

THE  
**RIGHT TO FOOD**  
**GUIDELINES**

**INFORMATION PAPERS AND**  
**CASE STUDIES**





# THE RIGHT TO FOOD GUIDELINES

INFORMATION PAPERS AND  
CASE STUDIES

**FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS**  
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# FOREWORD

The latest major international development concerning the right to food took place in FAO in November 2004 when its Council unanimously adopted the Voluntary Guidelines on the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. This was an important event for several reasons. It was the first time that human rights had been discussed in substance within FAO. It was also the first time that countries negotiated on what should be done to implement and realize a recognized economic, social and cultural right. FAO welcomed the Voluntary Guidelines as a tool for the achievement of the hunger reduction target of the first Millennium Development Goal and eventual achievement of food security in the world.

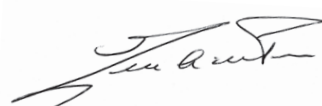
The negotiations took two years. They were facilitated by the FAO Secretariat. Uncertainties and controversies about the right to food and its implications, as well as concerns about the legal implication of the Voluntary Guidelines emerged. The FAO Secretariat thus produced a number of information papers on different subjects to facilitate the negotiations on contentious areas.

We believe that the papers reproduced here facilitated the negotiations and remain relevant for implementing the Voluntary Guidelines. Countries need to examine the implications of the Voluntary Guidelines and to reach consensus about appropriate action to take in each case to pursue the right to food. The studies analyze crucial questions such as whether the right to food can and should be justiciable, whether international trade agreements are compatible with the right to food, what the implication of the Voluntary Guidelines are for States that are not parties to the International Covenant on Economic, Social and Cultural Rights, and lessons to be learned from the experience of countries that have already taken steps to implement the right to food.

With the adoption of the Voluntary Guidelines the world now has concrete and practical recommendations on how to realize good food security policies within a human rights framework. The challenge for States is to recognize their obligations to put an end to hunger and poverty and put the Voluntary Guidelines into practice. FAO will continue to support its Member Nations in this endeavour by further developing the normative and operational aspects of the right to food. It is our hope that this publication will contribute to a better understanding of the right to food and its progressive realization.



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# **INTRODUCTION: BACKGROUND AND PURPOSE OF THE INFORMATION PAPERS**

## **1. BRIDGING THE GAP BETWEEN LEGAL RECOGNITION AND EFFECTIVE REALIZATION**

The right to food has been recognized as a human right since the Universal Declaration of Human Rights in 1948, in numerous binding and non-binding legal instruments, notably Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>1</sup> However, guidance on its implementation was not available until 2004 when, after two years of negotiations under the umbrella of FAO, Member States adopted the “Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security”<sup>2</sup>.

The Voluntary Guidelines were developed to fight hunger and malnutrition using a rights-based approach. The need for better realization of the right to food is evident given the persistent high prevalence of undernourishment and hunger. FAO estimates that 852 million people were undernourished worldwide in 2000-2002: 815 million in developing countries, 28 million in countries with economies in transition, and 9 million in industrialized countries<sup>3</sup>.

## **2. THE CALL FOR A VOLUNTARY INSTRUMENT ON THE RIGHT TO FOOD**

The process towards the adoption of the Voluntary Guidelines began in 1996 with the World Food Summit. The Rome Declaration on World Food Security “reaffirmed the right of everyone to have access to safe and nutritious food,

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<sup>1</sup> See, Extracts from international and regional instruments and declarations, and other authoritative texts addressing the right to food, FAO Legislative Study No. 68, Rome, 1999.

<sup>2</sup> <http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.htm>.

<sup>3</sup> FAO, 2004, *State of Food Insecurity in the World (SOFI) 2004*, Rome.



consistent with the right to adequate food and the fundamental right of everyone to be free from hunger”<sup>4</sup>. Moreover, Objective 7.4 of the accompanying Plan of Action also mentioned, for the first time, “the possibility of formulating voluntary guidelines for food security for all”.<sup>5</sup> In the inter-summit period, important right to food follow-up activities took place which culminated in the adoption of General Comment 12 on the Right to Adequate Food<sup>6</sup> adopted in May 1999 by the Committee on Economic, Social and Cultural Rights, the supervisory mechanism of the ICESCR. When States reconvened at FAO for the World Food Summit: *five years later* in June 2002, the idea of developing a voluntary instrument on the right to food was generally supported: States invited the FAO Council “to establish at its 123rd Session an Intergovernmental Working Group, with the participation of stakeholders ... to elaborate, in a period of two years, a set of voluntary guidelines to support Member States’ efforts to achieve the progressive realization of the right to adequate food in the context of national food security.”<sup>7</sup>

### 3. THE DEVELOPMENT OF THE VOLUNTARY GUIDELINES

The FAO Council created the Intergovernmental Working Group (IGWG) as a subsidiary body of the Committee on World Food Security on 29 October 2002. Some 90 member states of FAO and several UN-agencies participated in the meetings. Relevant international and regional institutions, as well as NGOs, civil society groups, parliamentarians, academic institutions and foundations as well as the private sector were invited to participate in the work of the IGWG as observers.

After almost two years of discussions and negotiations, the IGWG adopted the Voluntary Guidelines by consensus at its fourth session on 23 September 2004. They were subsequently endorsed by the Committee on World Food Security and adopted by the FAO Council. The Guidelines are composed of three sections: I. Preface and Introduction; II. Enabling Environment, Assistance and Accountability; and III. International Measures, Actions and Commitments. Section II contains 18 very specific guidelines that deal with issues ranging from good governance and the need for legislation, to food safety nets and to access to natural resources.

<sup>4</sup> World Food Summit, Rome Declaration on World Food Security, FAO, Report of the World Food Summit, Rome 13 to 17 November 1996, Part I, Appendix, Rome, 1996, para. 1.

<sup>5</sup> World Food Summit, Plan of Action, FAO, Report of the World Food Summit, Rome, 13 to 17 November 1996, Part I, Appendix, Rome, 1996.

<sup>6</sup> General Comments are issued by all the Treaty Bodies and are generally considered to provide authoritative, interpretation of the treaty provision in question.

<sup>7</sup> Report of the World Food Summit: *five years later*, Part one, Appendix. Available on <http://www.fao.org/docrep/meeting/005/y7106e/y7106e09.htm>

The establishment and work of the IGWG represent a major new development in the field of socio-economic rights. For the first time, an FAO body discussed the right to food in substance and detail, and States agreed on the meaning of this right.

#### 4. THE ROLE OF FAO AND OF THE INFORMATION PAPERS

During the negotiation process, FAO facilitated the work of the IGWG by providing technical assistance where needed. The information papers and case studies report reproduced here were developed in this context. The topics of the information papers reflect issues that were controversial amongst the IGWG's Members or complex legal questions for which clarification was requested. In addition, five country case studies were commissioned to assemble knowledge of best practices regarding the right to food. Their findings are shared in the case studies summary report.

All papers were initially published as meeting documents and are available at [www.fao.org/righttofood](http://www.fao.org/righttofood). They are reproduced here in the format in which they were published. Since the papers were drawn up to support the negotiation process, they are concise and written for a non-specialist audience. The purpose of publishing the papers in this collection is to provide a source of information on a variety of aspects of the right to food for development practitioners in governments and UN agencies, for civil society as well as for academic institutions.

# FOOD AID AND THE RIGHT TO FOOD

1

## I. INTRODUCTION

1. Flows of food aid from developed countries to developing countries began on a significant scale in the 1950s, primarily as government to government transfers of food aid aimed at augmenting food availability in the recipient country whilst simultaneously disposing of food surpluses in the donor country. This approach, which might be called the traditional approach, gave rise to certain problems and changes have taken place in recent years. Food aid in response to humanitarian emergencies has grown in importance, there is more reliance on cash appropriations and local purchases of food, and multilateral agencies and NGO/CSOs have begun to play a far more important role in the delivery of food aid. In particular, there is more interest in ensuring that food aid can contribute to food security and to the realization of the right to food.

2. As explained in General Comment 12<sup>1</sup> on Article 11 of the International Covenant on Economic Social and Cultural Rights, the Right to Adequate Food “... imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil (facilitate and provide) the right. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. 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 the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters.”

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<sup>1</sup> United Nations Economic and Social Council, Committee On Economic, Social And Cultural Rights (Twentieth session 1999). General Comment 12, The right to adequate food (Art. 11).

3. This paper has three aims. First, it sets out to describe the role and scope of food aid in realizing the Right to Food. Second, it attempts to assess the extent to which food aid does in fact contribute to the realization of the Right. Finally, it describes some elements of an emerging consensus on directions for reform of food aid practices to strengthen the impact on the right to food. It is important to note that this Information Paper is not intended to provide a general discussion of food aid, but rather to assess food aid from a Right to Food perspective.

## II. FOOD AID DONORS, TYPES AND FLOWS

4. This section provides a brief description of the principal features of food aid in order to lay the groundwork for the subsequent discussion of its impact. Until the mid-1960s the United States was essentially the only food aid donor. From the mid-1980s the European Union (i.e. the European Commission and the member states of the European Union), has also emerged as a significant donor. In 2003, the countries of North America and the European Union provided about 80 percent of all food aid by volume.<sup>2</sup>

5. There are three main types of food aid: programme food aid, project aid and emergency relief. The World Food Programme defines these as follows:

*“Programme food aid is usually supplied as a resource transfer for balance of payments or budgetary support activities. Unlike most of the food aid provided for project or emergency purposes, it is not targeted to specific beneficiary groups. It is sold on the open market, and provided either as a grant or as a loan.*

*Project food aid aims at supporting specific poverty-alleviation and disaster-prevention activities. It is usually freely distributed to targeted beneficiary groups, but may also be sold on the open market and is then referred to as “monetized” food aid. Project food aid is provided on a grant basis and is channelled multilaterally, through NGOs or bilaterally.*

*Emergency food aid is destined to victims of natural or man-made disasters. It is freely distributed to targeted beneficiary groups, and usually provided on a grant basis. It is channelled multilaterally, through NGOs or sometimes bilaterally.”*

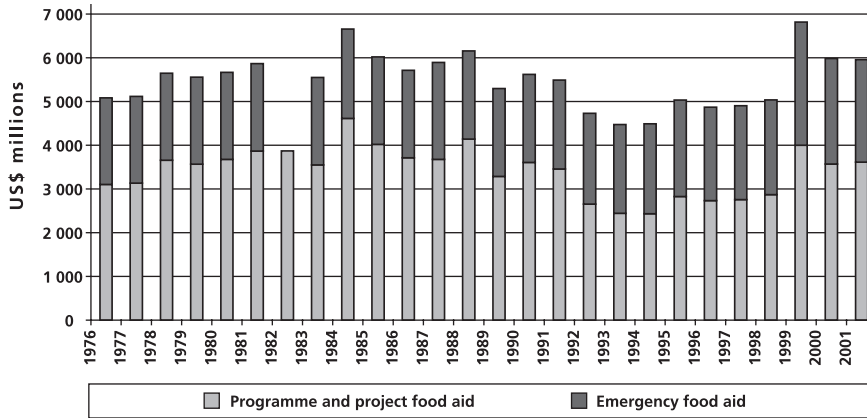
6. Flows of food aid can be assessed in terms of value or in terms of physical quantities. This is done in Figures 1 and 2 below. The value of food aid shipments from the OECD countries has fluctuated at around US\$ 5 billion per year in current prices since the mid 1970s (Figure 1), implying that it has fallen in real terms. It has also declined as a proportion of total bilateral official

<sup>2</sup> WFP, *Food Aid Monitor*, May 2004, Section 6.

development assistance from about 20 percent in the mid-1960s to less than 5 percent today. The proportion of programme and project aid has remained more or less constant at around 60 percent of the total, with emergency food aid making up the balance. Although the proportion of emergency food aid has

FIGURE 1

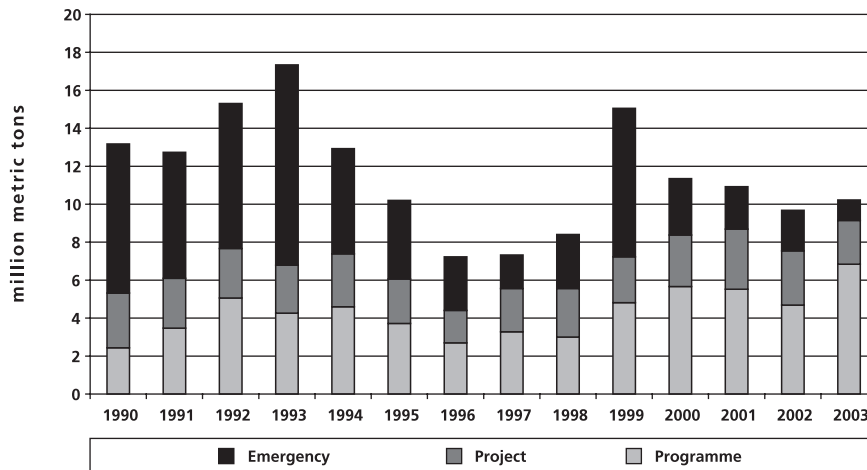
Value of OECD food aid shipments by type



Source: OECD, creditor reporting system. Information on emergency food aid is missing for 1982.

FIGURE 2

Global food aid deliveries by type

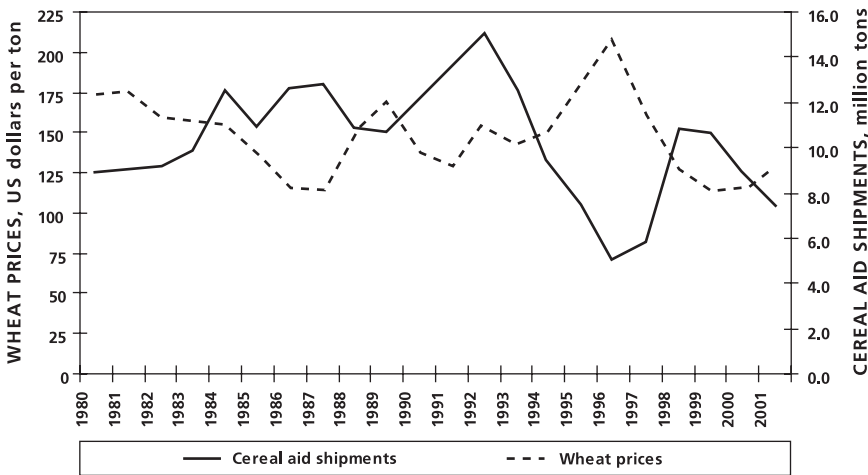


Source: WFP/Interfais May 2004

not increased across the board, the World Food Programme has increased the share of emergency assistance drastically, from 34 percent of its budget on emergencies in 1990 to 87 percent in 2001. Figure 2 below provides a breakdown of deliveries of food aid in metric tons from 1990 to the present. This graph also shows that the share of programme and project aid in total aid flows averaged 60 percent in the 1990s, but has been slightly lower in the last 5 years, and is currently at a historical low of 1.2 million MT. There is one marked difference, however: physical shipments of food aid have fluctuated more than values, implying that food aid shipments are inversely related to international food prices.

7. This is borne out by the evidence presented in Figure 3 below. Where cereal aid (the bulk of food aid) is concerned, the volume is high when international cereal prices are low (wheat prices are used for illustrative purposes here). An important reason for this is that when donor governments decide food allocations in monetary terms, the physical quantity of food supplied is necessarily lower when food prices are higher.<sup>3</sup> Yet developing countries are likely to need food aid precisely when food prices are high.

**FIGURE 3**  
**Cereal aid shipments and wheat prices**



Source: Food aid shipments from FAOSTAT, Wheat prices, U.S. number 1 Hard Red Wheat, fob Gulf of Mexico (annual) from IMF

<sup>3</sup> This assumes that monetary allocations are fixed over the course of the year. There is some evidence that allocations for emergency food aid do vary over the course of year in response to need. This would tend to mitigate the effect described above.

8. Who are the main recipients of food aid? This is simply answered. In 2003, deliveries of cereal and non-cereal food aid totalled about 10 million tonnes, of which about 25 percent was procured through local or triangular purchases.<sup>4</sup> About 75 percent of the total quantity of 10 million tonnes was delivered to sub-Saharan Africa and Asia, another 12 percent to the countries of the Middle East and North Africa and the rest to the transition countries and the countries of the Latin America and Caribbean region. In 2003, the share of food aid provided by the World Food Programme to least developed countries and low-income, food-deficit countries was 48.4 percent and 92.4 percent, respectively, a share that is generally significantly higher than the share of bilateral Official Development Assistance allocated to the poorest countries.

9. How large are food aid flows relative to commercial flows of food? The value of food aid as a percentage of the value of food exports has fallen from a high of 2.8 percent in the mid-1980s to 1.4 percent in 1999-2001.

### III. HOW CAN FOOD AID CONTRIBUTE TO THE REALIZATION OF THE RIGHT TO FOOD?

10. There are essentially three paths by which food aid can affect the right to food.<sup>5</sup> It can save lives in emergencies through direct provision of food, thereby *fulfilling (providing)* the right to food. It can strengthen the ability of the poorest to build sustainable livelihoods, thereby *fulfilling (facilitating)* the right to food. Finally, it can insulate the poor from fluctuations in international food prices, thereby *protecting* the right to food of the poor from the actions of others. This should not, of course, be read as implying that food aid will necessarily have these beneficial effects, only that the potential exists under the right circumstances.

#### A. Protection during emergencies

11. The majority of the world's poor live in rural areas and depend, directly or indirectly, on agriculture for their employment and income. Since agricultural production can be quite volatile, especially when irrigation is not available, a serious crop failure can wipe out the incomes of the poor. Since credit markets do not always work well, they may not be able to borrow to cover their consumption and may be forced to sell their assets, including productive assets such as livestock, skimp on medical expenses, undermining the right to health and possibly withdraw children from school, which threatens their

<sup>4</sup> A triangular purchase occurs when country A finances the purchase of food from country B for delivery to country C.

<sup>5</sup> Webb (2002). *Food as aid*, p. 1.

right to education. General Comment 12 notes that it is not acceptable that the enjoyment of one right is at the expense of another right. If a large number of poor people simultaneously attempt to sell their assets, market prices can be expected to crash, thereby making matters worse.

12. Under such circumstances, social safety nets, including but not limited to, food based safety nets, can protect the livelihoods of the poor. For example, food (whether from foreign or domestic sources) can be used to provide relief to those who cannot work, e.g. through a food ration system, or food-for-work programmes can be set up to employ those who can work. Food aid may be particularly helpful in this regard for countries that lack enough foreign exchange to buy food on the international market.

13. If these programmes work well, the poor are not forced to sell off their productive assets, children do not have to be withdrawn from school and infrastructure including roads and irrigation networks, can be built to reduce the likelihood of future crop failures. This also works to *fulfil (facilitate)* the right to food.

14. From this analysis, it is clear that what really matters is protecting the entitlements to food of the poor. Entitlements are defined as the set of all those commodity bundles over which a person can establish command given the legal, political, economic and social arrangements of the community in which he or she lives. These resources need not be exclusively monetary but may also include traditional rights, e.g. to a share of common resources. If the entitlements of the poor are protected, a reduction in the availability of food need not develop into a famine. If they are not, a famine can result. A K Sen has shown that the Bengal famine of 1943, the Bangladesh famine of 1974, and the Ethiopian famine of 1974 developed without any large decline in food availability.

15. It is critical to note that external food aid to cover emergency shortfalls makes sense primarily in situations where the food security of a large number of people is affected by the same events, and the government is unable or unwilling to provide assistance. If one person suffers a shortfall in his or her food security, while another gains, then there is no particular need for *external* assistance since there is no aggregate shortfall in the community as a whole. The focus in these cases should, therefore, be on ensuring that domestic assistance is forthcoming.

## B. Enabling development

16. Targeted food aid can be used in programmes that enable development of vulnerable groups' human and physical capital. An example of this is using food aid to build human capital by providing school meals as an incentive to increase school attendance, or by supporting training in agricultural,



income-production or other skills. Food aid can also play an important role in improving the standard of nutrition, both directly by providing essential food to those who lack access to adequate food, and indirectly when provided in conjunction with nutrition education or when used to finance health inputs that complement food intakes. Food aid can also help fight “hidden hunger”, i.e. micronutrient deficiencies, especially of iron, iodine and vitamin A, that afflict at least as many people as caloric deficiencies and have serious implications for health and the development of human capabilities. It is important to note that the inducement to participate in these programmes *brought about by food aid* may be as important as the direct impact of food itself.

### C. Insulating the poor from food price fluctuations

17. In developing countries the poorest of the poor spend 80 percent or more of their income on food. The consequences of allowing international food price fluctuations to pass through to local markets can be bad for the poor. This is particularly true if they are forced to sell off productive assets to buy food when food price spikes occur because that impairs even their existing income earning capacity – which may already be low. Indeed, it has been shown that sharp increases in food prices can have as great an impact on hunger and mortality as crop failures.

