BASED APPROACH TO SOCIAL PROTECTION FOR FOOD SECURITY

## *Evidence from international human rights law and practice – an introduction<sup>1</sup>*

This study takes a human rights based approach to addressing social protection for food security (see section 1.4 in the report). Not all readers may be fully familiar with the international system of protection and promotion of human rights which forms the platform for such an approach. This Annex provides information that can be used in appraising or planning social protection measures for food security in a human rights perspective, and offers a foundation for some of the recommendations made. The focus in this study is on the human rights to food and social protection, but no right can be addressed in isolation from the wider norms, principles and procedures embedded in international human rights law. This Annex introduces some of the main characteristics of that framework and some details of those two specific rights and their interpretations. Links to basic documents to consult electronically are provided as well as references.

The United Nations Charter, adopted in 1945, set the promotion of human rights as one of the three main purposes of the UN: peace and security, justice and human rights, and economic and social development cooperation. The content and list of human rights were spelled out in the Universal Declaration of Human Rights (UDHR) of 1948 and elaborated in subsequent human rights instruments, both legally binding (conventions) and non-binding (declarations). The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social and Cultural Rights (ICESCR) of 1966 constitute together with UDHR, the International Bill of Human Rights. Subsequent conventions focus on rights in relation to particular themes and population groups, including women and children. Figure I shows the major binding human rights conventions, years of their adoption and entry into force, and the numbers of states that have ratified them as of 1 June 2012. All can be consulted at the website of the Office of the High Commissioner for Human Rights.<sup>2</sup>

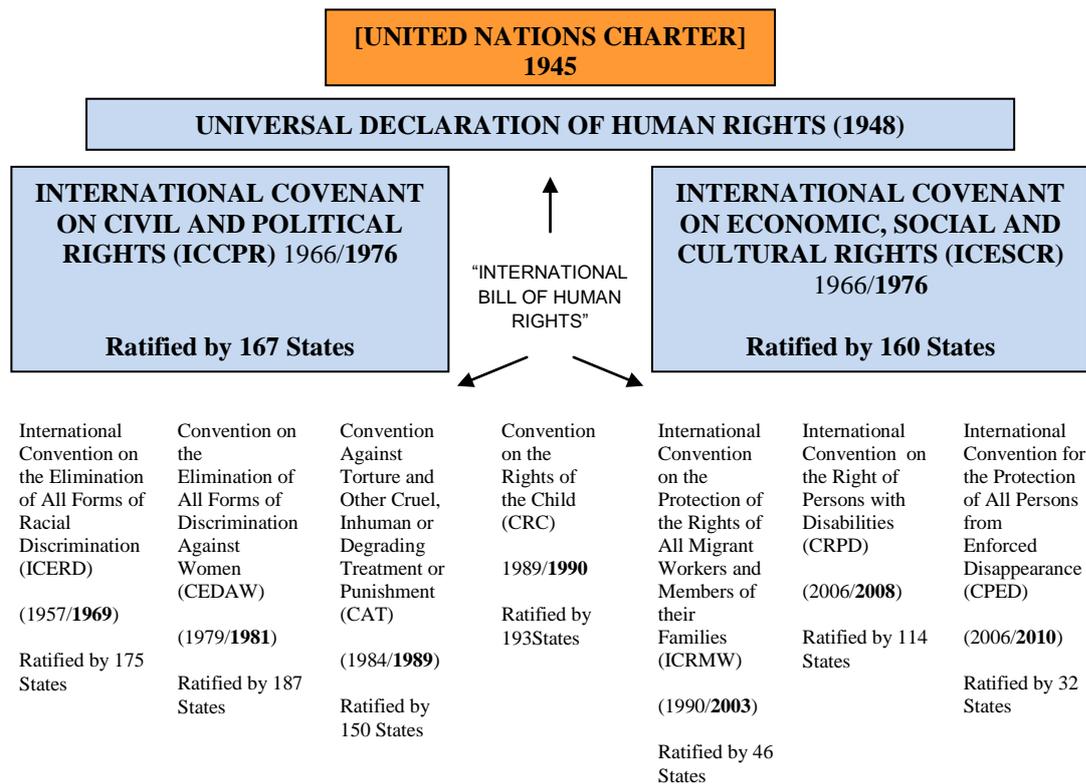
Based on these conventions and declarations, a jurisprudence and practice have evolved. Elaborate interpretations of the legal provisions have been made by authoritative UN bodies elected to monitor implementation of the rights contained in the conventions; a conceptual framework has emerged to analyse and identify corresponding obligations of States Parties to adopt the necessary legislation and policy measures; procedures for monitoring compliance by States Parties to the conventions have been established; principles have been agreed to observe in designing and implementing policies from a human rights perspective; and optional legislative and other measures have been proposed to ensure sustainability and facilitate claims, grievances and remedies if human rights are violated or breached, and mechanisms for accountability. Each set is touched upon below.

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<sup>1</sup> A short version of this Annex is included in the printed version of the HLPE report#4 (HLPE, 2012) available at: <http://www.fao.org/cfs/cfs-hlpe/report-4-social-protection-for-food-security/en/>.

<sup>2</sup> [www.ohchr.org](http://www.ohchr.org) (go to 'Your Human Rights', then 'International Human Rights').

Figure I. Overview of the key international human rights instruments



Source: based on Eide and Kracht (2005).

Note: Number of ratifications as of 1 June 2012

## A1. On the legal norms and their interpretations in General Comments

### A1.1. The legal provisions

Both the right to food and the right to social security were contained in the UDHR in 1948.<sup>3</sup> They were further established in the ICESCR in 1966,<sup>4</sup> Article 9 of which states:

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

In article 11.1 the States Parties recognise the right to food as part of the right of everyone to an adequate standard of living:

“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 co-operation based on free consent.

<sup>3</sup> [www.un.org/en/documents/udhr/](http://www.un.org/en/documents/udhr/).

<sup>4</sup> [www2.ohchr.org/english/law/cescr.htm](http://www2.ohchr.org/english/law/cescr.htm).

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 co-operation, 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 [*emphases added*].

## **A1.2. Interpretations of the content and implementation of the legal rights – the role and significance of General Comments**

The formulations of the legal norms contained in the ICESCR (and in other binding human rights conventions) are rather vague and imprecise, including the two in focus in the HLPE report on social protection (HLPE, 2012). They have therefore been further interpreted in “General Comments” on each right and their meaning and implications in terms of obligations for States that have ratified them (States Parties). For each human rights convention an independent committee of experts elected by UN Member States (Convention Committees or *Treaty Bodies*) is mandated to monitor States Parties’ compliance with their content according to those interpretations. General Comments provide the most authoritative expert interpretations of a specific right and are meant to be of use to the committees themselves, governments who have the political will to endeavour to comply with the instruments, and for civil society organisations and groups that can both help in these efforts and seek to hold governments accountable in case of non-compliance.