18. It is arguable that a state that lets this happen has failed to live up to its obligation to *protect* their right to food from the actions of other enterprises and individuals. Food aid can help governments meet their obligations. One possibility is to use food aid – together with food from other sources such as commercial purchases – to build up a buffer stock of foodgrains that can be used to mitigate the effects of supply instability. Through this means, food aid can play a role in *protecting* the right to food of those amongst the poor who would otherwise lose access to adequate food when prices rise.

19. The above discussion explains how food aid *can* help implement the right to food. However, this does not mean that it does so. Indeed it is shown in the next section that some of its features detract from the ability of states to implement the right to food.

## IV. DO CURRENT FOOD AID PRACTICES CONTRIBUTE TO THE REALIZATION OF THE RIGHT TO FOOD?

20. This section analyses the impact of current food aid practices on the right to food. As explained above, there are three types of food aid: programme aid, project aid and emergency aid. In programme aid, the traditional and historically most widely used form, food is shipped to the recipient country, sold on local markets without attempting to target any particular group, and

the proceeds are credited to either the recipient government or to NGOs/CSOs. The main effect is to *increase the availability of food* in the recipient country without targeting. This is also the main effect of programme aid where food is shipped to the recipient country and provided directly to targeted beneficiary groups, or monetized, except that this form of food aid is more targeted. Food aid to cover emergency shortfalls does not, by definition, increase food availability beyond what is normally available.

21. There is also a second possibility, which is to provide resources to buy food in the affected area and distribute it to those who need it.<sup>6</sup> This increases demand for local food and thereby creates a tendency for food prices to rise, thus helping local food producers. This is increasingly being resorted to by donors.

22. To sum up, when food is sourced from outside the country, food aid can *increase food availability* in the recipient country in an untargeted or targeted way or it can *cover emergency shortfalls*. When food is procured locally it provides incentives to local farmers. The impact of food aid on the right to food depends crucially on these primary effects.

### A. The impact of programme food aid on increased food availability

23. FAO figures show that in 1997-99, average dietary energy supply in 30 countries, with a total population of 570 million, was below 2 200 kcal/person/day. In many of these countries, even the highest level of dietary energy supply ever achieved between 1961 and 1999 was grossly inadequate, yet they suffered further declines, some very sharp ones. If low aggregate food supply in a country contributes to inadequate access to food, then augmenting aggregate supply through food aid makes sense. But does food aid in fact increase food availability in the recipient country, and if so, what are the consequences for access to food?

24. In answering this question, Engel's Law - one of the most firmly established empirical generalizations in Economics - proves useful. This states that when incomes increase, not all the increase is spent on food. Therefore the proportion of total income spent on food decreases with rising incomes. Since an unrequited transfer, such as food aid, is equivalent to an income increase for the recipient, the increased demand for food will not equal the increased supply. The size of the gap depends on whether food aid reaches the very poor, i.e. on whether it is well targeted. If it is, the gap will be small because the very poor tend to spend almost all of any income increase on food. Irrespective

<sup>6</sup> There is, admittedly, a third possibility, which is for the donor agency to provide cash to the needy or pay people to work on public projects, but then that cannot really be called food aid.

of whether this gap is large or small, the implication is that consumers in the recipient country will not wish to consume all of the food supplied as aid. Hence there will be a tendency to cut back on commercial food imports.

25. To prevent this and other undesirable effects, the Food Aid Convention of 1999 requires member countries to observe certain rules when giving food aid. First, food aid donors are prohibited from tying food aid to commercial exports of agricultural products to recipient countries. Secondly, food aid is to be given as a grant to the maximum extent possible (at least 80 percent of a member's commitment). Thirdly, food aid is to be provided in accordance with FAO's *Principles of Surplus Disposal and Consultative Obligations*, especially the system of Usual Marketing Requirements (UMR).

26. UMRs require the recipient country to continue to import at least as much as it did from normal commercial channels before receiving food aid. If a UMR is seriously implemented, the total quantity of food in the recipient country exceeds the quantity demanded at prevailing market prices. Therefore an import subsidy is required to restore commercial imports to the level that would have prevailed in the absence of food aid. However this means that domestic food prices must fall below world prices, hurting the interests of net suppliers of food (although benefiting net buyers of food). An example of this problem comes from Mozambique, where it was found that large programme aid shipments of yellow maize in Mozambique caused market prices of both white and yellow maize to fall sharply. Other examples also exist (e.g. large inflows of food into Russia in 1999), but it has to be said that there is little detailed empirical evidence of the size of the impact on local food prices.

27. The crux of the matter is that the impact on access to food depends on the size of food aid flows relative to commercial flows, the extent to which local food markets are integrated with national and international markets, and the extent to which food aid reaches the poor, i.e. how well targeted it is. As shown above, today food aid makes up about 1.4 percent of commercial trade in food, but this percentage is, of course, considerably higher in some countries. As far as the second consideration is concerned, if local markets are well integrated with national and international markets,<sup>7</sup> there is likely to be little impact on local food prices. As far as the third consideration is concerned, the impact can be mitigated quite considerably if the poor can be targeted and if some market segmentation is possible, i.e. if food could be supplied cheaply to the poor (e.g. through a food rationing system) while being provided at higher prices to the rich through open market sales. This would tend to weaken any tendency for market prices of food to fall.

<sup>7</sup> Providing there are good storage, road and rail facilities and telecommunications facilities as well as well-functioning markets.

28. This analysis suggests that programme food aid increases food availability in a country and does undoubtedly improve access to food for net buyers (marginal farmers, the rural landless and the urban proletariat). However, because it lowers food prices, it does so at the expense of the state obligation to *protect* the right to food of net sellers from the actions of others.<sup>8</sup> It can also be argued that it detracts from the state obligation to *facilitate* the right to food for those producers who either lack or are in danger of losing access to adequate food. This is because lower prices for producers affect their livelihoods. This effect can be mitigated to some extent by purchasing food locally.

## B. The impact of aid to cover emergency shortfalls

29. The available evidence indicates that food aid flows have responded effectively to large-scale crises due to crop failures, civil strife or natural calamities (floods, earthquakes, volcanic eruptions, etc.). However, food aid seems to have been less effective in meeting smaller scale emergencies arising out of fluctuations in food supply. The limited evidence available on this point indicates that food aid does not always stabilize food availability, especially when it is used as a means of surplus disposal. In some cases, slow and inefficient bureaucratic procedures are used to dispense food aid with the result that the need has disappeared by the time the aid is disbursed.

30. Strengthening domestic agricultural production capability and reducing its dependence on rainfall, coupled with a system of safety nets underpinned by buffer stocks may offer a superior alternative. Unfortunately, over the past 20 years buffer stocks have been run down in many countries in response to arguments that they were “too large and too expensive” to maintain, or that they had been built up to serve political constituencies rather than for humanitarian reasons. Countries were encouraged to rely on international foodgrains markets to make up unexpected shortfalls in supply. Unfortunately, these expectations have not been borne out. Experience has shown that poor transport networks in developing countries, coupled with order and delivery delays, work against timely delivery of food to areas and people suffering from food shortages. Many developing countries also lack expertise in dealing with international grain markets. It seems clear that buffer stocks, fed at least in part by food aid, should continue to play an important role in countries with large numbers of people living on the edge of starvation.

31. To sum up, food aid flows do seem to respond reasonably well to large-scale emergencies but less well to stabilise food availability in the face of

<sup>8</sup> Lower food prices reduce the entitlements of net sellers of food. Those amongst them who find themselves deprived of access to adequate food have had their right to food violated. Not all net sellers of food fall into this category.

smaller scale fluctuations in food availability. However, it is important to manage food aid for emergency relief in ways that serve both relief and development objectives by building local and national capacities to the extent possible.

## V. HOW CAN THE IMPACT OF FOOD AID ON THE RIGHT TO FOOD BE STRENGTHENED?

32. As discussed earlier, food aid can play a role in helping states meet their obligations to *protect* and also to *fulfil* (*facilitate*) and *fulfil* (*provide*) access to adequate food of the appropriate quality. However, the extent to which it does so depends crucially on the uses to which it is put (increasing food availability or covering emergency shortfalls), the precision with which food aid is targeted and how it is procured and disbursed.

33. From the discussion above, it would seem that food aid needs to focus on emergency and humanitarian assistance to cover temporary shortfalls in food availability because that avoids collateral damage of the kind inflicted by programme and project aid as conventionally procured and disbursed. This does not rule out a role for programme and project aid, provided the modalities of procurement and disbursal are designed to enable development.

34. The rest of this section describes the elements of an emerging consensus on what needs to be done to ensure that food aid contributes to the realization of the right to food. The Statement tabled in closing of the Policies Against Hunger II: International Workshop on Food Aid – Contributions and Risks to Sustainable Food Security, Berlin, 2-4 September 2003, describes some elements of this consensus.

### A. Change focus from donors' needs to recipients' needs

35. Historically, programme and untargeted project food aid has been provided to suit the convenience of donors rather than that of recipients. These forms of food aid continue to be a means of surplus disposal and to serve the foreign policy objectives of the donor countries. These motives do not lead to the service of recipients' needs. As shown by the recent trend of reduced emphasis on programme and project food aid (shown in Figures 1 and 2), the international community is moving towards food aid that is targeted to the recipients' needs. Secondly, there are delays in delivery, varying from up to two years for programme aid to up to five months for emergency shipments. Thirdly, if food aid is allocated in monetary terms, this implies – as shown in Figure 3 on page 8 – that volumes decline when food prices are high, despite the fact that the need for aid is high at precisely this time. The importance of simple bureaucratic inertia should not be

underestimated either: countries that have historically received programme food aid often continue to get it even after needs have changed, while more deserving candidates are not considered.

36. Human rights principles and norms enhance greater attention to the needs of the people and stress the responsibility of governments. Two major changes would be helpful. First, the international governance of food aid needs to be reformed with a view to achieving predictability and timely delivery of food aid. The Berlin statement makes some interesting points here. It asks for food aid to be separated from commercial trade, for food aid to be given exclusively as grants to least developed countries, for the replacement of the Food Aid Convention by a Food Aid Compact, and for an international code of conduct on food aid to be monitored by an independent body.

37. One change in particular seems desirable and that is to increase the share of multilateral food aid, as this is less likely to mirror the vagaries of domestic policies.

38. Another is to base “food aid allocations [...] on a sound needs assessment, involving both recipients and donors, [...] optimally targeted to the needy and vulnerable groups”.<sup>9</sup> In recent years, some donors have made significant shifts in their food aid strategies, away from domestic farm support and export promotion, and have started paying attention to meeting nutritional needs at minimum cost. For example, in 1993 Denmark reduced its use of more expensive, processed animal products to less expensive basic vegetable commodities, thereby enabling Danish contributions to the World Food Programme to provide six times more calories and three times more protein than the 1990 Danish food aid basket, and at lower cost.<sup>10</sup>

### **The importance of macro and micro targeting**

39. Food aid needs to be properly targeted at two levels. At the macro level, it should flow to countries and regions that have the greatest need and, within countries, it should flow to the people who have the greatest need. Finally, where emergency relief is concerned, it should be delivered on time.

40. There is evidence that food aid is today mainly directed toward low-income food deficit countries (LIFDCs) and that the flow of aid is (weakly) inversely related to the availability of food from other sources (domestic and foreign). But these effects are weak for a variety of reasons explained above.

<sup>9</sup> Berlin Statement.

<sup>10</sup> Colding and Pinstrup-Andersen, 1999.

41. The next step is to ensure that food aid reaches the food insecure within a country and, hopefully, no one else. However, it must also be recognized that perfect targeting of food aid is not possible because food insecurity can only be measured through other indicators that are not necessarily perfectly correlated with the concept. Some of the greatest targeting errors come not from reaching the wrong people – in many food recipient communities, even the middle of the local income distribution is desperately poor and failing to enjoy its full right to food – but from providing vulnerable people with relatively ineffective assistance.

42. One of the biggest problems is deciding on appropriate criteria for eligibility. A commonly proposed solution, community-based targeting, can go wrong if there are deep divisions within “communities”. The provision of food as aid, as opposed to the provision of cash as suggested by some, does offer one notable advantage. As food is in general less desirable than cash, aid provided in the form of food is likely to be better targeted to the poor because the non-poor are less likely to covet it and thus capture it.

43. The setting up of vulnerability analysis and mapping (VAM) systems and poverty maps, or a food insecurity and vulnerability information and mapping system (FIVIMS), is an essential part of good targeting. Predicting the onset of a crisis is essential if food aid is to be delivered on time.

## **B. Use better procurement and disbursement methods**

44. The key question is whether it is possible to procure food in a manner that impacts the right to food at least as much as food distribution.

45. Procuring food from within the recipient country has a lot to recommend it. It offers the advantage of stimulating local production while simultaneously providing food to the needy that is far more likely to be culturally acceptable than food from outside. In recognition of this, the World Food Programme and the European Union have increased their reliance on local purchases and triangular transactions as sources of food. In 2003, 21 percent of global food aid was procured in developing countries or territories in transition (provisional figures). In the same year, 70 percent of WFP’s food purchases came from developing and transition countries, representing 33 percent of the total food provided by the Programme. The European Union has expanded the use of local purchases and triangular transactions, from 16 percent of total deliveries in 1989-91 to about 65 percent in 2003.

46. It can, however, conflict with the obligation to provide food of adequate quality as production and storage facilities and capacities for food and bio-safety standards assessment need strengthening and upgrading in many developing countries if they are to supply food of adequate quality and safety.

There is evidence that food aid donors, particularly multilateral donors take care to provide food of adequate quality. Other problems with this mode of procurement include the (often high) cost of transporting food over poor quality roads<sup>11</sup> and the difficulties involved in negotiating with large numbers of scattered smallholders to buy food. There is also a risk of causing food prices to spike where local food markets are thin and the donor agencies buys large quantities of food.

47. There is also unexploited potential for using the proceeds from sales of food provided as programme or project aid. If the funds made available to the recipients are spent on, for example, medicines, mosquito nets, and other interventions, this may be more helpful, *at the margin* to beneficiary populations than an extra allocation of cereals. This is because good nutrition requires complementary inputs in addition to food. A number of NGOs are in fact doing this. Another alternative is for governments to spend the proceeds on providing or improving primary education, health care facilities, etc. or on infrastructure development in rural areas and other measures to lower production costs and improve the competitiveness of local producers. The negative impact on producers could then be reduced. It would be difficult to show, unfortunately, that additions to the general revenue of governments are in fact spent on such measures.

#### **Set up evaluation and monitoring systems**

48. Good evaluation and monitoring systems can make their greatest contribution in showing whether food is the most effective form of assistance. They are required for answering questions such as the following: under what circumstances and in which situations is food distribution superior to cash distribution in terms of welfare impact on food insecure households? This is in addition, of course, to their usual role in establishing whether food assistance programmes have worked as intended, i.e. who they were intended to reach and whether they did effectively reach the intended beneficiaries. Participation of the beneficiaries and accountability –two key human rights principles– play an outstanding role.

### **C. Use food aid to enable development**

49. Food should be given as aid only where it offers the most cost-effective way to achieving development objectives. To this end, development needs assessments should be carried out before deciding whether food or general financial assistance is the most efficient alternative, for example, by assessing whether food is unavailable or is in short supply locally (in which case

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<sup>11</sup> The costs of shipping foodgrains by sea are usually far lower than the costs of moving foodgrains by truck or train.



providing cash or food vouchers would in any case not permit people to access food), or whether financial and/or market infrastructure is weak or non-existent, making it difficult to transport and distribute large sums of cash to remote areas. It should be noted that “leakage” of cash resources tends to be easier to conceal than “leakage” of large volumes of physical resources. Food aid can be particularly helpful in protecting the assets of the poor and preventing vulnerable people from falling into destitution. It can also play a helpful role in building up human capital and infrastructure. It may also smooth the process of adjustment to economic shocks by helping to alleviate the costs of adjustment through food-based safety nets.

50. For example, if food aid is used as part of a food-for-work programme to build roads, bridges, schools and irrigation works, it can be said to “improve measures of production, conservation and distribution of food by making full use of technical and scientific knowledge and by developing or reforming agrarian systems” (Article 11:2 ICESCR). There is also some empirical evidence that food aid promotes agricultural production by relaxing working capital constraints. By these means, people can be empowered to provide for themselves. In a similar way, the promotion of human development and future earning capability through, for example, school meals to encourage attendance, or nutrition programmes that focus on the needs of vulnerable groups, can also empower people to provide for themselves.

#### **D. Ensure that emergency food relief also contributes to long-term economic development**

51. There will always be some who cannot provide for themselves, in particular children, the old, and those who are handicapped. The victims of natural disasters (including crop failures) and other emergencies such as civil wars are also unable to provide for themselves and it is here that emergency relief based on food aid can be of help. Providing food to those who need it at the time they need it and in the most appropriate form is critical because the need for food cannot be postponed. People, especially children at certain critical stages in their lives, who go without enough food for a sufficiently long time can suffer irreversible damage to their health. To acquire food, households are forced to sell productive assets and avoid undertaking potentially profitable but riskier investments for fear of the consequences of failure. Food aid that flows into a social protection strategy (safety net) can be particularly useful in this regard.

52. In this context, the impact of HIV/AIDS is particularly important. The basic problem is that an AIDS epidemic leads to a hollowing out of the population pyramid in countries; it kills people of prime working age while sparing the very young and the very old. This can have a catastrophic impact on agricultural production and general economic development by causing

the agricultural labour force to shrink, but also by preventing agricultural skills from being passed on to the next generation. Households with AIDS patients thus face reduced incomes, coupled with an increased need for food and medicine. Orphans have special needs.

53. Under these circumstances, “food assistance can provide a safety net to catch families before they become destitute, and thus even more vulnerable to the risk of infection, and they can support the needs of orphans and foster families in the aftermath of family dissolution due to AIDS”.<sup>12</sup> To avoid stigmatising them, it might be better to target such assistance on the basis of food security and not HIV status.

54. By providing a safety net, food assistance ensures that productive potential is preserved and livelihoods remain intact. Unfortunately, the need is immense: up to 50 million metric tons of foodgrains per year for Africa according to some estimates.

## VI. CONCLUSIONS

55. It is important to note that food aid alone cannot be expected to respect, protect and fulfil the right to food, but needs to be one component of an integrated response. However, food aid can make an important contribution to the realization of the Right to Food, depending on how well it is targeted and how it is disbursed, i.e. as programme, project or emergency aid. Programme food aid that is not well-targeted tends to lower food prices by creating an excess supply of food. Since lower food prices benefit net buyers of food but harm net sellers, this tends to create tradeoffs between the state obligation to provide the Right to Food and the obligation to fulfil (facilitate) since the livelihoods of net sellers are affected and some of them will now find themselves deprived of access to adequate food.

56. The human rights framework offers important incentives to ensure positive effects of food aid on the realization of the right to food by emphasising the rights and needs of individuals and the duties of governments, as well as the responsibilities of donors. In recent years, there has been a significant shift towards project and emergency food aid, which is better targeted, and for which there is evidence of a stronger positive impact on the Right to Food. There appears to be an emerging consensus that this trend needs to be further encouraged in order to strengthen the impact on the Right to Food. This will require action on several fronts, based on four fundamental principles.

<sup>12</sup> Berlin Statement, International Workshop on Food Aid – Contributions and Risks to Sustainable Food Security. Berlin, 2-4 September 2003.

These are: i) that food aid should flow in response to the nutritional needs of the recipients and should not be used as a means of surplus disposal, ii) that improved procurement and disbursement methods should be used; iii) that food aid should be used to enable development to the maximum extent possible and, in particular, iv) that emergency food aid should provide relief in a manner that also promotes development.

57. As far as the first principle is concerned, good targeting, at both macro and micro levels is clearly an essential element. Not only should food aid flow to the countries and regions that need it most, but within countries it should flow to the groups that need it most. Food aid thus needs to be based on a sound needs assessment involving both donors and recipients. Repayment capacity would also be an important component of such an assessment. For example, it has been suggested that food aid should be provided exclusively in the form of grants to least developed countries, since their repayment capacity is limited. It has also been suggested that the international governance of food aid needs to be reformed in order to improve the predictability and timely delivery of food aid. According to the Berlin statement, this could be achieved by a clearer separation of food aid from commercial trade, the replacement of the Food Aid Convention by a Food Aid Compact, and an international code of conduct on food aid to be monitored by an independent body. Such a code of conduct, dating from 1996, already exists in the European Community and its Member States. One change in particular seems desirable and that is to increase the share of multilateral food aid, as this is less likely to mirror the vagaries of domestic policies in the donor countries.

58. As far as the second principle is concerned, several suggestions for improvement have been made. One is that food aid should be “untied”, i.e. financial resources should be provided to finance imports of food (e.g. from neighbouring countries) or, for that matter, to purchase food in the recipient country itself. This offers the possibility of realizing efficiency gains which may be fairly large, while stimulating agriculture in the countries where the it is procured and providing food that is culturally appropriate if it is sourced from within the country or from neighbouring countries. However it also has some drawbacks. First of all, as it is politically more acceptable for many countries to provide aid in the form of food, requiring food aid to be provided in this manner may cause a reduction in its supply. But this need not happen if the efficiency gains from “untying” food aid are sufficiently large<sup>13</sup>, because these are then likely to outweigh the effects of a reduction in the total value of food aid, so that the availability of food is not affected. A related problem is that this could exacerbate the problem of food aid shipments being low when

<sup>13</sup> Surely not a completely implausible assumption.

food prices are high and vice versa since a fixed quantity of cash would buy variable quantities of food. Moreover, the quality of locally procured food is often problematic it is not easy to procure food in the quantities needed by negotiating with large numbers of smallholders. For all these reasons, there is a strong case for continuing to provide food as aid, while experimenting with alternatives where appropriate. Another possibility is to use the proceeds from the sale of programme or project aid to finance health interventions such as providing mosquito nets, which may have a larger incremental impact on nutrition by preventing disease than an extra allocation of cereals.

The importance of evaluation and monitoring systems as an essential part of a good food aid programme cannot be overemphasized.

**59.** As far as the third principle is concerned, the emerging consensus sees food aid as an enabler of development. Food aid can play a helpful role in building up human capital and infrastructure, e.g. through a food-for-work programme to build roads, bridges, schools and irrigation works. It may also smooth the process of adjustment to economic shocks by helping to alleviate the costs of adjustment through food-based safety nets. There is also some empirical evidence that food aid promotes agricultural production by relaxing working capital constraints. By these means, people can be empowered to provide for themselves. In a similar way, the promotion of human development and future earning capability through e.g. school meals to encourage attendance, or nutrition programmes that focus on the needs of vulnerable groups, can also empower people to provide for themselves.

**60.** The above principle implies that emergency relief in particular should also contribute to development. This requires attention to a number of points. In emergencies (including crop failures), people cannot provide food for themselves and food aid that flows into a social protection strategy (safety net) can be useful in providing the right to food as well as preventing lasting damage to the productive capacities and livelihoods of the victims, thereby serving to fulfil (facilitate) the right. Well designed and targeted food-based safety nets can ensure that households are not forced to sell productive assets to acquire food and can undertake potentially profitable but riskier investments without fear of the consequences of failure. They can also prevent irreversible damage to children's physical and mental development and thus allow them to lead healthy and productive lives. The needs of HIV/AIDS patients and orphans deserve special attention. Food assistance can provide a safety net to catch families before they become destitute, and thus even more vulnerable to the risk of infection, and they can support the needs of orphans and foster families in the aftermath of family dissolution due to AIDS.

**61.** To sum up, food aid has an important role to play in implementing the right to food, provided it is given in the form of project or emergency aid that is well-targeted. There appears to be an emerging consensus on what

this implies for the mechanics of food aid. In essence, what is required is a stronger emphasis on food aid delivery by multilateral agencies in support of projects that promote development while relieving immediate distress. Food aid programmes should incorporate strong monitoring and evaluation mechanisms in order to ensure that these principles are applied.

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# MONITORING THE IMPLEMENTATION OF THE RIGHT TO ADEQUATE FOOD

## 2

### I. INTRODUCTION

1. International commitment to the eradication of hunger was clearly stated at the 1996 World Food Summit, where Heads of State and Government reaffirmed:

*“the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger”<sup>1</sup>*

2. The 2002 World Food Summit: five years later then invited the FAO Council to establish an Intergovernmental Working Group (IGWG), with a mandate to elaborate, in a period of two years, a set of voluntary guidelines to support member Nations’ efforts to achieve the progressive realization of the right to adequate food in the context of national food security.<sup>2</sup>

3. The resulting Voluntary Guidelines, a human rights-based practical tool addressed to all States, were adopted by the 127th Session of the FAO Council in November, 2004. Their stated objective 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 Plan of Action of the World Food Summit...”*

4. The Voluntary Guidelines address a whole range of activities that States should undertake in order to realize the right to adequate food. Monitoring is specifically treated in the Guidelines.

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<sup>1</sup> Rome Declaration on World Food Security. The right to adequate food was also expressed in Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>2</sup> Paragraph 10 of the Declaration adopted at the 2002 World Food Summit: *five years later*.

## **GUIDELINE 17: MONITORING, INDICATORS AND BENCHMARKS**

17.1 States may wish to establish mechanisms to monitor and evaluate the implementation of these Guidelines towards the progressive realization of the right to adequate food in the context of national food security, in accordance with their capacity and by building on existing information systems and addressing information gaps.

17.2 States may wish to consider conducting “Right to Food Impact Assessments” in order to identify the impact of domestic policies, programmes and projects on the progressive realization of the right to adequate food of the population at large and vulnerable groups in particular, and as a basis for the adoption of the necessary corrective measures.

17.3 States may also wish to develop a set of process, impact and outcome indicators, relying on indicators already in use and monitoring systems such as FIVIMS, so as to assess the implementation of the progressive realization of the right to adequate food. They may wish to establish appropriate benchmarks to be achieved in the short, medium and long term, which relate directly to meeting poverty and hunger reduction targets as a minimum, as well as other national and international goals including those adopted at the World Food Summit and the Millennium Summit.

17.4 In this evaluation process, process indicators could be so identified or designed that they explicitly relate and reflect the use of specific policy instruments and interventions with outcomes consistent with the progressive realization of the right to adequate food in the context of national food security. Such indicators could enable States to implement legal, policy and administrative measures, detect discriminatory practices and outcomes, and ascertain the extent of political and social participation in the process of realizing that right.

17.5 States should, in particular, monitor the food-security situation of vulnerable groups, especially women, children and the elderly, and their nutritional status, including the prevalence of micronutrient deficiencies.

17.6 In this evaluation process, States should ensure a participatory approach

5. This paper aims at providing practical guidance for States on monitoring the implementation of the right to adequate food, based on the Voluntary Guidelines. It focuses on strengthening and institutionalising a rights-based approach to monitoring of the right to adequate food at country level.

## **II. RIGHTS BASED MONITORING**

6. Rights based monitoring (RBM) systems are distinguished from other monitoring systems because they should address the nature of rights-based



development: a comprehensive economic, social, cultural and political process. A rights-based approach to development integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in international treaties and instruments. By definition, rights-based approaches are incompatible with development policies, projects or activities that have the effect of violating rights, and they permit no “trade-offs” between development and rights.

7. A RBM system, as a component of a rights-based approach to development, incorporates the advantages, or added value, of such an approach, and works to promote their integrity. Some important advantages are described below.<sup>3</sup>

- > Easier consensus, increased transparency and less “political baggage” in national development processes. Development objectives, indicators and plans can be based on the agreed universal standards of the international human rights instruments rather than on imported foreign models, prescriptive solutions, partisan approaches or arbitrary policies.
- > More effective and complete analysis. Traditional poverty analyses based their judgments on income and economic indicators alone. A human rights analysis reveals additional concerns of the poor themselves, including the phenomena of powerlessness and social exclusion.
- > A more authoritative basis for advocacy and for claims on resources, with international legal obligations and national commitments empowering development advocates.

8. The stakeholders of a RBM system, described in greater detail below, include rights holders (with emphasis on the poor and vulnerable) and duty bearers (with emphasis on the State). In general, a RBM system provides information through which rights holders can hold duty bearers accountable and which strengthens the rights holders’ capacity for self-action.

9. The monitoring process generally consists of four main components. They are: information (data) gathering from primary and secondary sources; information processing, organization and transformation (indicators); information analysis and interpretation; and dissemination (reporting). They provide a starting point for establishing RBM systems for the implementation of the right to adequate food as described in this paper under the headings: what should be monitored; how monitoring should be carried out; and for and by whom monitoring may be carried out. The latter brings into focus institutional aspects. A number of considerations are also suggested for the development of general strategies, an implementation agenda and a work plan.

<sup>3</sup> See <http://www.unhcr.ch/development/approaches-07.html>.

### III. WHAT TO MONITOR

#### Three dimensions of the right to adequate food – adequate, available, accessible

10. The Voluntary Guidelines embrace three important substantive attributes, or dimensions of the right to adequate food: adequacy, availability and accessibility. These dimensions, described below, form a sound basis for the development of indicators within appropriate frameworks.

- > The concept of “*adequate*” food has three components.<sup>4</sup> First, food should be available in a quantity and have nutritional quality sufficient to satisfy the dietary needs of individuals. Second, the food should be safe for human beings to eat and free from adverse substances. This incorporates an element of consumer protection. Third, the food should be acceptable within a given culture.
- > “*Availability*” of food refers to a sustainable supply of adequate food, with environmentally and economically sustainable food systems. Sustainability indicates a long term availability and accessibility to adequate food. Areas critical for improving overall food availability are contained in the Voluntary Guidelines, such as land, water, agriculture, technology, extension and credit availability. International cooperation in augmenting food availability is also relevant.
- > “*Accessibility*” of food suggests a stable access to adequate food. It incorporates both physical and economic access to food within the household’s livelihood. It also suggests the accessibility of food in ways that do not interfere with the enjoyment of other rights, and corresponds to the Voluntary Guidelines that are directed at improving the management of resources.

11. There are clear differences and some interactions among these three dimensions. The overall aim is to distinguish dimensions that relate to quantity and availability from the predominantly qualitative aspects of the right to food. The dimensions of adequacy and accessibility are key to understanding the scope of the normative content of the right to food; however, adequacy has quantitative and qualitative attributes, while accessibility suggests more physical and economic attributes. Availability, on the other hand, relates to quantity, but also identifies obligations of duty holders directed at enhancing food availability in the country. Further, it offers the possibility of monitoring some of the more operative obligations and responsibilities identified in the Voluntary Guidelines.

<sup>4</sup> Based on paragraph 8 of General Comment 12, adopted by the UN Committee on Economic, Social and Cultural Rights (CESCR) in 1999.

## Indicator development

12. Monitoring the implementation of the right to adequate food can be achieved with reference to a well-defined monitoring framework. A few examples are described below. An initial step in establishing such a framework is determining what to monitor. In this context, development of appropriate indicators identifying what to monitor is an essential tool for the monitoring process.

13. Although there are different examples and categories of indicators that can be used for monitoring, it would be fundamental to ensure that the indicators are rights-based (RB), and not simply general development (GD). While the GD indicators focus on the general status of human conditions and capabilities and normally cover all population groups, RB indicators:

- > relate to relevant human rights instruments, standards and normative principles;
- > assess whether, and the extent to which, duty bearers have fulfilled their obligations to respect, protect and fulfil;
- > require disaggregation of data, to focus on the most vulnerable and disadvantaged groups of society.

14. The indicators should be both qualitative (descriptive) and quantitative (numeric). Qualitative indicators can, however, sometimes be presented in numeric form.

15. The choice of specific indicators for monitoring the implementation of the right to adequate food may vary from country to country, and situation to situation. It may be potentially confusing, and reduced to an exercise of cataloguing possible alternatives. To avoid this, a general framework may first be developed to guide the selection of indicators. It would also assist in analysing outcomes and establishing a linkage between the policy tools, means of implementation and desired impacts. A framework for identifying and designing indicators could address issues such as the following.

- > There should be explicit linkage to relevant human rights instruments, standards and normative principles<sup>5</sup> as well as to the Voluntary Guidelines.
- > The attributes of the “core content” of the right to adequate food should be put in the context of local needs and priorities.
- > The framework should be amenable to a disaggregation of indicators to appropriate levels for the country.

<sup>5</sup> These would include Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights, the 1996 Rome Declaration on World Food Security of the World Food Summit, General Comment 12, the 2002 Declaration of the World Food Summit: *five years later*, as well as national human rights instruments and laws.

- > The framework should relate and contribute to a common approach for monitoring other human rights. In this context, three key categories of indicators should be considered: structural, process and outcome/impact,<sup>6</sup> described below.
- > The principles of participation, accountability and redress should be applicable to all categories of indicators.

## Examples of frameworks to guide indicator development and selection

16. Complementary indicator development frameworks are presented in Annex I, II and III. They are illustrative only, and are examples of different types of frameworks that individual States may wish to develop and tailor to their situations to guide the selection of their own set of indicators.

17. A framework for the development of indicators useful for assessing the duty-bearer's implementation of its obligations in relation to household food security is in Annex I. This example takes as indicators the obligations of the State, described in human rights instruments,<sup>7</sup> to respect, protect and fulfil (facilitate and provide) the right. In particular:

- > States should respect existing access to adequate food by not taking any measures that result in preventing such access.
- > States should protect the right of everyone to adequate food by taking steps so that enterprises and individuals do not deprive individuals of their access to adequate food
- > States should promote policies intended to contribute to the progressive realization of people's right to adequate food by proactively engaging in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. States should, to the extent that resources permit, establish and maintain safety nets or other assistance to protect those who are unable to provide for themselves.

18. In this framework, these human rights obligations of the State are related to the three dimensions of household food security described above - adequacy, availability and accessibility – the normative principles of the right to adequate food.

19. An example of an indicator development framework useful for assessing the state of realization of the right to adequate food (outcomes/impacts) is in Annex II. It is also useful for a violations approach in analysing and

<sup>6</sup> These categories have also been adopted by the Special Rapporteur on the Right to Health.

<sup>7</sup> These obligations appear in the ICESCR, General Comment 12 and the Voluntary Guidelines.

interpreting information and data, and in reporting. Such an approach would indicate the failure to respect, protect or fulfil a right. However, there are some concerns with a violations approach. Although its advantages include an emphasis on rights and obligations, a visible link with accountability and a clearer implementation of a rights-based approach, there are also some important difficulties. One is the volatile political and moral implications of the term “violations”.<sup>8</sup> In addition, the parameters and standards that identify such violations are themselves undefined, including the concept of non-retrogression (protection of the level of realization of rights).

20. This framework considers the three dimensions of the right to adequate food (adequacy, availability and accessibility) in terms of the three key categories of indicators described below: structural, process and outcome/impact. It consists of an illustrative list of questions, some of which (in italics) demonstrate the need to review qualitative (descriptive) information before assessing quantitative (numeric) indicators. Often, such questions provide a link to relevant human rights instruments or norms.

- > **Structural indicators** broadly capture information reflecting the legal and institutional framework for the realization of the human right. They include information indicating whether:
  - > the relevant treaties and international instruments have been ratified or otherwise endorsed by the country;
  - > steps have been taken to implement their provisions in national law; and
  - > institutional arrangements are in place to implement the provisions.
- > **Process indicators** provide information that relates a policy or programme instrument to a “milestone outcome” consistent with the progressive realization of the right. These indicators should provide clear guidance to States with respect to the implementation of legal, policy and administrative measures, detect discriminatory practices and outcomes, and ascertain the extent of political and social participation in the process of realizing the right to adequate food.

Useful process indicators could include policy measures used to improve food availability, such as developing regulations for food imports or support to agricultural extension services. Process indicators that assist in monitoring improvements in availability and accessibility of food could include, for example, indicators on access of farmers to genetic resources for food production, access to food aid and the coverage of school children by nutrition supplement programmes.

- > **Outcome/impact indicators** provide summary information on the state of realization of a human right. They may describe a consolidated impact

<sup>8</sup> Alternative terms could be non-fulfilment, non-compliance or non-realization.

of two or more process indicators. Examples of useful outcome indicators could be the share of household expenditure on food or the nutritional status of children captured through anthropometric measures.<sup>9</sup>

21. These three categories of indicators help to bring out the “added” value of rights-based monitoring. Selection of appropriate process indicators could promote accountability in implementing and monitoring the right. Further, a combination of structural, process and outcome indicators enables an assessment of State obligations – as primary duty bearer – to respect, protect and fulfil the realization of human rights. A suitable choice of outcome indicators allows assessment at the individual level of the enjoyment, or the violation/denial, of human rights.

22. It should be noted that the dimensions and categories shown in Annex II do not divide indicators into groups that are mutually exclusive. For example, an indicator for food availability could also be used for food accessibility. The main objective is to simplify the normative framework for easy analysis and selection of indicators, and facilitate a systematic and comprehensive identification of relevant indicators. Some benefits to this approach are that it:

- > simplifies the selection of indicators;
- > encourages the use of contextually relevant information;
- > facilitates a more comprehensive coverage of the different attributes or aspects of the realization of the right; and
- > possibly minimizes the overall number of indicators required to monitor the realization of the right to food in any context.

23. In particular, minimization of the number of indicators would not be possible if an alternative approach were taken, such as identifying indicators corresponding to each of the Voluntary Guidelines. This approach would also be constrained because it is not always possible to identify a unique indicator that could be used to monitor the implementation of a specific Guideline. Sometimes a single indicator may be seen as being adequate to cover more than one Guideline and in other cases a few indicators may be required to cover just one Guideline.

24. There is an additional advantage to using the structural/process/outcome categories of indicators: they attempt to capture the “flow” and “stock” aspects of the process of social change and development that underpins the protection and promotion of the human right. A “flow” indicator allows monitoring of momentary changes, for example the per capita availability of food grains from year to year. A “stock” indicator reflects summary outcomes

<sup>9</sup> These measures involve weighing and measuring the children, and do not take into account food consumed.

that consolidate such changes over successive years, such as anthropometric measures for school children. An appropriate mix of such indicators could potentially overcome some of the constraints associated with availability of suitable information and data gaps.

25. In some cases the use of an indicator may depend on contextual factors. For example, the indicator on land reforms could assess progress in land consolidation or land distribution to the landless, depending on the context.

26. Finally, an example of an indicator development framework useful for monitoring large national programmes is in Annex III. Unlike the previous two examples, it does not specifically refer to the three dimensions of the right to adequate food. The focus of this example is rather on inputs, processes, outputs, intermediate outcomes and final outcomes or impacts. It is duty-oriented; information on the level of resources and processes indicate the level of duty discharged by the State.

### Additional criteria for indicator selection

27. States may wish to be guided by the following criteria as they select and develop their own set of indicators.

- > **Measurement of change:** Monitoring is about measuring change over time. The indicator should be capable of measuring differences over time with a minimum of random measurement errors.
- > **Disaggregation:** The indicator has to be equally valid for all categories or classes involved in the disaggregated analysis. This is important for making comparisons across different population groups.
- > **Ease of construction:** Data should be generated by simple measurement techniques, requiring a minimum of data transformation, and making use of available data, if possible.
- > **User friendly:** The indicator should provide clear and transparent information that the intended users can understand.
- > **Action relevance:** The information provided by the indicator should contribute to the formulation of action and to more informed decision making.
- > **General application:** The indicator should generally be relevant but “sensitive” to different social and cultural settings.
- > **Specificity:** The indicator should be specific to a given phenomenon, thus avoiding different interpretations.

28. A challenge in the selection process, however, arises from the fact that few indicators will consistently conform to all these criteria. It may therefore be necessary to consider trade-offs in selecting from among various indicators, with the aim of selecting the best indicators possible.

## IV. HOW TO MONITOR

29. The “how” of monitoring the right to adequate food in a RBM system is anchored in human rights principles such as accountability, empowerment, participation, non-discrimination and attention to vulnerable groups. Its focal point is information analysis and interpretation, based on a clear process of information gathering, management and dissemination. It allows for the examination of actual change against intended change, and provides an understanding why change did or did not take place. It also involves setting time-bound targets, or benchmarks, and information dissemination (reporting) for well-defined users’ groups. These elements are addressed in the step-by-step guidelines below, together with relevant human rights principles.

### A. Important considerations in RBM processes

#### Clear and specific analytical questions

30. The first step towards achieving sound analysis and interpretation is to prepare clear and specific analytical questions. If possible, they should be asked so that responses can be either “yes” or “no”.

#### Transparent conclusions

31. Similarly, the conclusions should be transparent and clearly understood by the intended users. Information and analytical results should be understood by rights holders with different technical knowledge, socio-cultural and ethnic backgrounds and social experiences.

#### Application of statistical methods

32. Information sought can be simple or complex. Some questions can be prepared so they are answered by applying simple statistical techniques to one or more indicators. Others could be more complex and involve several indicators. However, not all analyses need to apply statistical methods. What is important is that there are clear criteria for accurate interpretation.

#### Participatory and empowering analytical process

33. The analytical process itself should be participatory and empowering. The direct involvement of rights holders in the monitoring process should be assured, without discrimination. Data collection and information gathering should be done in local languages. Information systems should integrate indigenous knowledge. Access to information should be guaranteed for those who do not read.

34. Capacity among rights bearer and duty holder groups to facilitate simple, participatory monitoring methods should be strengthened. Information gathered at local levels should offer an opportunity for rights holder groups to indicate their priorities and aspirations. It should then be returned to the



rights-holder groups for interpretation (assisted as needed) according to their priorities and aspirations. The information should measure concrete results for comparison with agreed results and targets; this would provide the basis for discussion between rights holder groups and duty bearers.