General Comment No. 12 from 1999 interprets the right to adequate food,<sup>5</sup> and General Comment No. 19 from 2007 the right to social security.<sup>6</sup> We reproduce here some salient excerpts from both; the full documents can be consulted electronically. (*Note: All emphases in the excerpts are as in the original.*)

### **A1.2.1. General Comment No.12 on the right to adequate food**

The following paragraphs set some of the premises of “GC12”:

4. The Committee affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all.

5. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate food, a disturbing gap still exists between the standards set in article 11 of the Covenant and the situation prevailing in many parts of the world. [...] The Committee observes that while the problems of hunger and malnutrition are often particularly acute in developing countries, malnutrition, under-nutrition and other problems which relate to the right to adequate food and the right to freedom from hunger, also exist in some of the most economically developed countries. Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of *access to* available food, *inter alia* because of poverty, by large segments of the world’s population

<sup>5</sup> UN Doc. E/C.12/1999/5, [www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9](http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9).

<sup>6</sup> UN Doc. E/C.12/GC/19, <http://www.unhcr.org/refworld/docid/47b17b5b39c.html>.

The section on Normative content of Article 11 reflects, firstly, the preoccupation of the Committee on Economic, Social and Cultural Rights (ESCR) with *adequacy* broadly defined – which follows both from the wording of that article and the definition of food security by the 1996 World Food Summit – and other characteristics of the right such as accessibility and sustainability.

6. The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The *right to adequate food* shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The *right to adequate food* will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters.

#### *Adequacy and sustainability of food availability and access*

7. The concept of *adequacy* is particularly significant in relation to the right to food since it serves to underline a number of factors which must be taken into account in determining whether particular foods or diets that are accessible can be considered the most appropriate under given circumstances for the purposes of article 11 of the Covenant. The notion of *sustainability* is intrinsically linked to the notion of adequate food or food *security*, implying food being accessible for both present and future generations. The precise meaning of “adequacy” is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while “sustainability” incorporates the notion of long-term availability and accessibility.

8. The Committee considers that the core content of the right to adequate food implies:

The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;

The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

9. *Dietary needs* implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation. Measures may therefore need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breast-feeding, while ensuring that changes in availability and access to food supply as a minimum do not negatively affect dietary composition and intake.

10. *Free from adverse substances* sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain; care must also be taken to identify and avoid or destroy naturally occurring toxins.

11. *Cultural or consumer acceptability* implies the need also to take into account, as far as possible, perceived non nutrient-based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.

12. *Availability* refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.

13. *Accessibility* encompasses both economic and physical accessibility.<sup>7</sup>

*Economic accessibility* implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised. Economic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.

*Physical accessibility* implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill. Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened.

Other aspects of the right to adequate food as interpreted in GC12 are drawn upon in relevant connections below.

#### **A1.2.2. General Comment No.19 on the right to social security**

This General Comment was adopted by the Committee on ESCR in 2007, a latecomer in the series, as the Committee had not put much emphasis on this right in its earlier work. As expressed by its Vice-Chair, Professor Eibe Riedel:

“It is the shortest provision in the Covenant and one that has attracted less than its fair share of attention in scholarly literature and amongst the deliberations of the Committee on Economic, Social and Cultural Rights. But the experience has demonstrated that the quality of State reports to the Committee improves greatly after the adoption of a General Comment, and with the recent decision by the Committee to adopt a comment on the subject, it seems desirable to help close the gap with some considered reflections on the topic” (Riedel 2007)<sup>8</sup>.

The Committee on ESCR understands the right to social security in the current broader understanding of ‘the right to social protection’, as used in the HLPE report on social protection (HLPE, 2012), and formulated its General Comment 19 accordingly. It considers, in paragraph 1, “the right to social security to be of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights”. In paragraph 2 the right to social security is seen to encompass the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, *inter alia*, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents (paragraph 3); furthermore that social security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion (paragraph 4).

The Committee on ESCR recalls that social security was also recognised as a human right in the Universal Declaration of Human Rights of 1948, which states in article 22 that “Everyone, as a member of society, has the right to social security” and in article 25(1) that everyone has the “right to

<sup>7</sup> Note: The two types of accessibility – economic and physical - are derived from the definition of food security by the 1996 World Food Summit. FAO later inserted also “social accessibility” which is both logical and enriches the definition, but this came later than the adoption GC12 and is therefore not included in it.

<sup>8</sup> On State reports as mentioned here, see more in A.2.2.1 on monitoring by human rights treaty bodies.

security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control". The right was subsequently incorporated in a range of international human rights treaties and regional human rights treaties. In 2001, the International Labour Conference, composed of representatives of States, employers, and workers, affirmed that social security "is a basic human right and a fundamental means for creating social cohesion".

GC19 begins its considerations of the normative content of Article 9 as follows.

The right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage, whether obtained publicly or privately, as well as the right to equal enjoyment of adequate protection from social risks and contingencies (GC19 paragraph 9).

Section 1.4 in this report provided a condensed list of how GC19 deals with the normative elements of the right to social security, here reproduced in full.

#### **A. Elements of the right to social security**

10. While the elements of the right to social security may vary according to different conditions, a number of essential factors apply in all circumstances as set out below. In interpreting these aspects, it should be borne in mind that social security should be treated as a social good, and not primarily as a mere instrument of economic or financial policy.

##### **1. Availability – social security system**

11. The right to social security requires, for its implementation, that a system, whether composed of a single scheme or variety of schemes, is available and in place to ensure that benefits are provided for the relevant social risks and contingencies. The system should be established under domestic law, and public authorities must take responsibility for the effective administration or supervision of the system. The schemes should also be sustainable, including those concerning provision of pensions, in order to ensure that the right can be realized for present and future generations.

##### **2. Social risks and contingencies**

12. The social security system should provide for the coverage of the following nine principal branches of social security to take steps to the "maximum of available resources" under an optional protocol to the Covenant (E/C.12/2007/1).

###### **(a) Health care**

13. States parties have an obligation to guarantee that health systems are established to provide adequate access to health services for all. In cases in which the health system foresees private or mixed plans, such plans should be affordable, in conformity with the essential elements enunciated in the present General Comment. The Committee notes the particular importance of the right to social security in the context of endemic diseases such as HIV/AIDS, tuberculosis and malaria, and the need to provide access to preventive and curative measures.