### **Priority Areas of Analysis for RBM of the Right to Food**

35. Some examples are given below where information and data can support priority areas of analysis in RBM process related to the implementation of the right to adequate food.

## **B. Identification and characterization of vulnerable groups**

36. Guideline 17 calls upon States, in particular, to monitor the food-security situation of vulnerable groups, especially women, children and the elderly, and their nutritional status. Vulnerability refers to the full range of factors (man-made or natural) that place people at risk of becoming food-insecure. The degree of vulnerability of individuals, households or groups of people is determined by their exposure to certain risk factors and their ability to cope with, or withstand, stressful situations that result from exposure to risks. Different population groups can usually be identified as being vulnerable with respect to different attributes of the right to adequate food, depending on the type of risk to which they are exposed, and on their livelihood strategies. For example, young children may suffer from dietary inadequacy due to within-household food distribution practices, whereas internally displaced population groups may be vulnerable to inadequate food access due to lack of productive assets.

### **COMMUNITY AND HOUSEHOLD VULNERABILITY TO POVERTY - KENYA**

A recent study on community and household vulnerability to poverty in Kenya, undertaken by the International Livestock Research Institute, analysed five different types of assets upon which individuals draw to build their livelihoods (natural, social, human, physical and financial capital), using an integrated and cross-sectoral approach. The use of remote sensing and other tools made gathering information at a level of disaggregation sufficient to: analyse spatial variations of vulnerability at community and household level; understand the factors conditioning these variations; and identify and characterise vulnerable groups.

*Source: Better Understanding Livelihood Strategies and Poverty through the Mapping of Livelihood Assets: A Pilot Study in Kenya, ILRI-FIVIMS Collaborative Projects – Final Report, June 2004.*

37. An analysis to identify and characterize vulnerable groups should focus on the so-called Who, Where and Why questions. *Who* are the food insecure and vulnerable population groups and how can they be identified? *Where* are they located? *Why* are they food insecure and/or vulnerable? In this context, each group's livelihood strategies and activities should be understood and respected. The answer to "why" they are food insecure or vulnerable should assist in identifying actions to implement the right to adequate food in each group.

38. Typical monitoring questions may include:

- > how has the exposure to risks changed for specific groups?
- > are vulnerable groups better equipped to withstand the impact of recurring or other risks?

Reduced vulnerability increases the probability of enjoying the right to adequate food.

39. In applying the Guidelines, the initial approach to assessing vulnerability may be based on the livelihoods of households, with special attention to be given to the vulnerability of women, children and the elderly in vulnerable households. In each country, it would be desirable to assess the major vulnerable groups by population segments and by region.

40. The process of identifying the vulnerable groups, using appropriate criteria, should be based on human rights principles of participation and transparency, allowing also for self-selection by households or individuals based on their perceived vulnerability.

41. Guideline 13 links the "who", "where" and "why" by suggesting that States should establish Food Insecurity and Vulnerability Information and Mapping Systems (FIVIMS) in order to identify groups and households particularly vulnerable to food insecurity, along with the reasons for being vulnerable to food insecurity.

#### **LIVELIHOODS ANALYSIS OF VULNERABLE GROUPS - BENIN**

The livelihoods of artisanal fishers in Benin have been characterized by qualifying livelihood assets (*human, physical, social, natural and financial capital*), livelihood strategies and income-generating activities during the rainy season (*seasonal wage work, production of foods for market*) and the dry season (*preservation and sale of fish, and cash transfers among family members*). Key risk factors identified were: health risks (*malaria, diarrhoea and respiratory infections*), indebtedness and lack of capital, and breakdown of traditional methods of fishery management

Source: *The State of Food Insecurity in the World (SOFI)*, 2000

42. General policy and programme measures may affect different population groups unevenly, or may not target vulnerable groups in an efficient manner with a minimum of leakage. To address this, an analysis of the distributional effects of policies and programmes can be undertaken. It should be based on disaggregated information and data, and monitor factors such as discrimination against vulnerable groups or the impact of affirmative action programmes.

43. This would be consistent with Guideline 13, which invites States to systematically undertake disaggregated analysis on the food insecurity, vulnerability and nutritional status of different groups in society. It should be done with particular attention to assessing any form of discrimination that may manifest itself in greater food insecurity and vulnerability to food insecurity, or in a higher prevalence of malnutrition among specific population groups, or both, with a view to removing and preventing the causes.

### C. Institutional and legal framework

44. The establishment and functioning of monitoring systems at the national level requires an adequate legal and administrative basis. Guideline 7 invites States to consider whether to include provisions in their domestic law to directly implement the progressive realization of the right to adequate food in the context of national food security. For adequate, effective and prompt remedies, administrative, quasi-judicial and judicial mechanisms may be envisaged. They should be accessible, in particular, to members of vulnerable groups.

45. The importance of a sound administrative basis is reinforced by Guideline 13, which recognizes that effective accountability and administrative systems are essential to prevent leakages and corruption. A complementary suggestion is in Guideline 5, which encourages States to take measures, as necessary, to implement effective anticorruption legislation and policies.

46. An analysis to determine the adequacy of the existing legal and administrative framework for RBM may therefore be a priority. Some considerations would include whether the law provides an institutional mandate and authority to gather information and undertake analysis and assessment, and a requirement to report. Access to information and information sharing among different agencies should also be mandated by law. A need for or effectiveness of anticorruption legislation could be examined, and an assessment of the process for, and effectiveness of, administrative remedies could be assessed.

47. The effectiveness of RBM systems depends to a great extent on the institutional arrangements, including operations and policies. Guideline 5 suggests that States, where appropriate, should assess the mandate and performance of relevant public institutions and, where necessary, establish,

reform or improve their organization and structure. It also suggests that States may wish to ensure the coordinated efforts of relevant governments ministries, agencies and offices. Institutional aspects of monitoring are discussed more thoroughly below.

48. An analysis could be undertaken of existing institutional structures and policies to implement food security policy and programme measures, including basic services delivery. It could take into account the existence of or need for a lead agency with a clear mandate, and assess the degree to which efforts are coordinated among relevant government agencies and among sectors. Another point for analysis could be the extent to which relevant institutions provide for full and transparent participation of the private sector and civil society, in particular the representatives of the groups most affected by food insecurity.

49. The aims would be to ascertain whether the institutions are conducive to reaching the most food-insecure and vulnerable, and to ensure sound governance and accountability to rights holders.

#### **D. Benchmarks**

50. Setting national benchmarks, time-bound targets for assessing progress, is a mechanism for holding duty bearers accountable. The level at which such benchmarks are set is important because it indicates whether or not obligations have been met. However, there may need to be ongoing adjustment of the level of the benchmarks, particularly if they were set unrealistically high or low. The process of setting national and sub-national benchmarks should involve the direct participation of both rights holder groups and duty bearers, and be supported by a detailed analysis of available data related to the food and nutrition conditions and trends in the country and at sub-national levels.

51. Guideline 17 encourages the establishment of benchmarks to be achieved in the short, medium and long term.

52. Targets and benchmarks should be expressed in such a way that repeated measurements over time lead to clear conclusions on the progress made. In this context, there should be a clear understanding of what is meant by progress. For example, if a benchmark is adopted to reduce the number of malnourished people by 10 000 in five years, an average annual reduction of 1 000 people in the first three years may not necessarily represent progress.

53. In considering whether to use benchmarks and for what purpose, it may be appropriate to consider benchmarks that take into account international commitments. Other uses for benchmarks would depend on in-country needs and processes, and in any case should be firmly linked to accountability mechanisms.

## E. Reporting

54. Dissemination of information and analyses, or reporting in a RBM system, responds to the need for all stakeholders, in particular the rights holders, to have access to available information and data on the realization of the right. The information should be available on a non-discriminatory basis, and be clearly understood by the various groups of rights holders. Because the right should be continuously pursued, the information/data should be available at different points of time or as a time series. This would facilitate both monitoring the progressive realization of the right and, as appropriate, the non-fulfilment of the right. It is also consistent with the principles of transparency and accountability.

55. A framework for reporting should incorporate a schedule of publication and dissemination of relevant information. This may need to be preceded by a careful analysis of the information needs of different user groups, to ensure that the information is timely, relevant and accessible for each user group. This should also guide what distribution means are to be employed when targeting specific user groups. For example, if RBM-provided information is to serve as an advocacy tool, it should be able to fulfil functions such as:

- > raising awareness on entitlements and duties;
- > assisting in articulating claims of rights holders;
- > facilitating in monitoring the progress by duty bearers in meeting their obligations.

56. In addition, Section III of the Voluntary Guidelines invites States to report, on a voluntary basis, on relevant activities and progress achieved in implementing the Guidelines, to the FAO Committee on World Food Security.

57. A communications strategy for reporting and disseminating of information would assist in fulfilling obligations to report. It could address the responsibility for and means of dissemination, and the various forms in which the information may be reported. The responsibility could be assigned to a specific institution, and the means could include identified publications, networks and organizations, as well as through the media.

### Mapping

58. Maps have been found to be highly useful dissemination tools that provide a means of both monitoring and reporting on the progress towards the realization of the right to adequate food. The Voluntary Guidelines refer to this technique as a way of identifying vulnerable groups and households, together with reasons for their food insecurity.

59. Some advantages to the use of maps are:

- > issues and challenges of the implementation of the right to adequate food are highlighted;

- > spatial representation is provided;
- > they are easily understood;
- > they easily show changes over time in implementation;
- > user-friendly software is widely available.

60. Maps can be constructed based on a range of indicators that directly relate to the implementation of the right to adequate food, such as geographic inequality and incidence of poverty. In addition, it can assist in development of strategies, allocating budgets, measuring progress and targeting programmes. Some examples of the use of mapping are shown in the table below.

EXAMPLES OF THE USE OF POVERTY MAPS		
USE	INDICATOR	COUNTRY
Assessing geographical inequality	Distance to Roads	Brazil: Parà and São Paulo
Reaching the most needy	Incidence of poverty versus number of poor	Viet Nam
Reaching the most needy	Geographical targeting of government programmes for the poor	Mexico
Monitoring outcomes at sub-national levels	Change in poverty incidence	Ecuador

61. Hunger and poverty maps are useful tools for RBM assessments. Today's software<sup>10</sup> can combine information from different maps and assist in defining such aspects as the location of the poor and hungry, as well as the causes of poverty and hunger (e.g., whether people have access to markets or crops).

62. Many countries have constructed poverty maps. The use of poverty maps may be important for monitoring the right to adequate food, because poverty can be used as a proxy indicator to identify and locate food insecure and vulnerable groups. In addition, hunger maps can assist with the development of relevant strategies, with budgetary planning and in the assessment of targeting of major development, social safety and other food security programmes.

<sup>10</sup> Examples of mapping software include Geographical Information Software (GIS), which can combine data from different kinds of maps, and market-available ArcGIS and ArcView.

## V. MONITORING FOR WHOM?

### Duty bearers

63. Duty bearers that implement the right to adequate food exist at national, sub-national and community levels, and have multiple information needs. As noted above, the primary duty bearer is the State, with its executive, legislative and judicial branches. Other duty bearers include: public security agencies; public interest firms; regulatory and consumer protection agencies; and private institutions that provide public services, such as water, health services, mass communication and industry.

64. For duty-bearers at the policy implementation level (such as public officers, parliamentarians, judges, prosecutors, and police officers) the RBM information is fundamental to (re)affirm their responsibility to undertake all possible efforts to meet their obligations, to help identify possible capacity gaps in public institutions and to prepare recommendations to overcome capacity gaps.

65. For duty-bearers at the planning and decision making level, the information is used to evaluate the adequacy of planning and to provide a basis for shifts in policy planning and implementation. This ensures that the funds are effectively allocated and used both to achieve the relevant goals and benchmarks, and to monitor relevant progress within the publicly agreed time frame.

### Rights holders

66. All human beings are right holders in respect to the right to food. By taking into account the principles of equality and non-discrimination, the Voluntary Guidelines indicate that the approach should focus on poor and vulnerable people who are often excluded from the processes that determine policies to promote food security. They also refer to the need for inclusive societies free from discrimination by the State in meeting their obligations to promote and respect human rights.<sup>11</sup>

67. For individual rights holders, and organizations and interest groups that represent them, the RBM information is fundamental to (re)affirm and clarify the different dimensions of their right to adequate food and the corresponding obligations of the duty bearers. It could also provide factual information for social mobilization, participation and lobbying actions and in directly presenting their claims and demands to existing public institutions, including legislative, judiciary, executive, and monitoring institutions.

<sup>11</sup> Paragraph 19.

## Human rights monitoring bodies

68. Human rights monitoring bodies are key institutions in the monitoring process, and can include human rights commissions and national ombudspersons. They normally have a mandate to monitor public agencies' compliance with national legislation and international obligations regarding human rights, sometimes with an explicit mandate to monitor economic and social rights, including the right to adequate food. They generally comply with the 1991 Paris Principles, which recognise the necessity for human rights bodies to be autonomous from the Government and impartial, essential qualities for effective monitoring.<sup>12</sup>

## VI. MONITORING BY WHOM: INSTITUTIONAL ASPECTS

### A. Institutional responsibilities and attributes

69. The major task of institutions designated to take part in a human rights-based RBM system is to bring stakeholders together in a participatory process. The RBM system itself can build on existing institutions and monitoring systems. In fact, most countries currently have in place institutions and monitoring systems that are relevant to implementing the right to food, such as an agricultural database in the ministry of agriculture, a health monitoring system in the ministry of health and national statistical surveys on income and expenditures, health, nutrition or environmental conditions in the office of statistics.

70. An important first step in developing a RBM system is the identification of stakeholders that would contribute to or depend upon the monitoring process. Stakeholders – institutional and non-institutional - may be grouped into three categories: information providers; independent interpreters of the available information (“intermediate users”); and the ultimate users of that information for articulating their claims and monitoring the realization of the right to food (“end users”).

71. This may involve, *inter alia*, the ministries of agriculture, food, public health and family welfare (including women and children), the national human rights institution, relevant civil society organizations engaged in monitoring human rights, consumer groups, other social groups, parliamentary committees and claim holders at large. The information in an RBM system has different uses

<sup>12</sup> *Principles relating to the status and functioning of national institutions for protection and promotion of human rights*, endorsed by the Commission on Human Rights in March 1992 (resolution 1992/54) and by the General Assembly in its resolution A/RES/48/134 of 20 December 1993.



for various stakeholders. For greater clarification, a table of users and uses of RBM information is provided in Annex IV. Because institutions play a central role in collecting, analysing and disseminating such information for RBM systems, the principles of *participation, transparency and accountability* should be applied when identifying institutions, their responsibilities and their information collection methods.

72. One mechanism for applying these principles is to assemble the different monitoring stakeholders in a participatory process. Their respective competencies and perspectives, focused on different aspects of the right to adequate food, and various methods of information collection, would enable formation of a collegium for monitoring the right to adequate food. This collegium could identify an independent institution to take a lead in interpreting the available information from a human rights perspective and, as appropriate, coordinate the assessments of other partners. The institution could be, for example, the national human rights body or a human rights non-government organization (NGO).

73. In structuring a RBM system, a distinction should be made between institutions that represent independent monitoring mechanisms, and those responsible for implementing programmes and providing information on progress in meeting obligations for the realization of human rights. For example, in the case of a monitoring system for implementation of the right to adequate food, a human rights commission and a ministry of agriculture/health and family welfare would have distinct but complementary roles.

74. It is important that the process to select institutions for RBM responsibilities is nationally owned and implemented. It should also be sufficiently decentralised and inclusive, so the concerns of different stakeholders may be taken into account.

75. Some criteria that may be used for selecting national institutions for RBM activities or strengthening existing institutions are listed below, mindful that any one institution may not meet all criteria. The list assists in addressing existing problems such as limited mandates, weak capacity to understand and monitor right-to-food issues, inconsistent/inadequate methodologies among ministries and agencies, and limited access to or insufficient/no sharing of information and data. The criteria describe attributes that institutions should have to enable effective RFM.

- (a) a clear mandate for monitoring the right to food, endorsed at high level (e.g. Parliament), and widely known and understood by key stakeholders;
- (b) adequate and identifiable human and financial resources to undertake the monitoring tasks, in order to achieve sustainable, high-quality monitoring;
- (c) a well-defined RBM work plan, on the basis of which it can be held accountable for outputs and results;

- (d) a high level of credibility *vis-à-vis* duty bearers and rights holders – the institution should be seen as an objective and independent player, and a clear agenda to promote and facilitate the implementation of the right to food for all;
- (e) strong linkages with key actors, institutions and organizations, both in the government sector and in civil society, to ensure that RBM information and analysis transforms into decision-making and effective multi-sector actions;
- (f) effective access to all relevant RBM information generated by both government institutions and civil society organizations, relying on existing information networks but with a mandate and the capacity to verify the validity of information;
- (g) as part of its mandate, the institution should establish advisory committees with specific expertise in both technical and human rights aspects, related to right to food monitoring;
- (h) a good communications and advocacy strategy in place to proactively promote the implementation of the right to food, and empower rights holders.

76. Major challenges in considering institutional responsibilities and attributes for RBM are to decide which institution(s) would be most effective, to prioritize the responsibilities and attributes according to the country's circumstances and to address any need for institutional partnerships in the monitoring process. Potential roles for such partnerships could be considered for academic institutions and coalitions or associations of civil society organizations.

## B. Capacity development

### Capacity development in RBM

77. It is evident that duty bearers in a RBM system need adequate capacity to undertake their duties. Capacity strengthening may be necessary to achieve the objectives of monitoring, and if so an initial activity would be the assessment of capacity development needs. The assessment should take into account the components of capacity within a human rights framework:

- > responsibility, motivation and leadership;
- > authority;
- > access and control of human, financial and organizational resources;
- > capacity to communicate and build partnerships (see "Capacity development in dissemination skills" in box below);
- > capacity to make rational decisions.

78. Although capacity development is considered in the context of institutions in this paper, it is also relevant for individuals, groups, households, communities and civil society organizations.

### **CAPACITY DEVELOPMENT IN DISSEMINATION SKILLS**

The media can play an important part in food insecurity and vulnerability early warning by ensuring that the information produced regularly by local authorities is widely disseminated. In 2003 the Kenya Food Security Steering Group (KFSSG) hosted a two-day training on Public Information and Media Skills for key decision makers and potential spokespeople responsible for delivering information to the media. The workshop helped to improve the interactions between the KFSSG and the media for a more balanced and constructive media coverage of food security related issues, to improve skills of members for dealing with the media and to identify main issues and strategies for improving media relations.

*Source: Proceedings of the Public Information and Media Skills Workshop, KFSSG, March 2004*

79. Duty bearers should have adequate technical and managerial skills to discharge the duties that they will undertake. Other qualities that capacity strengthening should seek to promote in duty bearers include motivation and a clear understanding of the relevance and importance of their tasks. Institutionally, they should be empowered, have some degree of autonomy based on delegated authority, and have adequate access to resources.

80. In-country capacity development may also be needed in designing integrated and disaggregated analyses, appropriate statistical methods, statistical interpretation and dissemination methods such as maps.

### **Capacity development for data collection and disaggregation**

81. Institutional capacity and appropriate methodologies for collection and analysis of data are necessary for RBM. Human rights monitoring data could be based on multiple sources and data collection methods, each of which may require specific methodologies for collection and analysis. For example, monitoring data could be comprised of: data based on events and testimony, particularly for violation of human rights; socio-economic statistics collected by ministries and agencies to monitor public programmes; household perception and opinion surveys; and analyses and judgements by relevant experts.

82. Further, an important requirement of a RBM approach is availability of information /data at a level of disaggregation that captures the country's vulnerable population groups. To achieve this, data should be available by sex, major population age-groups, regions (including rural and urban) and where possible by demographic groups such as racial, ethnic or religious groups, minorities, refugees, internally-displaced persons and migrants.

83. Gaps in the available capacity to provide relevant data should be assessed in developing a RBM system, and the means to address the gaps in information should be identified.

## VII. IMPLEMENTATION STRATEGY, AGENDA, WORK PLAN

84. The practical guidance provided by the Voluntary Guidelines for implementing the progressive realization of the right to adequate food provides the foundation for establishing a RBM system. The what, how, who and institutional aspects of monitoring implementation of the right, described above, build upon that foundation. On a more general level, and looking ahead, those aspects should be consolidated, for planning purposes, in an overall implementation strategy, an implementation agenda and a work plan. Some guidelines in this regard appear below.

85. An overall implementation strategy for developing a RBM system to monitor the implementation of the right to adequate food could focus on information and human rights aspects discussed above.

86. Regarding information aspects, a strategy could take into account, and build upon existing monitoring information systems related to emergencies and structural food insecurity and malnutrition. Local or community level information should be incorporated, and a RBM framework developed to identify minimal information gaps and the need for adjustments in existing information systems.

87. Human rights aspects principles should be mainstreamed in food security and poverty monitoring. On a broader scale, it should be ensured that the RBM process itself is rights based: participatory; empowering; transparent; and provides a basis for holding duty bearers accountable.

88. On a more practical level, an implementation agenda and work plan should be developed. Setting up or strengthening a RBM mechanism to monitor implementation of the right to adequate food can be guided by the following considerations and steps drawn from the what, how, who and institutional aspects of RBM described above.

- > **Institutionalization.** This would involve establishing RBM mandates, allocating resources and strengthening capacities. Another activity could be identification of an independent institution that takes the lead in interpreting the available information from a human rights perspective and perhaps also coordinating the assessment of other partners.
- > **Develop and test methods.** Methods for carrying out RBM, including use of indicators and information collection, analysis and dissemination, should be developed and tested.

- > **Identification of monitoring stakeholders.** Institutional and non-institutional stakeholders who would be contributing to the monitoring process should be identified.
- > **Identification of major vulnerable groups.** Criteria should be based on human rights principles of participation and transparency, and vulnerable (livelihood) groups should be identified and characterized.
- > **Baselines, benchmarks.** Baselines should be established and benchmarks set.
- > **Mainstream right to food principles.** An advocacy and communications strategy should be developed to integrate the right to adequate food into the broader range of the State's activities, including development and humanitarian action.
- > **Capacity development, including for data collection and disaggregation.** Institutional capacity and cooperation may need to be developed to carry out RBM tasks, including data collection and disaggregation at a level that captures the country's vulnerable population groups.
- > **Mainstream RBM.** Relevant policy and programme initiatives, local level projects and grass roots actions should be integrated into the RBM system.
- > **Reporting periodically, publication, access to information and followup.** The access by all stakeholders to relevant information and data on an ongoing basis is key for RBM.

89. These steps are not exhaustive, but may assist in developing the RBM mechanisms needed for monitoring, and in identifying specific capacity gaps that should be addressed.

## VIII. CONCLUSION

90. Human rights norms and values and right based approaches to development serve to develop and to strengthen the underlying rationale for human development and poverty eradication strategies.

91. Fundamentally, a human rights based approach to poverty is about empowerment of the poor. Empowerment is facilitated through the introduction of the concept of rights, which recognises the existence of the legal entitlements of rights holders - the hungry and malnourished in the case of the right to adequate food - and of legal obligations of duty bearers towards the former. For the right to food this is reflected through the Voluntary Guidelines, including in key areas such as policies, strategies, access to resources and assets, nutrition and support for vulnerable groups. This focus on the poor and the needy for their empowerment is amply reflected in calls for increased spending on the hungry and malnourished, for better targeting of those to be assisted, for those targeted to have a say in how services are provided, and for poor communities to be empowered to control the way money set aside for them is spent. In this context, it is clear that the design and

operation of an effective RBM system for the right to adequate food would be instrumental to the progressive realization of the right.

92. The value of the Voluntary Guidelines is that they have moved beyond the normative content of the right to adequate food to a more practical interpretation of the concept. They provide a framework to start operationalizing the right to food, including through the establishment of monitoring mechanisms. On a broader level, they also provide a rights based framework with which to address food security, and wider development goals and approaches. At each level, they offer the important advantages of defining goals, accountabilities and obligations, of protecting consistency of efforts to improve food security over time and of ensuring effective monitoring of progress. A rights based approach to food security empowers rights holders and duty bearers alike. Above all, it makes the commitment to get rid of hunger entirely unambiguous, and monitoring the implementation of the right is essential for the fulfilment of the commitment.

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**ANNEX I**

# INDICATOR DEVELOPMENT FRAMEWORK 1

Normative Principles		FOOD SECURITY				
		ADEQUATE FOOD			SUSTAINABLE SUPPLY OF ADEQUATE FOOD	STABLE ACCESS TO ADEQUATE FOOD
		Dietary adequate (Quantity, Nutritional Quality)	Safe for human beings to eat	Culturally acceptable	Environmentally and economically sustainable food systems	Physical and economic access to food within the household's livelihood
Level of State Obligations						
RESPECT						
PROTECT						
FULFIL	Facilitate					
	Provide					



## ANNEX II

# INDICATOR DEVELOPMENT FRAMEWORK 2

## I. FOOD ADEQUACY

ATTRIBUTE/ ASPECT OF REALIZATION	INDICATORS - STRUCTURE, PROCESS, OUTCOME
DIETARY ADEQUACY/ NUTRITION	<ul style="list-style-type: none"> <li>■ <i>Has the right to adequate food been ratified and incorporated in the national legal framework and regulations?</i></li> <li>■ <i>Is there a national nutrition policy and culturally sensitive norms on desirable nutrients for the population?</i></li> <li>■ Proportion of local governments implementing such a policy?</li> </ul>
	<ul style="list-style-type: none"> <li>■ Proportion of population not able to consume the desired normative calorie requirement of adequate diet</li> <li>■ Proportion of population suffering from malnutrition/ contextually relevant nutrient deficiency</li> <li>■ Average calorie intake of the bottom three-(income/consumption) deciles as a proportion of the top three deciles of the population</li> <li>■ Average calorie/protein intake of the identified vulnerable group of the population as a proportion to the total population</li> <li>■ Proportion of underweight children below age five years</li> </ul>
	<ul style="list-style-type: none"> <li>■ Proportion of vulnerable population (school going children, expectant mothers, non-working aged population or other social groups) covered under public/social programmes to supplement nutrition intake</li> <li>■ Proportion of population/females exposed to public information and education on nutrition</li> </ul>
FOOD SAFETY & CONSUMER PROTECTION	<ul style="list-style-type: none"> <li>■ Is there adequate national food safety (processing, distribution) and consumer protection legislation?</li> <li>■ Do the courts enforce consumer protection and food safety legislation?</li> </ul>
	<ul style="list-style-type: none"> <li>■ The disposal rate/average time for consumer protection cases to be heard</li> <li>■ Number of persons prosecuted under food safety and consumer protection laws</li> <li>■ Number of recorded deaths/incidence of food poisoning related to consumption of adulterated food.</li> </ul>
	<ul style="list-style-type: none"> <li>■ Proportion of social sector public expenditure devoted to consumer protection advocacy, education and implementation of laws and regulations</li> </ul>
CULTURAL ACCEPTABILITY	<ul style="list-style-type: none"> <li>■ <i>Are policies on agriculture production, food pricing and availability sensitive to local preferences and needs?</i></li> <li>■ Indicators to monitor changes in consumption patterns for factors other than affordability</li> </ul>

## II. FOOD AVAILABILITY

ATTRIBUTE/ ASPECT OF REALIZATION	INDICATORS - STRUCTURE, PROCESS, OUTCOME
FOOD AVAILABILITY	<ul style="list-style-type: none"> <li>■ Per capita availability of major food items of local consumption</li> <li>■ Proportion of per capita availability of major food items met through domestic production</li> <li>■ Proportion of per capita availability of major food items met through international food aid</li> <li>■ <i>Does the State undertake or sponsor buffer-stock operations for major food items?</i></li> <li>■ Proportion of the average buffer-stocks to annual domestic production</li> </ul>
	<ul style="list-style-type: none"> <li>■ <i>Have necessary (contextually relevant) land and tenure reforms (land consolidation, titles to tillers, redistribution etc.) been undertaken to support improvement in domestic capacity for agriculture production?</i></li> <li>■ <i>Do property, inheritance and other regulatory laws support improvement in capacity for agriculture production</i></li> <li>■ Proportion of female headed-households with a clear title to agriculture land</li> <li>■ Coverage of publicly provided agriculture extension services, including to the allied sectors of livestock, forestry and fishing</li> <li>■ Proportion of public development budget allocated to agriculture extension, irrigation and marketing infrastructure</li> <li>■ Average availability of agricultural credit per unit of cultivated land</li> </ul>

## III. FOOD ACCESSIBILITY

ATTRIBUTE/ ASPECT OF REALIZATION	INDICATORS - STRUCTURE, PROCESS, OUTCOME
FOOD ACCESSIBILITY	<ul style="list-style-type: none"> <li>■ Incidence of hunger in the country/proportion of population not getting two square meals in a day</li> <li>■ Incidence of poverty in the country/proportion of population living below the national poverty</li> <li>■ Proportion of population with access to potable water</li> <li>■ Average household expenditure on food for the bottom three deciles of the population</li> <li>■ Proportion of average household expenditure on food of the bottom three deciles (or vulnerable group) to the top three deciles of the population</li> </ul>
	<ul style="list-style-type: none"> <li>■ <i>Is there a publicly funded programme for distribution to improve the accessibility of the population to food?</i></li> <li>■ Share of household consumption of major food items for vulnerable groups met through public distribution system</li> <li>■ Share of total public expenditure on food subsidy directed at food security</li> </ul>
	<ul style="list-style-type: none"> <li>■ Unemployment rate for the vulnerable segments of the labour force viz. unskilled workers and agricultural landless workers</li> <li>■ Average real wage levels (adjusted for inflation) for vulnerable segments of the labour force</li> <li>■ Work participation rates by gender and by vulnerable segments of the population</li> <li>■ <i>Is there a national policy to address food availability and accessibility during natural disasters and emergencies?</i></li> <li>■ Are movement in agriculture terms of trade at the national and international level monitored for their impact on the vulnerable groups of agricultural producers and consumers?</li> </ul>

## ANNEX III

# INDICATOR DEVELOPMENT FRAMEWORK 3

<b>INPUTS</b>	Allocation and availability of human, financial and other resources. Conditions under which resources are made available to implementing institutions.
<b>PROCESSES</b>	Procedures and operational mechanisms being applied in right to food actions, including resource management procedures, institutional linkages, stakeholder participation in decision making, mechanisms for accountability. Policy and regulatory environments.
<b>OUTPUTS</b>	Immediate results of right to food actions and activities, e.g. higher skill levels, increased food production, greater awareness of economic, social and cultural rights (ESCRs).
<b>INTERMEDIATE OUTCOMES</b>	Changes in income levels, better social and governance conditions, better access to higher quality public services, higher educational attainment, improved health and nutritional status, and other outcomes that directly affect the well being of the poor.
<b>FINAL OUTCOMES (IMPACTS)</b>	Improvements in peoples' well being. Fewer right to adequate food violations.

## ANNEX IV

# USERS AND USES OF RIGHTS-BASED MONITORING INFORMATION

INFORMATION USERS (DUTY BEARERS AND RIGHTS HOLDERS)	USES OF RIGHTS-BASED MONITORING INFORMATION
<b>Individuals, Families and different Social Groups (Rights Holders)</b>	<ul style="list-style-type: none"> <li>■ Reaffirmation of their rights</li> <li>■ Basis for claiming non-realized rights</li> <li>■ Inform civil society representatives of participation in social control mechanisms</li> <li>■ Effective participation in public debates on rights issues</li> <li>■ Grass roots political and social mobilization and control</li> <li>■ Greater awareness of the relation between food, nutrition, rights and broader development issues</li> </ul>
<b>Civil Society Organizations (Non-governmental and community organizations, Labour Unions, Professional Associations, Consumer Protection Agencies)</b>	<ul style="list-style-type: none"> <li>■ Formulation of projects and action plans</li> <li>■ Policy advocacy <i>vis-à-vis</i> central and local authorities and technical cooperation agencies</li> <li>■ Social mobilization</li> <li>■ Informal education and training</li> </ul>
<b>Public Sector Technical Staff (National and sub-national [province, district, local] levels)</b>	<ul style="list-style-type: none"> <li>■ Reaffirmation of their obligations as duty bearers</li> <li>■ Recognition of existing capacity gaps in the service</li> <li>■ Orientation for technical action</li> <li>■ Preparation and monitoring of action plans</li> <li>■ Analysis and formulation of policy and programme options</li> <li>■ Monitoring of local and targeted programmes and projects</li> <li>■ Advocacy <i>vis-à-vis</i> central authorities and technical cooperation agencies</li> </ul>
<b>Local Government Authorities</b>	<ul style="list-style-type: none"> <li>■ Identification of capacity gaps and training needs in local public services</li> <li>■ Formulation and monitoring of local policies and plans</li> <li>■ Administration and allocation of financial resources</li> <li>■ Advocacy <i>vis-à-vis</i> central authorities</li> </ul>
<b>Public Policy and Programme Decision Makers</b>	<ul style="list-style-type: none"> <li>■ Monitoring the fulfilment of State obligations – goals, benchmarks, etc.</li> <li>■ Budget planning</li> <li>■ Formulation and monitoring of sector plans and programmes</li> <li>■ Formulation of development strategies and plans</li> <li>■ Planning of public services</li> <li>■ Periodic reporting on the realization of ESCRs - nationally and internationally</li> </ul>
<b>Legislators</b>	<ul style="list-style-type: none"> <li>■ Formulation of legislative bills – social and economic policy</li> <li>■ Allocation of public resources</li> <li>■ Monitoring public policies and programmes</li> <li>■ Monitoring the effective utilization of public funds</li> </ul>
<b>Legal System Operators</b>	<ul style="list-style-type: none"> <li>■ Monitoring the access to justice and rights by different social groups</li> <li>■ Monitoring the impact of judicial decisions on rights promotion</li> </ul>
<b>Mass Media</b>	<ul style="list-style-type: none"> <li>■ Preparation of print articles, and radio and television reports on food security and nutrition issues, policy debates and current events</li> </ul>
<b>Researchers/Analysts</b>	<ul style="list-style-type: none"> <li>■ Studies and analysis of food and nutrition issues and policies</li> </ul>
<b>Training Institutions</b>	<ul style="list-style-type: none"> <li>■ Training needs assessments</li> <li>■ Preparation of capacity building initiatives</li> </ul>
<b>Donors</b>	<ul style="list-style-type: none"> <li>■ Formulation and monitoring of technical co-operation projects</li> <li>■ Resource allocation</li> </ul>

# RIGHT TO FOOD PRINCIPLES AND INTERNATIONAL TRADE AGREEMENTS

# 3

## I. INTRODUCTION

1. Part of the debate in the Inter-Governmental Working Group (IGWG) for the Elaboration of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the context of National Food Security has focused on the question of whether and how international factors influence or determine the progressive realization of the right to adequate food within national jurisdictions.<sup>1</sup>

2. This paper addresses only one aspect of the international environment, namely international trade agreements. Its purpose is to discuss how these agreements influence policies governing agricultural production and trade, food security and ultimately policies necessary for the realization of the right to adequate food.

3. The Uruguay Round Agreements, concluded in 1994, are the most important source of multilateral trade rules governing domestic agricultural and trade policies. Although almost all World Trade Organization (WTO) agreements influence agricultural policies to some extent and have an impact on food security, the following four agreements are most relevant: Agreement on Agriculture (AoA); Agreement on the Application of Sanitary and Phytosanitary Measures (SPS); Agreement on Technical Barriers to Trade (TBT); and Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

4. The paper is divided into four sections. Following this introduction, Section II provides an overview of relevant international agreements and covenants, and the concepts of right to food and food security. Section III, the substantive part of the paper, examines the main question posed in this

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<sup>1</sup> Right to food is in this paper taken to encompass both the right to adequate food and the fundamental right to be free from hunger.

paper, namely how various international trade rules influence domestic policies in the area of agriculture and food security, and thus have consequences for the realization of the right to adequate food. Section IV concludes the paper.

## II. INTERNATIONAL AGREEMENTS AND THE RIGHT TO ADEQUATE FOOD

5. The right to adequate food is recognized in Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), among several other instruments of a binding and non-binding nature.<sup>2</sup> The World Food Summit Declaration reaffirms “the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger”. The Declaration of the World Food Summit: *five years later*, and several United Nations General Assembly resolutions have reaffirmed the same right.

6. Article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living, including food, for themselves and their families. A first explicit link between the realization of the right to food and international trade, although not exclusively limited to it, is expressed in Article 11 (2), which states that “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, 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”.

7. In response to the invitation of the World Food Summit Plan of Action (objective 7.4), the Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment 12,<sup>3</sup> in which it developed the normative content of the right to adequate food reflecting the core minimum obligations of states as well as obligations of the international community. As indicated in General Comment 12, the right of everyone to adequate food is realized when everyone has physical and economic access at all times to adequate food or to the means for its procurement (para. 6). Enjoyment of the right implies:

<sup>2</sup> FAO. 1999. *Legislative Study 68, Extracts from international and regional instruments and declarations, and other authoritative texts addressing the right to food*. Rome. Available at [www.fao.org](http://www.fao.org).

<sup>3</sup> *General Comment 12, The right to adequate food (Article 11 of the Covenant)*, Committee on Economic, Social and Cultural Rights, UN Document E/C.12/1999/5, 5 May 1999.

- > The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals (free from adverse substances). Availability refers to the possibility for people to feed themselves directly from the land or other natural resources, or from well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed (paras. 8 and 12);
- > The access to food in ways that are sustainable and that do not interfere with the enjoyment of other human rights. Access implies both economic and physical access. Economic access implies affordability and that financial costs related to food are not so great or high as to threaten the enjoyment of other basic rights. Physical access implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, victims of natural disasters, and other people living in isolated areas and situations that require special attention. (paras. 8 and 13).

8. In General Comment 12, the CESCR identified minimum essential levels of the right to food which states have the obligation to ensure. They comprise, at the very least, the fundamental right to be free from hunger and the right to have access to food without discrimination. Although the principal obligation is to take steps to achieve *progressively* the full realization of the right to adequate food, with states having to move as expeditiously as possible towards that goal, every state should ensure for everyone under its jurisdiction non-discriminatory access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger. States should respect, protect, promote and provide the right to food for their people and should also ensure that existing levels of enjoyment of access to food and adequate nutritional status are not rolled back. This imposes the obligation to carefully assess any policy measure that is likely to have an impact on the realization of the right to food in the country, in particular of the most vulnerable.

9. The CESCR also considered that states have responsibilities with respect to the realization of the right to food in other countries. States should take steps to respect, protect and fulfil this right in other countries (para. 36); facilitate access to food and provide necessary food aid where required in a way that does not threaten sustainable local food security; and take into account their obligations regarding the right to food when negotiating and concluding international agreements. This would seem to require states to bear in mind the effects of their national agricultural and food policies, including food aid, on the enjoyment of the right to food in other countries.

10. The most widely accepted definition of food security is articulated in the 1996 World Food Summit Declaration as follows: “*Food security exists when all people, at all times, have physical and economic access to sufficient, safe and*

*nutritious food to meet their dietary needs and food preferences for an active and healthy life*". Some defining features of this concept are the emphasis placed on food security at the level of both individuals and households; the three dimensions of availability, access and stability; and nutrition and quality aspects of food. Amartya Sen's entitlements approach to food security is another widely accepted analytical framework for food security. The four entitlements in his framework are production-based entitlement, trade-based entitlement, entitlement based on the exchange of labour, and transfer-based entitlement. In view of the emphasis on multiple pathways to food security, the latter framework is also useful for assessing the linkage between multilateral trade rules and food security.

11. A human rights approach to food and nutrition problems is considered fundamentally different from basic needs-oriented approaches to development.<sup>4</sup> The former introduces a normative basis which is obligatory at the state level. It also implies that the "beneficiaries" of development are active *subjects* and "right holders" and stipulates the duties or obligations of those against whom such claims can be made. By placing strong emphasis on the equal rights of everyone without discrimination, a rights-based approach focuses on national and household food security and helps to ensure food security at the individual level (men and women, boys and girls included). Finally, such an approach introduces an accountability dimension not present in basic needs strategies whereby rights holders are able to bring their concerns and interests to their authorities and hold the latter accountable for the policies and actions they take.

12. Thus, while the dimension and causes of food insecurity vary from country to country, leading to different solutions in different settings, it is increasingly recognized that legal recognition and protection of the right to food could be used to further food security in all countries.<sup>5</sup>

13. The adoption of a human rights and, in particular, a right to food perspective to international trade rules and policies implies the application of the above principles of participation, accountability, equality and non-discrimination and recognition of legal rights to the process of elaborating and enforcing those rules and implementing policies.

<sup>4</sup> This paragraph draws from the Introduction chapter, *The Right to Food in Theory and Practice*, by Mary Robinson, former United Nations High Commissioner for Human Rights. FAO, Rome, 1998. Available at [www.fao.org](http://www.fao.org).

<sup>5</sup> Consolidated report of six case studies, *Implementing the Right to Adequate Food: The Outcome of Six Case Studies*, document IGWG/RTFG INF/4. FAO, Rome, June 2004.