###### **(b) Sickness**

14. Cash benefits should be provided to those incapable of working due to ill-health to cover periods of loss of earnings. Persons suffering from long periods of sickness should qualify for disability benefits.

### **(c) Old age**

15. States parties should take appropriate measures to establish social security schemes that provide benefits to older persons, starting at a specific age, to be prescribed by national law. The Committee stresses that States parties should establish a retirement age that is appropriate to national circumstances which take account of, *inter alia*, the nature of the occupation, in particular work in hazardous occupations and the working ability of older persons. States parties should, within the limits of available resources, provide non-contributory old-age benefits, social services and other assistance for all older persons who, when reaching the retirement age prescribed in national legislation, have not completed a qualifying period of contributions or are not otherwise entitled to an old-age insurance-based pension or other social security benefit or assistance, and have no other source of income.

### **(d) Unemployment**

16. In addition to promoting full, productive and freely chosen employment, States parties must endeavour to provide benefits to cover the loss or lack of earnings due to the inability to obtain or maintain suitable employment. In the case of loss of employment, benefits should be paid for an adequate period of time and at the expiry of the period, the social security system should ensure adequate protection of the unemployed worker, for example through social assistance. The social security system should also cover other workers, including part-time workers, casual workers, seasonal workers, and the self-employed, and those working in atypical forms of work in the informal economy. Benefits should be provided to cover periods of loss of earnings by persons who are requested not to report for work during a public health or other emergency.

### **(e) Employment injury**

17. States parties should also ensure the protection of workers who are injured in the course of employment or other productive work. The social security system should cover the costs and loss of earnings from the injury or morbid condition and the loss of support for spouses or dependents suffered as the result of the death of a breadwinner. Adequate benefits should be provided in the form of access to health care and cash benefits to ensure income security. Entitlement to benefits should not be made subject to the length of employment, to the duration of insurance or to the payment of contributions.

### **(f) Family and child support**

18. Benefits for families are crucial for realizing the rights of children and adult dependents to protection under articles 9 and 10 of the Covenant. In providing the benefits, the State party should take into account the resources and circumstances of the child and persons having responsibility for the maintenance of the child or adult dependent, as well as any other consideration relevant to an application for benefits made by or on behalf of the child or adult dependent. Family and child benefits, including cash benefits and social services, should be provided to families, without discrimination on prohibited grounds, and would ordinarily cover food, clothing, housing, water and sanitation, or other rights as appropriate.

### **(g) Maternity**

19. Article 10 of the Covenant expressly provides that “working mothers should be accorded paid leave or leave with adequate social security benefits”. Paid maternity leave should be granted to all women, including those involved in atypical work, and benefits should be provided for an adequate period. Appropriate medical benefits should be provided for women and children, including perinatal, childbirth and postnatal care and care in hospital where necessary.

#### **(h) Disability**

20. In its General Comment No. 5 (1994) on persons with disabilities, the Committee emphasised the importance of providing adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost, or received a reduction in, their income, have been denied employment opportunities or have a permanent disability. Such support should be provided in a dignified manner and reflect the special needs for assistance and other expenses often associated with disability. The support provided should cover family members and other informal caregivers.

#### **(i) Survivors and orphans**

21. States parties must also ensure the provision of benefits to survivors and orphans on the death of a breadwinner who was covered by social security or had rights to a pension. Benefits should cover funeral costs, particularly in those States parties where funeral expenses are prohibitive. Survivors or orphans must not be excluded from social security schemes on the basis of prohibited grounds of discrimination and they should be given assistance in accessing social security schemes, particularly when endemic diseases, such as HIV/AIDS, tuberculosis and malaria, leave large numbers of children or older persons without family and community support.

### **3. Adequacy**

22. Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant. States parties must also pay full respect to the principle of human dignity contained in the preamble of the Covenant, and the principle of non-discrimination, so as to avoid any adverse effect on the levels of benefits and the form in which they are provided. Methods applied should ensure the adequacy of benefits. The adequacy criteria should be monitored regularly to ensure that beneficiaries are able to afford the goods and services they require to realize their Covenant rights. When a person makes contributions to a social security scheme that provides benefits to cover lack of income, there should be a reasonable relationship between earnings, paid contributions, and the amount of relevant benefit.

Institutionalization of persons with disabilities, unless rendered necessary for other reasons, cannot be regarded as an adequate substitute for the social security and income-support rights of such persons, as well as rehabilitation and employment support, in order to assist persons with disabilities to secure work as required by articles 6 and 7 of the Covenant. The Committee also notes that children have a right to social security. See Convention on the Rights of the Child, article 26.

### **4. Accessibility**

#### **(a) Coverage**

23. 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 grounds prohibited under article 2, paragraph 2, of the Covenant. In order to ensure universal coverage, non-contributory schemes will be necessary.

### **(b) Eligibility**

24. Qualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.

### **(c) Affordability**

25. If a social security scheme requires contributions, those contributions should be stipulated in advance. The direct and indirect costs and charges associated with making contributions must be affordable for all, and must not compromise the realization of other Covenant rights.

### **(d) Participation and information**

26. Beneficiaries of social security schemes must be able to participate in the administration of the social security system. The system should be established under national law and ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner.

### **(e) Physical access**

27. Benefits should be provided in a timely manner and beneficiaries should have physical access to the social security services in order to access benefits and information, and make contributions where relevant. Particular attention should be paid in this regard to persons with disabilities, migrants, and persons living in remote or disaster-prone areas, as well as areas experiencing armed conflict, so that they, too, can have access to these services.

## **5. Relationship with other rights**

28. The right to social security plays an important role in supporting the realization of many of the rights in the Covenant, but other measures are necessary to complement the right to social security. For example, States parties should provide social services for rehabilitation of the injured and persons with disabilities in accordance with article 6 of the Covenant, provide child care and welfare, advice and assistance with family planning and the provision of special facilities for persons with disabilities and older persons (article 10); take measures to combat poverty and social exclusion and provide supporting social services (article 11); and adopt measures to prevent disease and improve health facilities, goods and services (article 12). States parties should also consider schemes that provide social protection to individuals belonging to disadvantaged and marginalized groups, for example crop or natural disaster insurance for small farmers or livelihood protection for self-employed persons in the informal economy. However, the adoption of measures to realize other rights in the Covenant will not in itself act as a substitute for the creation of social security schemes.

In an additional section the Committee deals with special topics of broad application, not detailed here: (1) Non-discrimination and equality; (2) Gender equality; (3) Workers inadequately protected by social security (part-time, casual, self-employed and homeworkers); (4) Informal economy; (5) Indigenous Peoples and Minority Groups; (6) Non-nationals (including migrant workers, refugees, asylum-seekers and stateless persons); and (7) Internally displaced persons and internal migrants.

### **A1.2.3. Right to Food Guidelines**

The 2002 World Food Summit: *five years later* took note of General Comment no.12 on the right to adequate food from 1999, which was presented to this second WFS by the High Commissioner for Human Rights as the response to the 1996 Summit's request for clarification of the concept of the right to food. The 2002 Summit agreed that a set of practical guidelines should be worked out for use

by interested governments in applying a human rights approach to their food security problems. The “Voluntary Guidelines to support the progressive realisation of the right to adequate food in the context of national food security” were negotiated among governments over 2 years, with an active observer participation of the international civil society led by FIAN.<sup>9</sup> The outcome was endorsed by the FAO Council in November 2004.<sup>10</sup> Of 19 Guidelines, 3 are especially relevant to this study, summarised here.

**GUIDELINE 1: Democracy, good governance, human rights and the rule of law** underlines that all individuals are accorded equal protection under the law and that due process is guaranteed in all legal proceedings; furthermore that where appropriate and consistent with domestic law, States may assist individuals and groups of individuals to have access to legal assistance to better assert the progressive realisation of the right to adequate food.

**GUIDELINE 13 Support for vulnerable groups** emphasises the need to identify households particularly vulnerable and undertake disaggregated analyses of food, vulnerability and nutritional status with attention to assessing any form of discrimination; establish transparent, non-discriminatory eligibility criteria in order to ensure effective targeting of assistance so that no-one who is in need is excluded, or that those not in need of assistance are included; ensure effective accountability and administrative systems to prevent leakages and corruption, and give priority to channelling food assistance via women as a means of enhancing their decision-making role and ensuring that the food is used to meet the household’s food requirements.

**GUIDELINE 14: Safety nets** stipulates that States should consider, to the extent that resources permit, establishing and maintaining social safety and food safety nets to protect those who are unable to provide for themselves, including building on existing capacities within communities at risk; the need to consider the benefits of local procurement for food assistance that could integrate the nutritional needs of those affected by food insecurity and the commercial interests of local producers; ensure adequate targeting of those in need respecting the principle of non-discrimination in the establishment of eligibility criteria; provide for effective food safety nets where measure of an economic or financial nature is likely to have a negative impact on existing levels of food consumption of vulnerable groups, and link safety nets to other complementary interventions that promote food security in the longer term; ensure that food assistance when part of safety nets can bridge the gap between the nutritional needs of the affected population and their ability to meet those needs themselves. provide food assistance with food that is. Food assistance should be provided with the fullest possible participation of those affected, with food that is nutritionally adequate and safe, bearing in mind local circumstances, dietary traditions and cultures; accompany such food assistance with essential complementary including access to clean water and sanitation, health care interventions and nutrition education activities to maximise benefits towards ensuring people’s access to and utilisation of adequate food; in all this consider assistance from international, regional and civil society organisations.

## **A2. Obligations of States and monitoring of implementation**

Article 2.1 of the ICESCR sets out the general requirements for States Parties for realising the rights it contains. “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” The concepts “progressively” and “to the maximum of its available

<sup>9</sup> FoodFirst Information and Action Network (FIAN) is the largest international NGO dealing entirely with the right to food from field level to international fora, see [www.fian.org](http://www.fian.org).

<sup>10</sup> Accessible at [www.fao.org/righttofood/publi\\_01\\_en.htm](http://www.fao.org/righttofood/publi_01_en.htm).

resources” are paramount to understanding the realisation of human rights – including the right to food and the right to social security (or social protection) – as *processes* that may take some time but in the right direction, rather than as impossible expectations of full achievements in the short-term.

Article 9 on social security and Article 11 on food must be read in light of this provision as the basis of obligations. The different categories of obligations (outlined in section 1.4 of this report) are to *respect, protect* and *fulfil* with subdivisions of fulfil in terms of *facilitate* or *provide*.<sup>11</sup> They are illustrated for the right to adequate food as follows, in General Comment No. 12 (paragraph 15).

- The obligation to *respect* existing access to adequate food requires States Parties not to take any measures that result in preventing such access as already exists and need no change.
- The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.
- The obligation to *fulfil (facilitate)* means that States must proactively engage in activities intended to strengthen people’s access to and utilisation of resources and means to ensure their livelihood, including food security.
- Finally, whenever an individual or group is unable to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly.

**Figure II. The ‘Right to Food Matrix’**

HFS attributes  Category of State obligations	Household Food Security				
	Adequate food			Sustainable supply of adequate food	Stable access to adequate food
	Dictary adequate (quantity, nutritional quality)	Free from adverse substances and safe to eat	Acceptable within a given culture	Environmentally and economically sustainable food systems	Physical, social and economic access to food within the household’s livelihood; not interfering with the enjoyment of other human rights
<b>Respect</b>					
<b>Protect</b>					
<b>Fulfil</b>					
<b>Facilitate</b>					
<b>Provide</b>					

Source: adjusted from Oshaug *et al.* (1994).

A ‘Right to Food Matrix’ was developed by researchers in the late 1980s to inspire operationalisation of this framework for obligations specifically in relation to local/household food security conditions (Oshaug *et al.* 1994; see Figure II).<sup>12</sup> Social protection measures for the right to food as reviewed in

<sup>11</sup> Originating in a United Nations University seminar in Norway in 1981 (Eide 1984), this framework for state obligations was first officially proposed in a study on the right to adequate food for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1987 and published in 1989 (UN 1987/1989). It was first used in connection with a general comment in GC12 on the right to adequate food in 1999, and then in all subsequent comments from the UN Committee on ESCR and other research or documents regarding state obligations for human rights. See also Eide (2007).

<sup>12</sup> Originally conceived in 1986 by Oshaug *et al.* (1994) and first included in the UN study referred to in footnote 8, here adjusted for full consistency with the definition of the core content of the right to adequate food in General Comment No. 12.

this study would mostly fall in the 'provide' and/or 'facilitate' categories of state obligations. A systemic approach to food security would make use of the whole set of obligations, contextualised and specified for each food security attribute in line with recommendations in the HLPE report on social protection (HLPE, 2012). Similar matrices could be constructed for other livelihood components.

For the right to social security, General Comment No. 19 elaborates on the obligations and provides concrete illustrations in the following paragraphs, adding also the obligation 'to promote'.