### III. ANALYSIS OF SELECTED WTO AGREEMENTS IN THE CONTEXT OF FOOD SECURITY AND RIGHT TO FOOD

14. To the extent that trade contributes to increased economic activities that generate employment and incomes for food-insecure population groups, almost all WTO Agreements have an impact on food security to a varying degree. For example, both the Agreement on Textiles and Clothing, and the Services Agreement are important for economic growth, employment and income generation for many developing countries. However, because of the nature of the topic, and in view of the overwhelming importance of the agricultural sector for food security, this paper covers only four WTO Agreements (AoA; SPS; TBT and TRIPS) and the Marrakesh Decision.<sup>6</sup>

#### Agreement on Agriculture

15. The long-term objective of the AoA is to establish a fair and market-oriented agricultural trading system through substantial progressive reductions in subsidies and protection. Food security is mentioned in the preamble of the AoA in connection with the way in which commitments under the reform programme should be made, but underlying the various WTO Agreements is the objective of raising standards of living which implicitly should benefit food security. Other international declarations and agreements also reflect this common understanding among the international community, i.e. that trade is not an end in itself but a means to development.<sup>7</sup>

16. The main issue addressed here is how and to what extent AoA rules promote or restrain the ability of states, in particular food-insecure ones, to pursue food security policies at the national level, including from a rights-based perspective. States meeting at UNCTAD XI recognized that “increasing interdependence of national economies in a globalizing world and the emergence of rule-based regimes for international economic relations have meant that the space for national economic policy ... is now often framed by international disciplines,

<sup>6</sup> The Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries, as agreed as part of the Uruguay Round Agreement.

<sup>7</sup> “Trade is not an end in itself, but a means to growth and development. Trade and development policies are an important instrument inasmuch as they are integrated in national development plans and poverty reduction strategies aiming at goals such as growth, economic transformation and production, diversification, export value-added, employment expansion, poverty eradication, gender equity, and sustainable development. Coherence and consistency among trade and other economic policies being pursued at the national, bilateral, regional and multilateral levels by all countries are important for maximizing the contribution of such policies to development.” Sao Paulo consensus, United Nations Conference on Trade and Development, doc. TD/410, 25 June 2004, para. 63.

commitments and global market considerations.” While it is left to each government to strike the right balance between international disciplines and commitments, and national policies, it is also recognized that it is particularly important for developing countries to take into account the need for such a balance.<sup>8</sup> States should, however, safeguard adequate policy space to be able to carry out policies and strategies aimed at realizing progressively the right to adequate food for their people.

17. The relation of the AoA to food security is examined by means of the following questions:

- > Is the AoA as a whole conducive to food security, i.e. does it contain elements that contribute to food security in food-insecure countries?
- > Do the AoA rules limit the ability of food-insecure states to adopt measures aimed at the realization of the right to adequate food and to pursue rights-based approaches to food security?

**(a) Is the AoA as a whole conducive to food security, i.e. does it contain elements that contribute to food security in food-insecure countries?**

18. In brief, the dominant view is that the AoA is conducive to food security. This conclusion is based largely on analyses that compare a counterfactual scenario (the continuation, in the absence of the AoA, of distortions to world agricultural markets that existed prior to the Uruguay Round) with the post-AoA situation when distortions are disciplined and reduced. The majority of these studies conclude that distortions have negative effects both on countries that subsidize and, more importantly, on other countries. Thus, the reforms initiated by the AoA could make positive contributions to agricultural development and food security. The following two paragraphs summarize the importance of the reform process in general and the need for some pro-active agricultural development and food security measures for food-insecure countries.

**19. Trade distortions introduced by trading partners have an impact on food security in other countries.** Understanding how food-insecure countries are affected by policy distortions of trading partners is important, especially from a rights-based perspective. Many of the negative effects of these distortions, such as depressed and unstable world market prices, reduced access to markets in the distorting countries, and unfair export competition in third-country markets, are well known. It is also well known that while developed countries account for most domestic and export subsidies (about 90 percent),

<sup>8</sup> Ibid. para. 8. In relation to the need for an appropriate balance between international commitments and national policy space it is also noted that in increasing the participation of developing countries in global export growth their specific needs should be taken into account, considering further that there is no one-size-fits-all trade and development strategy. Paragraph 66.

both developed and developing countries contribute to high tariff-induced distortions. A counter argument often advanced is that these distortions have also made some positive contributions to food security by supplying food to world markets at lower prices, thus making food more affordable to the needy. Similar arguments apply to the availability of food aid. These benefits must be assessed against the costs that such distortions create. Given that a majority of developing countries, including both food-insecure countries and those that are large-scale importers of basic foods, have taken a position in the WTO negotiations to reduce these subsidies, it seems that they expect net positive gains from continuing the reform process as a whole.

20. Moreover, distortions, especially of food markets, make it difficult for non-subsidizing countries to achieve reform. Thus, for example, depressed world market prices reduce farm incentives which may lead governments to raise tariffs that can have other economic costs. Similarly, export subsidies are often associated with import surges. The distortions also make non-subsidizing countries less competitive in third country markets.

21. Thus, these distortions may have negative effects on production and trade and make it harder for food-insecure countries to implement sound food security policies. While the Uruguay Round subjected these distorting policies to the rules-based system, it did not reduce the level of distortions to any great extent.<sup>9</sup> The latter is being attempted under the Doha Development Agenda negotiations which could thus have important implications for non-subsidizing, and largely food-insecure, countries.

**22. *Similar or identical trade rules often lead to dissimilar outcomes when there are imbalances in economic conditions across countries.*** Experience since 1995 shows that most developing countries have not been able to take full advantage of the “policy space” provided by the AoA (see (b) below) due to lack of financial resources and institutional capability. Thus, even if the AoA were balanced in terms of “policy space”, the outcome could vary from one country to another because some countries utilize this space fully (e.g. in supporting agriculture), while others cannot afford to do so.<sup>10</sup> Similarly, while some countries have the capability to resort to general trade remedy measures, others do not. Another example is the often vast difference in technical standards (e.g. food quality in the context of the SPS Agreement) between rich and poor countries. This difference often leads to an asymmetric response to trade liberalization in that, given the same degree of market opening by

<sup>9</sup> See *The Uruguay Round Agreement on Agriculture: An Evaluation of its Implementation in OECD Countries* for the analysis and this conclusion. OECD, Paris, 2001.

<sup>10</sup> Financial constraints aside, it is also possible that support to agriculture could be delayed because governments do not give adequate priority to this sector.

both parties, an exporter with higher domestic SPS standards (notably rich countries) would not face market access constraints on SPS grounds, while an exporter with lower standards (notably many poorer countries) may face binding access constraints. As a result, trade response to liberalization becomes asymmetric.

23. The main point made here is that, even where multilateral trade rules are similar, various asymmetries across rich and poor countries make the outcomes dissimilar. While imbalances in the AoA can for example be addressed through multilateral negotiations, this is not enough to reduce or eliminate the asymmetries in outcomes without several pro-active measures targeted at lower-income, food-insecure countries, e.g. investment in agriculture, technical standards, institutional capability etc, that will assist them to improve their capacity to use the opportunities and mechanisms offered by international trade rules.

24. This asymmetry has implications for states' compliance with obligations on the right to food. States parties to the relevant agreements have a duty to take all appropriate measures to progressively realize the right to adequate food, including by using all possibilities, flexibilities and/or policy space allowed under trade agreements within the limits of their available resources.

25. Recognition of differences across countries in their capacity to respond to trade liberalization has been reflected in international trade agreements and arrangements. For example, during the 70s, an additional chapter was introduced in the General Agreement on Tariffs and Trade – which was the only agreement at the time regulating multilateral trade on goods - on differential and special treatment of developing countries. The same years saw the birth of the Generalized System of Preferences whereby developed states extended additional tariff preferences to developing countries without demanding reciprocal concessions. Special and differential treatment was also inserted in the various Uruguay Round Agreements, giving developing countries longer periods of implementation and allowing them to undertake lower levels of commitments. One of the main criticisms of these provisions is that they have not always been implemented and are not as effective as expected. In general, special and differential treatment, which has also found an important place in the Doha Declaration, raises problems in deciding which group of countries deserves more special and differential treatment than others and on what account.

26. A final point on the question of whether the AoA contains elements that contribute to food security is the new WTO dispute settlement system. To some extent, the system has been effective in strengthening the capability of the developing countries to defend their rights. These countries have been able to bring complaints to defend their rights and have indeed been successful in

several cases. In the context of the AoA, recent examples include successful challenges to *inter alia* domestic and export subsidies given by developed countries to cotton and sugar.

**(b) Do trade rules limit the ability of food-insecure states to pursue rights-based approaches to food security?**

27. Having noted some of the effects of the AoA, including the issue of asymmetry in outcomes, this sub-section examines the AoA rules in terms of the “policy space” available for pursuing food security policies, including from a rights-based perspective. A number of key concerns expressed both by governments and non-governmental stakeholders in the context of food security are dealt with.<sup>11</sup> The main conclusion is similar in each case – that the AoA does not, in general, at this stage, limit the policy space to implement food security programmes, and that the main constraints are lack of funding and institutional capability, and, to some extent, political will.

28. **The AoA rules and the “right” to produce food and other agricultural products.** The AoA is concerned with reducing distortions such as protection and subsidies; it does not call for limiting production itself except in some specific contexts. Where food production was maintained by virtue of subsidies, reforms could lower production. However, this is not a characteristic of food-insecure countries.

29. Agricultural production is influenced by many trade and domestic policy instruments. Thus, the rules in all “three” pillars of the AoA (domestic support measures, market access and export subsidies) do play a role. Nevertheless, policy instruments that fall under domestic support measures are particularly relevant. The main question asked is to what extent the rules limit the range of support measures as well as the level of financial support provided for agricultural production.

30. Firstly, regarding trade-distorting subsidies that are disciplined by the AoA, relatively few developing countries applied these subsidies to a significant extent in the Uruguay Round base period (1986-88), and so they do not have any reduction commitments. The upper limit of subsidies for them is set by the so-called *de minimis* level - i.e. all developing countries

<sup>11</sup> There is a large and growing amount of literature on the linkage between the AoA reform process and food security. See for example “Some issues relating to food security in the context of the WTO negotiations on agriculture”, and “Incorporating food security concerns in a revised Agreement on Agriculture”, both published in *FAO Papers on Selected Issues relating to the WTO Negotiations on Agriculture*, FAO, Rome, 2001. The linkage is also analyzed in *The Medium-term Impacts of the Trade Liberalization in OECD Countries on the Food Security of Non-member Countries*, Document COM/AGR/TD/WP (2001) 74/FINAL, OECD, Paris, 2002. There is also a chapter on this subject in *The State of Food Insecurity in the World, 2003*, FAO, 2003.

can grant subsidies up to 10 percent of the value of production of specific products (e.g. price support for rice, cotton, etc.) and additional non product-specific subsidies (e.g. on fertilizers, seeds, etc.) up to 10 percent of the value of total agricultural production. Experience with the implementation of the AoA since 1995 has shown that most developing countries were able to utilize only a small part of the 10 percent limits.<sup>12</sup>

**31.** Secondly, AoA's Article 6.2 exempts some subsidies applied by developing countries from the above discipline, e.g. input subsidies to low-income or resource-poor producers, thus further expanding the room for trade-distorting subsidies. Despite this, Article 6.2 has been little used.

**32.** Thirdly, the AoA does not place any limit on all other subsidies that are considered to have no or minimal production and trade distortions. Commonly known as Green Box measures, these include, for example, research and extension, pest and disease control, training, various infrastructural services (electricity, roads, market and port facilities, etc.), insurance, regional development aids and so on.<sup>13</sup>

**33.** In addition, production is supported indirectly by tariffs and other barriers to trade that, in the case of importing countries, raise the domestic price to producers above world market prices. Though not a subsidy, this is frequently the most powerful instrument used to support production. Typically most developing countries have retained rather high bond tariffs for food products so that they have a considerable margin with which to help protect domestic production under the AoA.

**34.** The overall conclusion is that the AoA provides ample policy space for raising food and agricultural production. As already indicated, the binding constraint lies elsewhere, namely in the lack of support to agriculture rather than in the AoA rules.<sup>14</sup> The issues of imbalance and asymmetry discussed above apply equally to domestic support measures.

<sup>12</sup> This is based on *Developing Country Experience with the WTO Agreement on Agriculture and Negotiating Issues*, Ramesh Sharma, 2002. Paper presented at the International Agricultural Trade Research Consortium (IATRC) summer symposium on *The Developing Countries, Agricultural Trade and the WTO*, Vancouver, Canada, 16-17 June 2002. FAO country case studies also discuss these issues for 23 developing countries that were the subject of the study, *WTO Agreement on Agriculture Implementation Experience: Developing Country Studies*. Rome. 2003. Available at [www.fao.org/trade](http://www.fao.org/trade).

<sup>13</sup> Three Green Box measures that are directly relevant for food security-oriented programmes (stockholding, subsidized food distribution and employment generation) are discussed below.

<sup>14</sup> Note also that almost all the measures for reducing hunger in the FAO Anti-Hunger Programme are those that fall under the Green Box category, i.e. they are not disciplined by the AoA.

**35. Safeguarding domestic markets from disruptions such as import surges.** This is an important food security objective, especially for many food-insecure countries where small farmers predominate, and price and income safety measures are lacking. The phenomenon of import surges, which have increased particularly since the mid-1990s for basic foods, is often linked to trade liberalization.<sup>15</sup> From a rights-based perspective to food security, it can be argued that farmers have a right to be safeguarded from these shocks. This requires governments to have access to appropriate instruments, which in the WTO framework include the following:

- > Raising applied tariffs up to the limit set by WTO bound rates;
- > Resorting to the Special Safeguard (SSG) of the AoA; and
- > Resorting to general trade remedy measures, i.e. anti-dumping, countervailing and emergency safeguards.

**36.** Experience since 1995 shows that many developing countries resorted to the first option when faced with import surges, partly because they did not have access to the SSG<sup>16</sup> and partly because they lacked capability to resort to general trade remedy measures. A proposal has been made in the ongoing negotiations for a Special Safeguard Mechanism for developing countries that is expected to be similar to the SSG. Access to this safeguard would be valuable for them from the standpoint of a rights-based approach to food security. At the same time, it is equally important for governments to develop capability in general trade remedy measures.

**37. Stockholding food for stabilizing domestic prices and for emergency food security needs.** The former, i.e. releasing stocks when domestic prices are high and *vice versa*, used to be a popular policy in developing countries; however, this form of market intervention is no longer common. By contrast, maintaining food security stocks for emergency needs is fairly widespread. From the standpoint of a rights-based approach, the question is whether the AoA limits these options.

**38.** The answer is no. Firstly, the AoA places all expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products that are part of a food security programme in the Green Box category, i.e.

<sup>15</sup> Several cases of import surges were reported in country case studies. See *WTO Agreement on Agriculture Implementation Experience: Developing Country Studies*. FAO. Rome. 2003. Available at [www.fao.org/trade](http://www.fao.org/trade). Several national and international civil society organizations have also documented cases of import surges based on field work. See also *Some Trade Policy Issues Relating to Trends in Agricultural Imports in the Context of Food Security*, Document CCP/03/10, 64th Session of the Committee on Commodity Problems, 18-21 March 2003, FAO, Rome.

<sup>16</sup> Access to SSG was made conditional on “tariffication” of non-tariff barriers, which many developing countries did not resort to. As a result, only 21 of them have access to the SSG.



there are no limits to the outlay. This also applies to government aid to private storage as part of such a programme. There is a requirement that the volume of such stocks correspond to predetermined targets related solely to food security, which should not be a difficult condition to meet. Moreover, for developing countries, subject to meeting these criteria, stocks of foodstuffs for food security purposes can be acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is counted as trade-distorting subsidies (measured as Aggregate Measurement of Support or AMS). Given the considerable scope for raising AMS levels up to the 10 percent level, this is unlikely to be a constraint.

**39. Implementing subsidized food distribution programmes.** This is a fairly common food security programme. In the AoA, it is called “domestic food aid” and falls under Green Box measures. It is stated that the eligibility to receive food aid shall be subject to clearly-defined criteria related to nutritional objectives, and that such aid should be in the form of direct provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or at subsidised prices. It is explicitly stated that the provision of foodstuffs at subsidised prices with the objective of meeting the food requirements of the urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the AoA. Thus, the AoA does not prevent developing country governments from providing such assistance, including food free of cost to the most needy.

**40. Implementing guaranteed employment schemes for food-insecure population groups.** These are also effective measures to combat hunger, especially seasonal food insecurity. Being guaranteed by law, they are good examples of a rights-based approach to food security. One widely cited rights-based scheme is the Maharashtra Employment Guarantee Scheme of India which came into operation in 1997. Many food-for-work programmes also fit into this category, albeit belonging to the non-guaranteed category. However, probably for budgetary reasons, there are relatively few examples of *guaranteed* schemes in developing countries, despite their attraction both for reducing hunger and for creating rural infrastructure. In the context of this paper, what is important is that neither the AoA nor other WTO agreements restrict this type of scheme.

### **The Marrakesh Decision – safeguarding against some food insecurity risks through a multilateral transfer mechanism**

**41.** During the Uruguay Round, negotiators were concerned that agricultural reform could have negative effects on least-developed and net food-importing developing countries (LDCs and NFIDCs) in terms of the availability of



adequate supplies of basic foodstuffs from external sources on reasonable terms and conditions, including short-term difficulties in financing normal levels of commercial imports. Several analyses had shown that the reform process was likely to increase food import bills as world prices of basic foods were expected to increase, and that these countries could be more dependent on food imports as they also open their economies, while at the same time food aid would probably decline. The response was the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. The *Decision* included four response mechanisms: food aid; short-term financing of normal levels of commercial imports; favourable terms for agricultural export credits; and technical and financial assistance to improve agricultural productivity and infrastructure.

42. The *Decision*, however, has not been implemented. Even during 1995-96, when world prices of basic foods soared, none of the response mechanisms was triggered within the framework of the *Decision*. The Doha WTO Ministerial Conference included the *Decision* as one of the implementation issues, and subsequently the WTO formed an inter-agency panel to examine this matter. Some analyses have been conducted by FAO (on a Revolving Fund considered there), but little progress has been made since then.

43. The *Decision*, if it had been implemented, would have been a good example of Amartya Sen's "transfer-based entitlement" to food security at the multilateral level. Having the *Decision* in place as intended would have contributed to food security as this would help developing countries to reform their agriculture by providing an effective safeguard for difficult times.

### **Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)**

44. Three aspects related to the TRIPS Agreement are important in the context of food security in general and for a rights-based perspective in particular. These are: protection of plant varieties (Article 27.3b of the TRIPS); right of protection of traditional knowledge; and the public's access to genetic resources and benefit sharing.<sup>17</sup>

45. Article 27.3(b) of the TRIPS requires all WTO Members to provide Intellectual Property Rights (IPR) protection to plant varieties, either by patents or by an effective *sui generis* system or by any combination thereof.

<sup>17</sup> Extending "Geographical Indications" to products other than wines and spirits, especially to traditional products of developing countries, is also relevant to food security as the benefits often extend to marginal and disadvantaged areas.

This *sui generis* option provides valuable policy space for most developing countries because, under a system of patents, farmers would be prohibited from using seeds from patented varieties without the consent of the patent holder. As seeds saved by farmers and exchanged among themselves can account for up to 80-90 percent of the total seed requirements in developing countries, a patent system could severely constrain subsistence farming and food security.

46. Many developing countries are in the process of formulating *sui generis* legislation. In doing so, they need to take advantage of provisions in other treaties and conventions. For example, the International Treaty on Plant Genetic Resources for Food and Agriculture recognizes farmers' rights, including the protection of traditional knowledge, the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources, and the right to participate in the decision-making process concerning their management. In addition, no limits can be imposed on the rights that farmers have to save, use, exchange and sell farm-saved seeds and propagating material.

47. Looking ahead, the Doha Declaration has directed the TRIPs Council to review Article 27.3(b) in order to examine the relationship between the TRIPs and the Convention on Biological Diversity (CBD), the protection of traditional knowledge and folklore and other relevant new issues raised by WTO Members. Pursuing this in the WTO is very important for developing countries, particularly in view of possible substantive implications for food security and for rights-based approaches.

## The SPD/TBT Agreements

48. The relation between the SPS/TBT Agreements and food security from the rights perspective has two aspects. First, according to the World Food Summit definition, food security requires "safe and nutritious food to meet dietary needs and food preferences". Thus, consumers have a right to safe food, and the SPS Agreement is the main multilateral framework for this. Second, the SPS/TBT Agreements contribute to food security by facilitating trade and thereby raising incomes.

49. Regarding the first point under the SPS Agreement, governments have the right to implement effective legislation and other safeguards to ensure food safety and quality, providing they do not discriminate arbitrarily or unjustifiably among WTO members nor act as a disguised restriction on trade. Such measures are essential for food security from a rights-based perspective, and therefore there are no apparent conflicts between the Agreements and food security.

50. It is an entirely different matter that many developing countries face enormous challenges in meeting food standards in export markets, notably in developed countries, and thus fail to take advantage of trading opportunities. Upgrading the levels of standards can be a very costly undertaking. The SPS Agreement includes non-binding provisions which recommend technical assistance for developing countries in this regard. FAO has been providing considerable amounts of technical assistance in these areas but there is still a large unmet need because of a shortage of finance.

#### IV. CONCLUDING REMARKS

51. The purpose of this paper is to discuss the likely implications of multilateral trade rules for food security in general and for a rights-based approach in particular, as a background paper in the context of the elaboration of draft Voluntary Guidelines on the right to food at the national level. Although all WTO Agreements impact on food security, the paper focuses on four of them with the most direct bearing on food and agricultural policies and trade - the AoA, SPS; TBT and TRIPS – as well as the Marrakesh *Decision*. The main question addressed in the paper was whether and how multilateral trade rules limit the ability of states to pursue the realization of the right to adequate food (within a rights-based approach to food security).

52. The following main points were noted in the analysis of the AoA. The reforms initiated by the AoA have the potential to make positive contributions to food security by limiting trade distortions which would have been more damaging in the absence of the Uruguay Round. Secondly, the Agreement provides sufficient “policy space” for all countries, including those that are food insecure, to pursue a right to food approach. That policy space, however, has not been used well. A few countries failed to do so because of their own policy choices and despite having resources, and thus neglected their obligations under the right to adequate food. However, in the vast majority of cases, they are constrained in taking advantage of the policy space by a lack of financial resources and weak institutional capability. The implementation experience since 1995 shows that, by contrast, countries with ample financial resources and capability have taken advantage of the policy space. The overall result is an asymmetry in *outcomes*, despite the same or similar *policy spaces*. A sharp divide in income levels between poor and rich countries has led to similar asymmetries in a number of areas, in terms of the ability to take advantage of the Agreements. The ongoing agricultural negotiations provide an opportunity to redress some of these imbalances, and thus to contribute to the “development” objective of the Doha Development Agenda.

53. It is worth noting in these negotiations that the CESCR, in General Comment 12, calls on states to be responsible with respect to the realization of

the right to food in other countries. Ensuring that damaging export subsidies and dumping do not occur are examples of such obligations.

54. In the case of the TRIPS Agreement, the main concerns from a food security point of view are the protection of plant varieties, the right to protection of traditional knowledge and the public's access to genetic resources and benefit sharing. The *sui generis* option to protect plant varieties is a valuable provision for most subsistence-oriented, food-insecure countries. It is, however, important for countries in the process of formulating *sui generis* legislation to take advantage of the provisions in other international treaties where the primary concern is with food security and agricultural development.

55. As regards the SPS/TBT Agreements, the main conclusion was that countries have the right to take measures to protect human life or health, and the SPS Agreement provides a framework for this. By also preventing arbitrary protectionism in trade, these Agreements help states to guarantee the rights of traders and farmers to engage in and gain from export trade. Currently, the majority of the developing countries face enormous challenges in meeting international technical standards, but there is little else that can be done here other than upgrading the standards.

56. Overall, it is a fact of life that trade liberalization produces both winners and losers, across countries and within countries. The across-country imbalances and asymmetries should be tackled through appropriate multilaterally negotiated trade agreements while individual states can make a difference in minimizing within-country imbalances. On the whole, the current multilateral trade rules provide considerable space for states to pursue rights-based approaches to food security at the national level, although the majority of these countries are constrained by lack of resources in taking advantage of the policy space. Lastly, the discussion throughout this paper has also stressed the importance for food-insecure countries in particular to participate effectively in the ongoing WTO negotiations so that the new Agreements are more balanced and development-friendly than at present.

# JUSTICIABILITY OF THE RIGHT TO FOOD

# 4

## I. INTRODUCTION

1. This paper concentrates primarily on the justiciability of the right to adequate food at the national level. Its purpose is to facilitate the deliberations of the Inter-Governmental Working Group (IGWG) on certain aspects of the Voluntary Guidelines on the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, in particular with regard to the governing legal framework, access to justice and the rule of law. It also aims to assist in the national implementation of the right to food, in the context of applying the Voluntary Guidelines.

2. Human rights obligations would have little meaning if the duty bearers could not be held accountable to rights holders and to society at large. Such accountability is put into practice through several institutions and processes. In a democratic society, political accountability is established through free and fair elections and may, in addition, include parliamentary scrutiny of the executive branch of government. Administrative accountability includes that of public officials to their superiors and to those whom they are mandated to serve.

3. Judicial and quasi-judicial accountability are established through legislation, its implementation and, in the final instance, the ability of a free and independent judiciary or quasi-judicial body to uphold the law through the effective enforcement of judicial pronouncements, thus supporting both the separation and balance of power.<sup>1</sup>

4. The question of the justiciability of economic, social and cultural rights has again re-surfaced within the context of the proposed Optional Protocol (OP) to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Debates on this potential international instrument provide a wealth of information concerning the general nature of rights enshrined in the ICESCR, from which lessons and examples may be drawn to inform the present discussion.

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<sup>1</sup> See Office of the High Commissioner for Human Rights, *Human Rights and Poverty Reduction: A Conceptual Framework*, United Nations, New York and Geneva, 2004.

It should be borne in mind, however, that within the context of the Voluntary Guidelines, arguments concerning the justiciability of the right to food are somewhat different. Firstly, the right to food is closely related to the right to life - a civil right, well-recognized in international and regional law and through a number of national constitutions.<sup>2</sup> Secondly, the IGWG is not debating whether an international quasi-judicial organ should be able to adjudicate potential state party violations of the ICESCR, but rather whether a competent national tribunal or quasi-judicial body would and should be able to make legal judgement as to whether the right to food had been adequately respected, protected and fulfilled.

5. While the right to food is justiciable in a number of states, others have voiced doubts as to whether the right to food should generally be considered to be justiciable and if so, whether it would be advisable for this right to be justiciable in all countries.<sup>3</sup> In general, however, most nations have recognized the justiciability of the right to food, or some aspects of same, through legislative efforts ranging from social security guarantees, through food safety regulations, to land tenure legislation. This information paper will provide a framework definition with regard to the justiciability of the right to food, prior to engaging in a review of how the different aspects of this right are, and can be, justiciable, as illustrated from the practice of numerous and diverse judicial and quasi-judicial bodies. Furthermore, arguments against the justiciability of the right to food will be thoroughly examined. Finally, where violations of the right to food are found to exist, available remedies are canvassed in order to demonstrate the positive role that judicial and quasi-judicial bodies can play in relation to the protection and promotion of all human rights, including the right to food.

## II. DEFINITIONS AND CONCEPTS

6. For the purposes of this information paper, the following working definition of justiciability is adopted, in relation to the right to food:

<sup>2</sup> See Art. 6 International Covenant on Civil and Political Rights which states: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”; on the scope of Art. 6 see Human Rights Committee, General Comment 6: The right to life, 30 April 1982, para. 5, U.N. Document HRI/GEN/1/Rev. 6 of 12 May 2003, p. 128 where the Committee notes that “the right to life has been too often narrowly interpreted (...) The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures (...) [it] would be desirable [if States took] all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”

<sup>3</sup> See “Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to support the progressive Realization of the Right to Adequate Food in the context of National Food Security”, *Recognition of the Right to Food at the national level*, FAO Document IGWG RTFG/INF2, Rome 2004 (hereafter “IGWG”).

*the possibility of a human right, recognized in general and abstract terms, to be invoked before a judicial or quasi-judicial body that can: first, determine, in a particular concrete case presented before it, if the human right has, or has not, been violated; and second, decide on the appropriate measures to be taken in the case of violation.*

7. What is at stake, therefore, is to determine whether the right to food as a general human right, recognized through national constitutions, regional instruments, international treaties or as general principles of law, is justiciable. On a conceptual level, the justiciability of the right to food within national, regional and international arenas receives support under international and regional law. Reference is made to Article 8 of the Universal Declaration of Human Rights (UDHR), which states:

*Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law.*

8. Addressing this issue, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) has advised that:

*The Covenant [ICESCR] norms must be recognized in appropriate ways, within the domestic legal order; appropriate means of redress, or remedies must be available to any aggrieved individual or group and appropriate means of ensuring governmental accountability must be put in place.<sup>4</sup>*

9. Further, through General Comment 12, the CESCR advised that 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”.<sup>5</sup> “Other appropriate remedies” refers, in particular, to those provided by quasi-judicial mechanisms.<sup>6</sup>

<sup>4</sup> Committee on Economic, Social and Cultural Rights, General Comment 9: The domestic application of the Covenant, U.N. Document E/C.12/1998/24 of 3 December 1998, para. 2 (hereafter “CESCR”).

<sup>5</sup> CESCR, General Comment 12: The right to adequate food, U.N. Document E/C.12/1999/5 of 12 May 1999, paras. 32-35.

<sup>6</sup> For the purposes of this paper, the concept “quasi-judicial mechanisms” denotes any non-judicial body that has the power to receive and consider complaints of individual or groups in a particular case. At the national level, a quasi-judicial mechanism is often found with a national human rights institution such as a human rights commission or a human rights ombudsman, whereas at the international level quasi-judicial bodies are, for example, the Human Rights Committee or the Committee for the Elimination of Racial Discrimination. Additionally see: Andreas Khol, *Zwischen Staat und Weltstaat: Die internationalen Sicherungsverfahren zum Schutze der Menschenrechte*, Wien 1969, p. 63. According to his study a quasi-judicial remedy implies that legal protection is provided by an independent organ, free from state influence, whose procedures are spelled out in general terms and which is empowered to take a legally non-binding decision in particular cases.

10. Regional instruments contain similar provisions on the right to a remedy. These include Art. 25 (1) of the American Convention on Human Rights and Art. 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In particular, the European Court of Human Rights has found the absence of remedies on the national level to be a violation of the ECHR.<sup>7</sup>

11. For the purpose of this paper, remedy is defined as a legal or judicial means by which a right is enforced or the violation of a right is prevented, redressed, or compensated. While remedies are not inherent in the concept of justiciability *per se*, the two concepts are clearly linked. A remedy is not necessary unless there has been a violation; the violation of a right can only be determined if the right in question is seen as justiciable. If a right is found not to be justiciable, then no remedy can be provided. Furthermore, the recognition of a right as being justiciable does not automatically lead to any particular kind of remedy. In some cases, a declaration that there has been a violation would suffice, in other cases the appropriate remedy might include the prevention of repetition, a change in the law, compensation, restitution or other financial measures.

12. It may also be useful to distinguish between insufficient or inadequate access or use of food resulting in malnutrition or undernutrition and whether such situation is the result of a violation of the concerned individual's right to food. While a chronically malnourished individual could almost certainly claim that his or her right to food and nutrition was not realized, in order for a justiciable violation to exist, account must be taken of whether and to what extent the State had an obligation to take or not to take certain action, including, as appropriate, the possible inability of the said State to take action with regard to the realization of this right, or other such possible defences.<sup>8</sup>

13. The distinction between obligations of result (the actual enjoyment of the right to food as measured, for instance, through collection of anthropometric data) and obligations of conduct (the State takes steps that are reasonably calculated to achieve the enjoyment of the right to food) is also significant in the context of justiciability. The right to food entails obligations of conduct and of result,<sup>9</sup> and both can be subject to determination by a competent organ as to whether a violation exists. The standards to be applied to assess whether a violation has occurred will vary, especially in view of the multifaceted nature of food insecurity and malnutrition. Thus, the mere existence of malnutrition in a given country is not conclusive in proving whether a violation of the right to food exists. However, if a country has relatively high income and relatively

<sup>7</sup> *Hatton and others v. United Kingdom*, Application No. 36002/97 of 8 July 2003.

<sup>8</sup> CESCR, General Comment 12, *op. cit.*, para 17.

<sup>9</sup> CESCR, General Comment 3, The nature of State parties' obligations, para. 1, U.N. Document HRI/GEN/1/Rev.6 of 12 May 2003, p. 14.



high levels of malnutrition, this could be an indication of a failure to take necessary and appropriate steps to the maximum of available resources.

### III. JUSTICIABLE DIMENSIONS OF THE RIGHT TO FOOD

14. With regard to the justiciability of the right to food and other economic and social rights, the South African Constitutional Court has affirmed that, “at the very minimum, socio-economic rights can be negatively protected from improper invasion”.<sup>10</sup>

This type of protection would be relatively easy to be justiciable in most jurisdictions. Negative protection of the right to food is similar to negative protection of other human rights, and merely requires that the State refrains from interfering with efforts made by individuals to feed themselves - that is, simply to respect this right. Consequently, negative obligations do not necessitate the utilisation of State resources, nor do they require a complex analysis of entitlements. Even a restrictive approach to economic, social and cultural rights leaves some space for justiciability:

*While governments intentionally violate civil and political rights with considerable frequency, the deliberate infliction of poverty, famine, or ill health is far less common. When it does occur – when deprivations are deliberately imposed on a population in whole or in part, especially from discriminatory motives – sanctions are, of course, appropriate.*<sup>11</sup>

15. Positive obligations to ensure that individuals have access to food in all circumstances have been increasingly viewed as justiciable. In order to fully understand the implications of such obligations, however, it may be useful to distinguish between different State obligations, or dimensions, related to the right to food. In the following paragraphs, the explicit obligations accepted by States Parties under the ICESCR will be discussed, prior to an examination of the different levels of State obligations, to respect, protect and fulfil this right. As noted below, State Parties are not under an obligation to adopt the wording of the ICESCR in national laws. However, in light of the wide ratification of the ICESCR and its likely influence on national adjudicators, these different obligations will provide the structure for the discussion.

16. In the following, international, regional and national jurisprudence will be cited. It should be noted, however, that while the cases do not all concern

<sup>10</sup> Ex parte Chairperson of the Constitutional Assembly: in Certification of the Constitution of the Republic of South Africa 1996 (First Certification judgment) 1996 (4) SA 744 (CC), paras. 77 - 78.

<sup>11</sup> Dennis, Michael J. and David P. Stewart, *Justiciability of Economic, Social and Cultural Rights: Should There Be an International Complaints Mechanism to Adjudicate the Rights of Food, Water, Housing and Health?*, American Journal of International Law, VOL 98, No 3, July 2004, at 498.

the right to food, they serve to illustrate the reasoning of Court judicial and quasi-judicial bodies regarding principles applicable to the right to food

## A. Explicit ICESCR obligations

17. While it is important to bear in mind that national constitutions will not necessarily incorporate the precise wording of the ICESCR, it may be useful to recall the explicit obligations that the ICESCR imposes on State Parties.

### 1. To take steps

18. The first explicit obligation under Article 2 of the ICESCR is that each State Party:

*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.*

19. In relation to the right to food, this paragraph essentially requires States Parties to “do something” - engage in actions dedicated to the realization of the right to food. While it is recognized that the full realization of this right can only be achieved over time and is subject to the availability of resources, States Parties to the ICESCR signalled their commitment to be accountable at the international level with regard to the right to food. National level accountability will depend on the domestic laws of a country, including the status of international treaties, Constitutional provisions, the rule of law and political accountability. For the purpose of this paper it will be assumed that countries have in one way or another undertaken to take steps towards the realization of the right to adequate food, Elaborating on the principle of “taking steps”, the CESCR has advised that States Parties cannot defer action indeterminately, even if the rights are to be realized progressively over time and are constrained by available resources.<sup>12</sup> However, the extent of such steps could vary according to the level of economic resources available.

20. With regard to negative obligations, “taking steps” vis-à-vis the right to food may involve the repeal of legislation that prevents people from satisfying their personal food needs through their own efforts. More generally, “taking steps” also implies that it is not allowed to take steps in the opposite direction, i.e. that would deprive individuals of access to food. Taking steps to fulfil positive obligations related to this right could include appropriate regulatory action and law enforcement, the establishment of social security systems or free food distribution schemes for those severely affected in times of famine.

<sup>12</sup> CESCR, General Comment 3, op. cit., para. 2.

21. In a potential right to food case where the “taking steps” obligation was at issue, a Court would perhaps inquire as to whether “any” steps had been taken to implement the right. If there was widespread starvation in a country and the government failed to take any steps to address the situation, this would surely be inconsistent with the obligations under the ICESCR, unless the reason was clearly inability rather than unwillingness to do so. Consequently, a national Court or commission would also have little trouble in declaring such a situation to fall within its competence, and hence, to be justiciable.

22. In *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*<sup>13</sup> (the “Ogoni Case”), the African Commission on Human and People’s Rights considered a communication that involved a violation of wide-ranging rights, including the right to food. The Commission had to consider whether or not the then military government of Nigeria had, through action and inaction, violated the rights of the Ogoni community. While the right to food is not explicitly enshrined in the *African Charter on People’s and Human Rights*, the African Commission read this right into the Charter and held that it was implicit in many other rights, such as the right to life, health, and to economic, social and cultural development. In its holding, the African Commission found that:

*Of course, the Commission here is not blaming the Nigerian Government for its endeavours to make use of its resources and thereby bring development to its people. Rather, the blame is qualified in that the Government has not taken such steps as would [be necessary] to protect the Ogoni population from harms done by the NNPC-Shell consortium.*<sup>14</sup>

23. The *Ogoni* Case demonstrates a concrete example of how the obligation “to take steps” can be judged. Thus it can be concluded that the obligation to take steps is justiciable.

## 2. Non-discrimination

24. The second explicit obligation relates to non-discrimination. According to ICESCR Article 2 (2) each State Party must

*guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

<sup>13</sup> Decision regarding Communication No. 155/96, Case No. ACHPR/COMM/A044/1 of 27 May 2002.

<sup>14</sup> *Ibidem*, para. 56.

25. In the words of the CESCR, Article 2 mandates that

*any discrimination in the access to food, as well as to means and entitlements for its procurement, on the grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights, constitutes a violation.*<sup>15</sup>

26. The principle of non-discrimination is reflected in the United Nations Charter, the UDHR, and is additionally reaffirmed in a large number of binding international and regional human rights instruments. Within the national context, the principle of non-discrimination is deeply rooted in numerous constitutions, common legislation and national jurisprudence. If national economic, social or cultural rights legislation and/or state programmes/actions were found to discriminate against persons on the basis of such unlawful criteria, the question of justiciability in this regard would be easily resolved. The following four cases are illustrative of this point.

27. In *Khosa and others v Minister of Social Development*<sup>16</sup> the South African Constitutional Court ruled on social security legislation, which was challenged on the basis that they excluded permanent residents who were non-citizens from having access to the social assistance scheme. The Court struck down the law as being unconstitutional and unreasonable as it excluded vulnerable persons lawfully residing in South Africa. By way of remedy, the Court judicially amended the legislation to remove its discriminatory effects, i.e. by “reading in” the words “or permanent resident” into the relevant provision.

28. In *F. H. Zwaan-de Vries v. The Netherlands*<sup>17</sup> the United Nations Human Rights Committee affirmed the principle of non-discrimination in relation to social rights when it ruled that Dutch legislation barring married women - but not married men - from obtaining unemployment benefits, was discriminatory and could not stand.

29. While the Constitution of the United States is silent on economic, social and cultural rights, it does contain provisions on equal protection under the law (14th Amendment), which the Supreme Court has used in the past to

<sup>15</sup> CESCR, General Comment 12, op. cit., para. 18.

<sup>16</sup> Case No. CCT 13/03, decision of 4 March 2004; the case was decided together with *Mablaule and others v. Minister of Social Development and others*, Case No. CCT 12/03 on account of the similarities of the two cases.

<sup>17</sup> Communication No. 182/1984, U.N. Document CCPR/C/29/D/182/1984 of 9 April 1987.

ensure access to public assistance programmes. Thus, in *Plyler v. Doe*,<sup>18</sup> the State of Texas was forbidden to deny public education to undocumented immigrant children.

30. In *Eldridge v. British Columbia (Attorney General)*,<sup>19</sup> the Supreme Court of Canada declared that the failure of health care programmes to provide for interpretation services for the deaf constituted discrimination and thus violation of the equality provisions of the Canadian *Charter of Rights and Freedoms*. This failure denied deaf people the equal benefit of the law and discriminated against them, in comparison with hearing persons. The Court confirmed the principle that discrimination can accrue from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public and acknowledged that the duty to take positive action to ensure that members of disadvantaged groups benefit equally from services offered to the general public is subject to the principle of reasonable accommodation.

31. It may be safely concluded that, as applied to the right to food, the principle of non-discrimination would be amenable to justiciability before national Courts

## B. Levels of obligations

32. The following typology of State obligations is utilised to examine justiciability with regard to the right to adequate food: obligations to respect, protect and fulfil (the latter comprising obligations to facilitate and provide). This typology, which has been applied by the CESCR to clarify the obligations of State Parties to the ICESCR,<sup>20</sup> goes beyond the simple denotations of obligations as being either negative or positive. Judicial practice from a number of States conforms to this typology, notwithstanding the manner in which the recognition finds expression in a particular national constitution or legislation.

### 1. Respect

33. The obligation to respect the right to adequate food requires States not to take any measures that result in preventing individuals and/or groups from utilising their own efforts to satisfy this right.<sup>21</sup> Conceptually, this formulates

<sup>18</sup> 457 US 202 (1982).