- The obligation to *respect* requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to social security. The obligation includes, *inter alia*, refraining from engaging in any practice or activity that, for example, denies or limits equal access to adequate social security; arbitrarily or unreasonably interferes with self-help or customary or traditional arrangements for social security; arbitrarily or unreasonably interferes with institutions that have been established by individuals or corporate bodies to provide social security.
- The obligation to *protect* requires that State parties prevent third parties from interfering in any way with the enjoyment of the right to social security. Third parties include individuals, groups, corporations and other entities, as well as agents acting under their authority. The obligation includes, *inter alia*, adopting the necessary and effective legislative and other measures, for example, to restrain third parties from denying equal access to social security schemes operated by them or by others and imposing unreasonable eligibility conditions; arbitrarily or unreasonably interfering with self-help or customary or traditional arrangements for social security that are consistent with the right to social security; and failing to pay legally required contributions for employees or other beneficiaries into the social security system. Where social security schemes, whether contributory or non-contributory, are operated or controlled by third parties, States parties retain the responsibility of administering the national social security system and ensuring that private actors do not compromise equal, adequate, affordable, and accessible social security. To prevent such abuses an effective regulatory system must be established which includes framework legislation, independent monitoring, genuine public participation and imposition of penalties for non-compliance.
- The obligation to *fulfil* requires States parties to adopt the necessary measures, including the implementation of a social security scheme, directed towards the full realization of the right to social security. The obligation to fulfil is here subdivided into the obligations to *facilitate*, *promote* and *provide*. The obligation to fulfil/*facilitate* requires States parties to take positive measures to assist individuals and communities to enjoy the right to social security. The obligation includes, *inter alia*, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national social security strategy and plan of action to realize this right; ensuring that the social security system will be adequate, accessible for everyone and will cover social risks and contingencies.
- The obligation to fulfil/*promote* obliges the State party to take steps to ensure that there is appropriate education and public awareness concerning access to social security schemes, particularly in rural and deprived urban areas, or amongst linguistic and other minorities.
- States parties are also obliged to *provide* the right to social security when individuals or a group are unable, on grounds reasonably considered to be beyond their control, to realize that right themselves, within the existing social security system with the means at their disposal. States parties will need to establish non-contributory schemes or other social assistance measures to provide support to those individuals and groups who are unable to make sufficient contributions for their own protection. Special attention should be given to ensuring that the social security system can respond in times of emergency, for example during and after natural disasters, armed conflict and crop failure.

- It is important that social security schemes cover disadvantaged and marginalized groups, even where there is limited capacity to finance social security, either from tax revenues and/or contributions from beneficiaries. Low-cost and alternative schemes could be developed to cover immediately those without access to social security, although the aim should be to integrate them into regular social security schemes. Policies and a legislative framework could be adopted for the progressive inclusion of those in the informal economy or who are otherwise excluded from access to social security.

The Committee on ESCR acknowledges that the realization of the right to social security carries significant financial implications for States parties, but notes that the fundamental importance of social security for human dignity and the legal recognition of this right by States parties mean that the right should be given appropriate priority in law and policy. States parties should develop a national strategy for the full implementation of the right to social security, and should allocate adequate fiscal and other resources at the national level. If necessary, they should avail themselves of international cooperation and technical assistance in line with article 2, paragraph 1 of the Covenant (GC19, paragraph 41).

## **A2.2. Monitoring**

Monitoring of States Parties implementation of the right to food, the right to social security and other rights contained in the Covenant on ESCR takes place, as is the case with other human rights, in basically two ways: through the respective human rights treaty bodies, and through the function of 'Special Rapporteurs' under the United Nations Human Right Council, mandated to consider the deepening of the understanding of specific rights as well as compliance with this right in different countries visited (upon invitation), or general compliance with all ESCR in specific countries.

### **A2.2.1. Monitoring by treaty bodies**

States Parties to the ICESCR are obliged under its Article 16 to submit reports on the measures they have adopted and progress made in achieving the observance of the rights recognised in the Covenant. This obligatory reporting system is designed principally to assist each State Party in fulfilling its obligations under the Covenant and serves to achieve a variety of objectives (see below). As mentioned above, international monitoring undertaken by the treaty bodies is based on those obligatory periodic national reports, often supplemented by alternative or 'shadow' reports from civil society, plus other relevant documentation and research. The aim is a constructive dialogue with governments about particular constraints and other reasons for non-compliance with legal provisions, with 'Concluding Observations' including recommendations on further steps by the government to redress or improve the situation by the time of the next periodic report. All material is openly accessible at the OHCHR's website

The objectives of the monitoring are spelled out in General Comment No. 1 of the Committee on ESCR on Reporting by States parties<sup>13</sup> (GC1, paragraphs 2-9, somewhat abbreviated):

A first objective [...] is to ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the Covenant. Such a review might, for example, be undertaken in conjunction with each of the relevant national ministries or other authorities responsible for policy-making and implementation in the different fields covered by the Covenant.

A second objective is to ensure that the State party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within its territory or under its jurisdiction. From

<sup>13</sup> [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/38e23a6ddd6c0f4dc12563ed0051cde7?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/38e23a6ddd6c0f4dc12563ed0051cde7?Opendocument).

the Committee's experience to date, it is clear that the fulfilment of this objective cannot be achieved only by the preparation of aggregate national statistics or estimates, but also requires that special attention be given to any worse-off regions or areas and to any specific groups or subgroups which appear to be particularly vulnerable or disadvantaged. [...] Thus, the essential first step towards promoting the realization of economic, social and cultural rights is diagnosis and knowledge of the existing situation. The Committee is aware that this process of monitoring and gathering information is a potentially time-consuming and costly one and that international assistance and cooperation, as provided for in article 2, paragraph 1 and articles 22 and 23 of the Covenant, may well be required in order to enable some States parties to fulfil the relevant obligations. If that is the case, and the State party concludes that it does not have the capacity to undertake the monitoring process which is an integral part of any process designed to promote accepted goals of public policy and is indispensable to the effective implementation of the Covenant, it may note this fact in its report to the Committee and indicate the nature and extent of any international assistance that it may need.

A third objective of the reporting process is [...] to enable the Government to demonstrate that such principled policy-making has in fact been undertaken [...]

A fourth objective of the reporting process is to facilitate public scrutiny of government policies with respect to economic, social and cultural rights and to encourage the involvement of the various economic, social and cultural sectors of society in the formulation, implementation and review of the relevant policies. In examining reports submitted to it to date, the Committee has welcomed the fact that a number of States parties, reflecting different political and economic systems, have encouraged inputs by such non-governmental groups into the preparation of their reports under the Covenant. Other States have ensured the widespread dissemination of their reports with a view to enabling comments to be made by the public at large. In these ways, the preparation of the report, and its consideration at the national level can come to be of at least as much value as the constructive dialogue conducted at the international level between the Committee and representatives of the reporting State.

A fifth objective is to provide a basis on which the State party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the Covenant. For this purpose, it may be useful for States to identify specific benchmarks or goals against which their performance in a given area can be assessed. Thus, for example, it is generally agreed that it is important to set specific goals with respect to the reduction of infant mortality, the extent of vaccination of children, the intake of calories per person, the number of persons per health-care provider, etc. In many of these areas, global benchmarks are of limited use, whereas national or other more specific benchmarks can provide an extremely valuable indication of progress. In this regard, the Committee wishes to note that the Covenant attaches particular importance to the concept of "progressive realization" of the relevant rights and, for that reason, the Committee urges States parties to include in their periodic reports information which shows the progress over time, with respect to the effective realization of the relevant rights. By the same token, it is clear that qualitative, as well as quantitative, data are required in order for an adequate assessment of the situation to be made.

A sixth objective is to enable the State party itself to develop a better understanding of the problems and shortcomings encountered in efforts to realize progressively the full range of economic, social and cultural rights. For this reason, it is essential that States parties report in detail on the "factors and difficulties" inhibiting such realization. This process of identification and recognition of the relevant difficulties then provides the framework within which more appropriate policies can be devised.

A seventh objective is to enable the Committee, and the States parties as a whole, to facilitate the exchange of information among States and to develop a better understanding of the common problems faced by States and a fuller appreciation of the type of measures which might be taken to promote effective realization of each of the rights contained in the Covenant. This part of the process also enables the Committee to identify the most appropriate means by which the international community might assist States [...].

### **A2.2.2. Special Rapporteurs**

The function of UN Special Rapporteurs under the Human Rights Council is a special procedure to deepen the understanding of specific rights and corresponding State obligations, and further monitor and address countries' performance and problems at invited country visits and give advice to governments.

Of special interest here are the Special Rapporteur on the right to food (currently Professor Olivier De Schutter) and the Special Rapporteur on Extreme Poverty and Human Rights (Dr. Magdalena Sepúlveda Carmona). As independent experts they report to the UN Human Rights Council and to the General Assembly. While Prof. De Schutter's focus is the right to food, he takes an interest in social protection measures as relevant to the right to food and makes observations on such measures when relevant at his country visits. His general reports and reports from country visits can be consulted on his special web-site.<sup>14</sup> Dr Sepúlveda made social protection in a human rights context a special focus from the beginning of her function and has published widely on the issue (e.g. Sepúlveda and Nyst 2012). Dr. Sepúlveda's reports and other documents related to her mandate are found under the website of the Office of the United Nations High Commissioner on Human Rights.<sup>15</sup>

## **A3. General principles for the conduct of human rights based processes in implementing economic, social and cultural rights**

In 2001 the Chair of the United Nations Economic and Social Council had asked the Office of the UN High Commissioner for Human Rights to develop guidelines for the integration of human rights into poverty reduction strategies. The High Commissioner asked a team of three experts<sup>16</sup> to prepare draft guidelines, and in the process to consult with national officials, civil society and international development agencies, including the World Bank. After several drafts a final document was published in 2006 called "Principles and Guidelines for a Human Rights Based Approach to Poverty Reduction Strategies."<sup>17</sup> A related process led by the United Nations Development Group (UNDG) implied the adoption, in 2003, of a "Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming".<sup>18</sup> Part of the outcome of both took the form of a range of principles meant to guide the conduct of all human rights based policies and programme implementation. They have been discussed under different abbreviations, such as a human rights based approach to development – HRABD, or a human rights based approach to programming – HRBAP, or just HRBA. Various of the principles are more or less relevant for specific tasks to be pursued in a human rights perspective.

Drawing on these developments and on lessons learned during the evolving implementation of the Right to Food Guidelines from 2004, the FAO Right to Food Unit<sup>19</sup> proposed to use the following

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<sup>14</sup> [www.srfood.org](http://www.srfood.org).

<sup>15</sup> [www.ohchr.org/EN/Issues/Poverty/Pages/MSepulveda.aspx](http://www.ohchr.org/EN/Issues/Poverty/Pages/MSepulveda.aspx).

<sup>16</sup> Professors Paul Hunt, Manfred Nowak and Siddiq Osmani.

<sup>17</sup> Accessible at: [www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf](http://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf).

<sup>18</sup> Developed at the Inter-Agency Workshop on a human rights based approach in the context of UN Reform held in Stamford, USA in 2003; published in Unicef "The State of the World's Children 2004"; accessible at [www.unicef.org/sowc04/files/AnnexB.pdf](http://www.unicef.org/sowc04/files/AnnexB.pdf).

<sup>19</sup> Name replaced with Right to Food Team.

seven principles under the acronym PANTHER (for easy memorizing): *Participation*, *Accountability*, *Non-discrimination*, *Transparency*, *Human dignity*, *Empowerment* and *Respect for the rule of law*. They should be observed 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.

The following annotates the PANTHER principles:<sup>20</sup>

**Participation:** This implies that all stakeholders, particularly the social groups and local communities most affected by hunger and malnutrition, can participate in the assessment, decision making, implementation and monitoring of strategies, policies, programmes and projects that are relevant for food and nutrition security. In any case, meaningful participation includes, as a basic requirement, that the principle of free, prior and informed consent of people affected by specific programs or projects must be respected.

**Accountability:** Human rights and State obligations go hand in hand – rights can only be realised when they are effectively enforced. In this perspective, the achievement of effective right to food accountability is among the most immediate challenges to prevent impunity of right to food violations; it is at the same time an opportunity for increased efficiency in the fight against hunger.

**Non-discrimination:** Discrimination on the grounds of race, language, religion or sex is prohibited under international human rights law. The application of the non-discrimination principle implies, for instance, the recognition of women's rights, including their right to breastfeed, related labour rights, including equal salary for equal work, equal land and inheritance rights, equal access, control and ownership of natural and financial resources.

**Transparency:** This means that the actors, especially those most affected by hunger and food insecurity, have the right to receive all information from States related to decision making processes about hold duty bearers accountable.

**Human dignity:** Human rights have their very foundation in their role to protect human dignity. On the other side, the exercise of human rights must be in line with human dignity. Therefore, access to food for the most food insecure needs to be provided in a way that is consistent with their dignity, for instance, by ensuring adequacy and acceptability of food assistance and strengthening people's long-term capacities to feed themselves.

**Empowerment:** Empowerment is the process of increasing capacities of right holders, especially the most affected by hunger and malnutrition, to effectively demand and exercise their rights and to hold duty-bearers accountable.

**Rule of law:** The rule of law is a principle that holds that the government must obey the law just like the citizens and that any public institution taking action must have the legal authority to do so. The principle also relates to the principle of due process and the availability of administrative, judicial and quasi-judicial recourse mechanisms.

Some of these principles become particularly relevant for the design and implementation of social protection measures for food security, and further amalgamation of right to food and right to social protection considerations can make the principles even more useful. Several countries have made use of all or some of these principles and even additional ones in recent legislations on food security; examples are Nicaragua, Guatemala and Brazil.

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<sup>20</sup> Taken from Mainstreaming Right to Food, Fact Sheet 2: Human Rights – a Strategy for the Fight against Hunger. FAO, March 2012. [www.fao.org/righttofood/publi12/rtf-fs2\\_en.pdf](http://www.fao.org/righttofood/publi12/rtf-fs2_en.pdf).

## A4. Remedies and accountability

### A4.1 Accountability as an intrinsic dimension of human rights and democratic governance

States that have ratified relevant binding conventions or treaties in international human rights law are expected to demonstrate to the people their commitment to keeping promises (vertical accountability<sup>21</sup>). The international human rights system of norms, institutions and procedures is based on encouraging and exposing state accountability as a feature of the realisation of human rights. A study by the Governance Centre of the United Nations Development Programme (UNDP 2010) describes accountability as being at the heart of (UNDP's) understanding of democratic governance and of all aspects of human development, since "*it contributes to ensuring that the interests of the poorest and most marginalized groups in society are taken into account. It is a core human rights principle, and therefore intrinsic to the human rights-based approach [HRBA] to development.*"<sup>22</sup> In a practical guide to social audit from the UNDP Regional Center for Latin America and the Caribbean<sup>23</sup> accountability is described in two ways. The more "traditional" meaning of efforts to address issues of accountability for improving and/or strengthening the "supply-side" of democratic governance, whereby *inter alia* "the different branches and levels of government play a role in ensuring political checks and balances, and with the emphasis on State institutions and their interaction within and between them". Increased attention has recently been paid to improving the "demand side" of such governance, i.e. strengthening voice and capacity of citizens to demand greater accountability from public officials and service providers, the duty-bearers. Actors outside the State perform checks and balances on governmental actors within all three branches of government at national, regional, and local levels: civil society and non-governmental organizations, an independent media, watchdog organizations, and influential think-tanks and/or research organizations. As such, initiatives to enhance the ability of citizens and stakeholders to engage with public officials and policymakers in a more informed, direct and constructive manner are getting more attention and support.

### A4.2 Accountability in practice: claims and remedies

General Comment No. 9 from the Committee on Economic, Social and Cultural Right deals with ICESCR Article 3 on the domestic application of the Covenant.<sup>24</sup> It further deals with the issue of remedies to right-holders in case of violation of a right, or non-compliance with its corresponding obligations.

The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective. An ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate. By the same token, there are some obligations, such as (but by no means limited to) those concerning non-discrimination, in relation to which the provision of some form of judicial remedy would seem indispensable in order to satisfy the requirements

<sup>21</sup> UNDP speaks about 'vertical accountability' (people holding governments accountable), 'downwards accountability' (central government holding public institutions and staff accountable) and horizontal accountability (ministries/departments holding each other accountable) (UNDP 2010).

<sup>22</sup> UNDP (2010) "Fostering Social Accountability: From Principle to Practice. A Guidance Note." Oslo, UNDP Governance Centre, p.6, <http://www.undp.org/content/dam/undp/library/Democratic%20Governance/OGC/dg-ogc-Fostering%20Social%20Accountability-Guidance%20Note.pdf>

<sup>23</sup> UNDP (2011) A Practical Guide to Social Audit as a Participatory Tool to Strengthen Democratic Governance, Transparency and Accountability. By Gerardo Berthin, Democratic Government Team of the UNDP Regional Service Center for Latin America and the Caribbean, Panama.

<sup>24</sup> [www.unhcr.ch/tbs/doc.nsf/0/4ceb75c5492497d9802566d500516036?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/0/4ceb75c5492497d9802566d500516036?Opendocument).

of the Covenant. In other words, whenever a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary (GC9, paragraph 9).

Both General Comment No. 12 on the right to food and General Comment No. 19 on the right to social security address the right of persons or groups to have access to remedies in case of violations of these rights. In General Comment 12 on the right to food it is set out as follows:

32. Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition. National Ombudsmen and human rights commissions should address violations of the right to food.

33. The incorporation in the domestic legal order of international instruments recognizing the right to food, or recognition of their applicability, can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. Courts would then be empowered to adjudicate violations of the core content of the right to food by direct reference to obligations under the Covenant.

34. Judges and other members of the legal profession are invited to pay greater attention to violations of the right to food in the exercise of their functions.

35. States parties should respect and protect the work of human rights advocates and other members of civil society who assist vulnerable groups in the realization of their right to adequate food.

In General Comment 19 on the right to social security, the corresponding text is as follows:

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. All victims of violations of the right to social security should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudspersons, human rights commissions, and similar national human rights institutions should be permitted to address violations of the right. Legal assistance for obtaining remedies should be provided within maximum available resources.

78. Before any action is carried out by the State party, or by any other third party, that interferes with the right of an individual to social security the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and include: (a) an opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies. [...]

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.

80. Judges, adjudicators and members of the legal profession should be encouraged by States parties to pay greater attention to violations of the right to social security in the exercise of their functions.

81. States parties should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society, with a view to assisting disadvantaged and marginalized individuals and groups in the realization of their right to social security.

These provisions ensure the human right to remedies that become at the same time mechanisms for holding the State and its operative duty bearers accountable for their promises and practices, for instance in implementing social protection entitlements. They open for legitimate *claims* by right-holders entitled to participate in a programme but who feel they have been excluded or that the programme does not perform to expectations. The functioning of programme-related remedies are likely to be most effective where there is a national culture of remedies and accountability mechanisms more generally, as addressed below.

#### **A4.3 Mechanisms to foster and demonstrate accountability**

Transparent and effective accountability is a precondition for the implementation of remedies. UNDP describes a *social audit* as an accountability mechanism where citizens organize and mobilize to evaluate or audit government's performance and policy decisions. It rests on the premise that when government officials are watched and monitored, they feel greater pressure to respond to their constituents' demands and have fewer incentives to abuse their power. Critical questions and premises are whether citizens have the skills, capacity and tools to effectively monitor and evaluate their governments and decision-makers. Social audit can be defined as a process to build accountability and transparency in the use and management of public resources, relying on engagement from citizens and/or civil society organisations to directly and/or indirectly demand both in the public policy and budget cycles. Social audit is participatory, and can be an anti-corruption and efficiency enhancing mechanism. It is based on the premise that citizens want and have the right to know what the government does; how it does it; how it impacts on them; and that the government has an obligation to account and be transparent to citizens.

For a systemic approach to accountability, special mechanisms may have to be tailor-made to the issue at hand. Emerging from a recommendation in the UN Secretary-General's Global Strategy on Women's and Children's Health<sup>25</sup> launched in 2010 at the occasion of the MDG Summit in New York, a "Commission on Information and Accountability for Women's and Children's Health" was established in January 2011 chaired by President Kikwete of Tanzania. It presented its report *Keeping Promises, Measuring Results* to the World Health Assembly in May 2011<sup>26</sup>. It is based on studies of two expert working groups on *Accountability of results* and *Accountability of resources*. Focusing on international and national accountability mechanisms for efforts in the areas of women and children's health, some of the Commission's findings may have transfer value to other areas such as social protection for these and other vulnerable groups.<sup>27</sup>

### **A5. National legislation and the notion of a *framework law***

Article 2.1 of the International Covenant on Economic, Social and Cultural Rights states:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights

<sup>25</sup> [http://www.who.int/pmnch/activities/jointactionplan/201009\\_globalstrategy\\_6lang/en/index.html](http://www.who.int/pmnch/activities/jointactionplan/201009_globalstrategy_6lang/en/index.html)

<sup>26</sup> The report is accessible in pdf. through <http://www.everywomaneverychild.org/resources/accountability-commission>

<sup>27</sup> The World Health Organization has launched a new website on results, resources and oversight related to women's and children's health, in support of *Every Woman Every Child*, which will also track progress on the implementation of the recommendations of the Accountability Commission and inform the international community about the work of the independent Expert Review Group (iERG).

recognized in the present Covenant by all appropriate means, ***including particularly the adoption of legislative measures*** [emphasis added].

Different legislative measures are conceivable in this respect. The “Guide to Legislating for the Right to Food”<sup>28</sup> (FAO 2009) discusses three options at national level: explicit recognition of the right to food in constitutional provisions; adoption of a framework law on the right to food, and a review of the relevant sector legislation for compatibility with the rights to food; in principle all three levels should be comprised.

This report brings up the possibility for developing ‘framework law’ regarding social protection for food security (or on social protection more generally). The notion of framework law in connection with economic, social and cultural rights appeared first time in the late 1990s and was briefly addressed in General Comment No.12 on the Right to adequate food paragraph 29:

In implementing the country-specific strategies referred to above, States should set verifiable benchmarks for subsequent national and international monitoring. In this connection, States should consider the adoption of a *framework law* as a major instrument in the implementation of the national strategy concerning the right to food. The framework law should include provisions on its purpose; the targets or goals to be achieved and the time-frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures. In developing the benchmarks and framework legislation, States parties should actively involve civil society organizations.

The framework law idea has received further prominence in subsequent recommendations of the UN Committee on Economic, Social and Cultural Rights. Khoza nevertheless described, in 2005, framework law as “a relatively new and undeveloped concept in legal theory and practice” (Khoza 2005: 194) and noted at the time a scant literature or scholarly work on the term and its application in a national context. Drawing in part on earlier efforts to explain the concept in relation to the right to food (Moore, 2000; Eide, 2001; Künnemann and Yakpo, 2003; Khoza, 2004) he summarises the general purpose of a framework law, further elaborated in the chapter, as “to get a systematically defined and complex process of implementation started [...] It consolidates an agreement over procedures for regulating this process and serves as a point of departure in seeking loopholes or gaps in the current legislative frameworks. It therefore provides for the development of policy and the specific legislation in certain areas of need. It establishes principles to which policy and law development and implementation must conform”. Khoza himself specifically explored the usefulness of such law with a primary focus on realising the right to food, using the South African legal environment as a basis for discussion.

The comprehensive FAO Guide mentioned above devotes a substantive part (Chapter 3) to a thorough discussion and exemplification of elements of a framework law on the right to food and aspects of developing it. A special asset of the Guide are the many references to state practices and efforts underway towards broader legal frameworks relevant to the right to food. The Guide also touches upon legislation for social security and assistance, and provides in an annex a generic checklist for framework law on the right to food that should have relevance to similar framework law for food security.

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<sup>28</sup> The Guide forms part of the FAO Toolbox on the Right to Food accessible at [www.fao.org/righttofood](http://www.fao.org/righttofood).

Framework legislation is also brought forward in General Comment No. 19 on the right to social security.

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 (GC19, paragraph 72).

Finally, the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, provides evidence from her experiences from visiting, upon invitation, a number of countries, regarding the significance of basing social protection measures in national legislation.

“In those countries in which social protection programmes were already in place, protected by legislative or constitutional measures and constructed in accordance with a human rights framework, individuals and households most at risk of economic hardship enjoyed stronger protection of their rights and were thus able to rely on social protection mechanisms to mitigate the social and economic effects of the crises. This was the case in a number of Latin American countries that have well-developed and adequately supported social protection systems. Where no pre-existing human rights based social protection mechanisms were in place, States’ investments in social protection were less able to respond to the effects of the economic downturn, although they still provided an important form of support to those most affected by the crises” (Sepúlveda and Nyst (2012)).<sup>29</sup>

## A6. Additional sources

A large body of research, documentation and information is available on economic, social and cultural rights applied to economic, social and cultural – and human – development in general, and with regard to the right to food and the right to social protection in particular. Too extensive to make a justified selection here, we refer to a few *portals* with both evidence and practical evolving experiences relevant to a rights-based approach to food security, increasingly also regarding the right to social protection. Suggestions include: (1) the website of the Office of the High Commissioner for Human Rights,<sup>30</sup> for general sources about international human rights and activities around these; (2) the special website of the UN Special Rapporteur on the Right to Food;<sup>31</sup> and (3) the FAO Right to Food team’s website.<sup>32</sup> The latter contains a wealth of resources, including a Knowledge Centre with, *inter alia*, a primer for interactive self-learning about the right to adequate food, a Toolbox containing elaborate ‘tools’ for a range of implementation aspects (including legislating for the right to food, right to food assessment, monitoring, budget work to advance the right to food, and outlines of curricula for different training purposes), furthermore regular updates about mainstreaming the right to food into sub-national plans and strategies, and very much more.<sup>33</sup>

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<sup>29</sup> Published by the Finnish Ministry of Foreign Affairs on its website <http://formin.finland.fi/public/default.aspx?contentid=250472&nodeid=34606&contentlan=1&culture=fi-FI>.

<sup>30</sup> <http://www.ohchr.org>.

<sup>31</sup> <http://www.srfood.org>.

<sup>32</sup> <http://www.fao.org/righttofood>.

<sup>33</sup> Published by the Finnish Ministry of Foreign Affairs on its website <http://formin.finland.fi/public/default.aspx?contentid=250472&nodeid=34606&contentlan=1&culture=fi-FI>.

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