<sup>19</sup> Case No. [1997] 3 S.C.R. 624.

<sup>20</sup> First introduced in CESCR, General Comment 12, op. cit. and subsequently used in General Comments 13, 14 and 15.

<sup>21</sup> CESCR, General Comment 12, op. cit., para. 15.

a key negative obligation, which would be violated if a State were to authorize, instruct or otherwise tolerate official policies, programmes and/or actions that destroyed people's food sources - such as crops or food stocks - without a valid reason or reasonable compensation. Other deprivations of income leading to inability to purchase adequate food could also fall hereunder. The obligation to respect may also include a prohibition against the suspension of legislation or State policies that enable people to have access to food, or the implementation of a food policy that excluded segments of the population vulnerable to hunger and food insecurity. The following four cases illustrate violations of the obligation to respect.

34. In the *Ogoni case*, cited above, the African Commission held that by destroying the people's food sources and arbitrarily evicting them from their homes, the authorities had breached their negative obligation not to interfere with people's access to food. In *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council*,<sup>22</sup> an action was brought before the High Court of South Africa, following a local council decision to disconnect the water supply to the flats, due to non-payment of water charges. The Court found that the applicants had existing access to water before the Council disconnected their supply; that the conditions and procedures for disconnection had not been "fair and equitable" in accordance with the applicable statute, and that the Council's disconnection of the water supply constituted a *prima facie* breach of its constitutional duty to respect the right of existing access to water. The water supply to the flats was subsequently reinstated.

35. In *Carlos Torres Benvenuto and others v Peru*,<sup>23</sup> the Inter-American Commission for Human Rights found that the Republic of Peru violated the rights of pensioners when it failed to pay monies calculated in the manner established by law, once petitioners began receiving payments under a specific system: accordingly, the subsequent modifications of pension schemes constituted a violation of the right to progressive development with respect to economic, social and cultural standards established under Articles 21, 25 and 26 of the American Convention.

36. Finally, in *Ain O Salish Kendro (ASK) & Ors v Government of Bangladesh & Ors*<sup>24</sup> the Bangladesh High Court held that the Government's demolition of 'Basties' (slum-dwellings) and the eviction of their inhabitants was contrary to the respect for human dignity.

<sup>22</sup> 2000 (6) BCLR 625 (W), Case No.: 01/12312.

<sup>23</sup> Case No. 12.034.

<sup>24</sup> [1999] ICHRL 118 (3 August 1999).

37. These cases indicate the justiciability of the obligation to respect economic, social and cultural rights at the national level, not only as a negative obligation, but also in terms of respecting existing access, even when this access is provided through public funds.

## 2. Protect

38. The obligation to protect requires States to ensure that private parties, such as enterprises or individuals, do not deprive other individuals of access to adequate food.<sup>25</sup> Such measures would include the enforcement of existing legislation and rule of law guarantees that protect the most vulnerable segments of society against outside interference. A violation of the obligation to protect could, for instance, arise in the event of unsafe food being sold and consumed, if this could be attributed to a failure in establishing or enforcing food safety standards and controls. Another example could be failure to protect tenants from illegal eviction from their farmland by other individuals or corporations. The following cases are illustrative.

39. In the *Ogoni Case* referred to above, the African Commission found that the military Government of Nigeria had also violated its obligation to protect the right to food, as it did not prevent the oil companies from depositing oil and waste products that led to the contamination of water for farming and fishing, the destruction of crops and the death of farm animals: factors which resulted in malnutrition amongst the Ogoni.<sup>26</sup>

40. In “*Social Insurance Law*”<sup>27</sup>, the Constitutional Court of the Republic of Latvia noted that the Constitution and international treaties protected the right to social security:

*The State social insurance is a sector of public rights and legal relations between the insurer and the insured person as well as with the employer in relation to public rights. The law obliges the employer to incur the payment of the compulsory premium for every employee. If the employer does not perform this task, then the organiser of the insurance, i.e. the State, shall ensure the implementation of it with the help of compulsory measures. Therefore, when developing the system of the State social insurance, the State is obligated to develop an efficient mechanism of implementation of the above legal norms, thus guaranteeing the right to social security, established by the [Constitution].*

41. In its holding, the Court found that the Latvian system of collecting the dues from employers was not sufficient as it could lead to employees being

<sup>25</sup> CESCR, General Comment 12, op. cit., para. 15.

<sup>26</sup> Op. cit., footnote 12., para 66.

<sup>27</sup> Case No. 2000-08-0109, decision of 13 March 2001.

deprived of social insurance. As such, the legislation supporting this system was found to be null and void.

42. These examples indicate that failure to protect individuals' right to food against interference or non-respect by third parties can also be justiciable.

### 3. Fulfil (facilitate)

43. The obligation to fulfil (facilitate) means that the State must pro-actively engage in activities intended to strengthen people's access to and utilisation of resources and means to ensure their livelihood, including food security.<sup>28</sup> These activities do not necessarily entail the provision of substantial financial resources and could imply simply ensuring access to information regarding opportunities to satisfy the right to food. Examples of typical measures to facilitate access to food include education and training, agrarian reform, policies supportive of urban and rural development, market information etc.

44. For these obligations, the State would normally be granted a large margin of appreciation. The most appropriate question for judicial or quasi-judicial determination would be, firstly, whether the State had "taken steps" to facilitate access to food by the affected individual or the group and, secondly, whether such steps were reasonable or appropriate under the circumstances (the political and economic situation of the country). The central question faced by the court would be, therefore, whether steps had been taken and whether such steps were reasonable or appropriate. In such cases one would expect courts or quasi-judicial bodies to grant a wide margin of discretion to the legislative and executive arms of government in deciding on priorities.

45. An example of judicial involvement in facilitation measures rests in an order made in *People's Union for Civil Liberties versus Union of India and others*<sup>29</sup> (the "PUCCL case"). In this case, the Supreme Court of India ruled that beneficiaries of various official food security programmes must enjoy legal entitlements under same, as this would facilitate their access to food. Furthermore, the Court ruled that Indian States should carefully identify vulnerable groups under their jurisdiction and ensure that these groups are informed as to the way in which their right to food may be satisfied.<sup>30</sup> These orders were, however, auxiliary, and the Court was relying on existing programmes. Similarly, in the as-of-yet unsettled *Orissa Starvation Deaths Proceedings*,<sup>31</sup> the National Human Rights Commission of India has considered

<sup>28</sup> CESCR, General Comment 12, op. cit., para. 15.

<sup>29</sup> *People's Union for Civil Liberties versus Union of India and others*, Writ Petition [Civil] No. 196 of 2001 (hereinafter *PUCCL case*).

<sup>30</sup> *PUCCL case*, op. cit., Court orders of 23 July 2001, 17 September 2001 and 28 November 2001.

<sup>31</sup> Case No. 37/3/97-LD, decision of 17 January 2003.



a wide range of measures taken by the State of Orissa to facilitate access to food, including land reform, soil conservation, afforestation, primary health care and rural development programmes.

46. To conclude, the obligation to facilitate may be the most problematic issue area for judicial determination. Confronted with such cases, it would be important to consider the obligation to fulfil (facilitate) in light of budgetary implications, the role of government in setting priorities and action and other factors that would normally allow the government a relatively wide margin of discretion in such cases. Nevertheless, the judiciary is well-placed to assess whether State policies and programmes (the steps taken) are reasonable or appropriate, especially as to whether the plight of vulnerable persons has been considered and given appropriate priority.

#### 4. Fulfil (provide)

47. According to the CESCR, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly, within the means at their disposal (maximum of available resources).<sup>32</sup> This obligation also applies to persons who are victims of natural or other disasters. The obligation is, thus, not to provide for every individual but for those who cannot provide for themselves, due to age, infirmity or other such reasons.

48. While the standard of national safety-net schemes varies considerably amongst countries, most nations recognize the need to provide basic necessities for those unable to provide for themselves, temporarily or permanently, even if many rely on the resources of local communities, agencies such as the World Food Programme, or international NGOs.

49. There exists a wealth of jurisprudence from developing and developed nations on the obligation to provide. For example, as referenced above, while the final judgment in the *PUCL Case* has yet to be delivered, the Indian Supreme Court has issued a number of interim orders, which make the justiciability of this obligation before national Courts quite clear.<sup>33</sup> Indeed, the Court has issued orders according to which food grains are to be “provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them”.<sup>34</sup>

<sup>32</sup> CESCR, General Comment No. 12, op. cit., para. 15.

<sup>33</sup> *PUCL case*, op. cit., Interim Order of 23 July 2001.

<sup>34</sup> *PUCL case*, op. cit., Interim Order of May 2, 2003.

50. A second example pertaining to the justiciable nature of the obligation to provide, emanates from the Swiss Federal Court which, in *Gebrüder V. v. Regierungsrat des Kanton Berns*,<sup>35</sup> recognized a previously unwritten constitutional right to basic minimum subsistence. This case was brought by three stateless Czech refugees who found themselves in Switzerland with no food and no money. They could not work because they could not get a permit and without official identity documents they could not leave the country. They asked the authorities for assistance but were refused. The Court decided that these individuals must have the right, at the very least, to basic minimum conditions within Switzerland so as to prevent them from being reduced to begging.

51. The third example of the obligation to provide as adjudicated through national Courts resides in *Grootboom and others v. Government of the Republic of South Africa and others*<sup>36</sup> (the “*Grootboom Case*”) where the Constitutional Court of South Africa considered the constitutional right to housing. Since the Court explored the implications of the obligation to provide, very thoroughly, the case will be presented in some detail. The applicant, Ms. Grootboom, a member of a large group of 510 children and 390 adults, lived in appalling circumstances in an informal settlement. After having illegally occupied nearby land earmarked for low-cost housing, the State evicted the community by force, with no provision for alternative accommodation. Thereafter the community settled on a sports field.

52. The Constitutional Court had to address the question of whether the measures taken by the State could be qualified as “reasonable” with respect to the realization of the right to have access to adequate housing under the Constitution. The Court stated that, in order for measures to qualify as reasonable, State authorities must take into account the degree and extent of the denial of the right, which it is obliged to realize. The Court evaluated the government’s housing programme with regard to its reasonableness and held as follows:

- > there must be a coordinated and comprehensive programme that is capable of facilitating the realization of the right;
- > such a programme must clearly allocate responsibilities and tasks to the different spheres of Government and ensure the availability of financial and human resources;
- > a reasonable programme must respond to the urgent needs of those in desperate situations;
- > the programme must be reasonable in formulation and implementation.

<sup>35</sup> See Entscheidungssammlung des Schweizerischen Bundesgerichts, Urteil der 2. öffentlichrechtlichen Abteilung vom 27. Oktober 1995 (ATF 121 I 367, 371, 373).

<sup>36</sup> *Grootboom and others v. Government of the Republic of South Africa and others*. Case No. CCT 11/00, decision of 4 October 2000 (hereinafter *Grootboom case*).

53. The Court then specifically considered the questions of progressive realization of the right to housing and the availability of resources. On the former question, the Court found that the housing programme had to progressively allow access to a larger and wider section of the society over time. As to the available resources, the Court considered that this was an important factor in determining both the rate of achieving, progressively, the right to housing and the reasonableness of the measures adopted.

54. The Constitutional Court concluded that the South African housing programme was not reasonable in that it did not provide for the immediate relief of “people in desperate need”, such as those “who have no access to land, no roof over their heads and who are living in intolerable conditions or crisis situations”.<sup>37</sup> The Court issued a declaratory order that the programme fell short and required the State to devise, fund, implement and supervise measures to provide relief to those in desperate need.

55. In this regard, it should be noted that the South African Constitution contains the explicit obligation “to take reasonable legislative and other measures” with regard to the right to food, housing and certain other rights which are to be progressively realized. The ICESCR does not have such an explicit reference to the reasonableness of the steps to be taken; yet the test of reasonableness may be seen as useful in determining whether the obligations of conduct listed in ICESCR Article 2.1 have been fulfilled. National bodies in other countries might similarly adopt this method in dealing with the right to food.

56. A fourth example, the case before the Constitutional Court of South Africa *Minister of Health and others v Treatment Action Campaign and others*<sup>38</sup> (the “TAC Case”), concerned the obligation to provide health care. The Treatment Action Campaign (TAC) challenged the decision by the South African Government to limit provision of the drug Nevrapine, used to limit mother-to-child-transmission of HIV/AIDS, to certain pilot health-care centres. The challenge was based on the right of access to health care services. Again, employing the reasonableness test developed in the Grootboom Case, the Constitutional Court ruled that the State had breached its obligations in relation to the right to health, by restricting access to the Nevrapine to only a few, while excluding others equally in need of it. The Court thus ordered the State to remove the restriction and roll out a national comprehensive programme.

<sup>37</sup> Grootboom case, op. cit., para. 99.

<sup>38</sup> *Minister of Health and others v Treatment Action Campaign and others*. Case No. CCT 8/02 (hereinafter *TAC case*)

57. *Gosselin v. Quebec*<sup>39</sup> before the Supreme Court of Canada concerned regulations providing for reduced welfare benefits for individuals under 30 not participating in training or work-experience employment programmes. The Supreme Court of Canada rejected that the regulations were discriminatory and further ruled that the circumstances of the case did not warrant a new application of section 7 of the Canadian Charter of Rights and Freedoms (which protects the right to life, liberty and security of the person) as the basis for a positive State obligation to guarantee adequate living standards. On this latter point, Justice Arbour (dissenting) considered that the right to a minimum level of social assistance was clearly connected to “security of person” in section 7 and that the interest claimed in this case fell within the range of entitlements that the State is under a positive obligation to provide under section 7. She further noted that the right was independent of any particular Statute and that the under-inclusiveness of the regulations in this case was clear as the State of Quebec had itself defined the minimum level of necessary income, which was higher than the welfare benefit payable to persons under 30.

58. As illustrated, the obligation to provide is capable of being justiciable at the national level. The extent to which a State would be expected to provide for those in need would, however, certainly vary between countries. The standard of living in the country, the definition of the poverty line as well as available resources and existing programmes, would all be factors to be taken into account by the Courts or quasi-judicial bodies.

#### IV. SOME SPECIFIC ISSUES CONCERNING JUSTICIABILITY

59. While it is clear that many aspects pertaining to the right to food are justiciable in many countries, this is not fully recognized in all countries, or in all circumstances. Of course, as experience is shared between countries and as lawyers are increasingly arguing for the right to food as a basis for decisions, it is likely that justiciability of the right to food will continue to expand over time. Yet, it must be acknowledged that there still remain arguments against justiciability, on a number of grounds. Governments may fear the cost implications of losing cases brought by people claiming a violation of the right to food. Some argue that economic, social and cultural rights, as stated in the ICESCR, are not justiciable, because they are imprecise, resource-demanding, and are subject to available resources and progressive realization.<sup>40</sup>

<sup>39</sup> *Gosselin v. Quebec* (Attorney General Case No. 2002 SCC 84).

<sup>40</sup> Ida Elizabeth Koch/ Jens Vedsted-Hansen, Judicialised Protection of International Human Rights and the Issue of Power Balance, in: Martin Scheinin (ed.): *The Welfare State and Constitutionalism in Nordic Countries*, The Nordic Council of Ministers 2001, pp.198 ff.

60. Many also feel that the right to food is still insufficiently understood and that the right itself is too vague. Another voiced argument is that the judiciary would violate the principle of separation of powers if they adjudicated claims concerning the realization of the right to food, the determination of which rightly belongs to the people's elected officials. Yet others argue, especially at the international level, that the right is subject to progressive realization and cannot therefore be the subject of judicial or quasi-judicial scrutiny. Ultimately, objectors conclude that the nature of economic, social and cultural rights renders them unable to be adjudicated by the Courts. These objections will be addressed below.

### A. Are socio-economic rights of a different nature?

61. Even today, it is sometimes mooted that economic and social rights are merely aspirational and not "real" rights, as they are fundamentally different from civil and political rights. For this reason, there were two separate international Covenants - one for economic, social and cultural rights and one for civil and political rights - with each Covenant employing different wording as to States' obligations. Many national Constitutions also separate economic and social rights in different chapters from civil and political rights, to the effect that the former are not intended to be directly justiciable.<sup>41</sup>

62. However, most countries do indeed recognize some aspects of at least some economic and social rights at the national level and through their ratification of various international treaties.<sup>42</sup> In fact, since the 1993 World Conference of Human Rights there is general consensus that all human rights, civil, cultural, economic, political and social, are indivisible, interdependent and interrelated.<sup>43</sup> The distinction between the types of human rights is thus gradually dissolving.

63. Indian jurisprudence is the clearest example of judicial action to overcome distinctions between socio-economic and other human rights, by extending the scope of the right to life to encompass the right to a dignified life and thus to a number of elements which are indispensable for it. This is the case not only for the right to food,<sup>44</sup> which is easily interpreted in the right to life (as the right to biological survival), but also for the right to education, which the Indian Supreme Court has ruled to be protected under the same ambit.<sup>45</sup>

<sup>41</sup> For instance, the Constitutions of India and Sierra Leone maintain such separation.

<sup>42</sup> See IGWG, Recognition of the Right to Food at the National Level, op. cit.

<sup>43</sup> World Conference on Human Rights: Vienna Declaration and Programme of Action, U.N. Document A/CONF.157/23, Part 1, para. 5.

<sup>44</sup> *People's Union for Civil Liberties v. Union of India and others*, op. cit.

<sup>45</sup> *Unni Krishnan v. State of Andhra Pradesh*, AIR 1993 SC 2178, cited in: Kundu A. and S. Jain, IGWG RTFG/INF.4/APP.5, Right to food case study: India, p. 17.

64. Another example is the South African Constitution, a relatively new construction, which does not distinguish between categories of rights, but stipulates that all recognized human rights must be respected, protected and fulfilled. As appropriate, specific rights, including the right to food, are then subject to realization within available resources and by taking reasonable steps.<sup>46</sup>

65. While the right to food is certainly complex, it follows from the above that - at least at the national level - there is no need to treat the right to food as if it were of a fundamentally different nature than civil and political rights. In some instances it may indeed be linked to rights that have been recognized in most if not all jurisdictions as being justiciable, such as the right to life and to security of the person.

## B. Is the right to food too vague?

66. Another frequently-voiced objection to the justiciability of the right to food and other economic and social rights, is that these rights are too vague, and the obligations too ill-defined, for a judicial or quasi-judicial body to be able to determine whether or not there has been a violation. Such arguments on 'vagueness' are, however, receding through the work of legal scholars, General Comments and evolving practice at the national, regional and international level. These efforts have clarified the obligations involved and have developed methodologies to address socio-economic rights, as, for example, the South African Constitutional Court did in the *Grootboom* Case, and the African Commission in the *Ogoni* Case, both of which are cited above.

67. The recognition that economic and social rights, including the right to food, are justiciable, assists in clarifying the content of such rights through the practice of courts and quasi-judicial organs. In this regard it should be noted that jurisprudence has, and continues to play, a powerful role in clarifying the meaning of civil and political rights which, in the beginning, were no less imprecise than the right to food is perceived to be at present. Constitutional rights are in most cases proclaimed in an equally vague manner as they are in human rights treaties; jurisprudence and practice clarifies their meaning over time. The perceived vagueness of the right to food, therefore, should not prevent it from being recognized as justiciable.

<sup>46</sup> See section 27, Constitution of South Africa of 7 February 1997: "The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights".

### C. Is justiciability compatible with separation of powers?

68. It is sometimes argued that to allow justiciability with regard to the right to food would constitute undue interference with the separation of powers: Courts would be called upon to make decisions that rightly belong to the legislature and executive spheres of the State regarding allocation of financial resources and national priorities. However, it may also be argued that the justiciability of human rights is an important part of both the rule of law and the principle of the separation of powers. This is based on the notion that the realization of human rights cannot be left exclusively to politically-elected authorities. Political actors have a margin of discretion in determining and adopting measures aimed at the implementation of such rights, while Courts, in specific cases and disputes, would scrutinise these measures to determine whether they are in compliance with international and regional obligations, constitutional guarantees and legislative requirements. Courts may also be called upon to enforce decisions already made by the legislative or executive wings, as was the case in the Indian *PUCL* Case cited above, in which the Supreme Court issued interim orders for the implementation of programmes already established at the federal and state levels. In finding a violation, Courts may also refrain from deciding on remedies, but instruct relevant government organs to find ways to redress the situation. This way of proceeding was followed in the South African case of *Grootboom*, where the Constitutional Court instructed the Government to devise a plan that would address the housing needs of those in desperate need, without determining exactly how this should be done. The Court stated:

*The precise contour and content of the measures to be adopted are primarily a matter of the legislature and the executive. They must, however, ensure that the measures they adopt are reasonable. In any challenge based on section 26 in which it is argued that the state failed to meet the positive obligations imposed upon it by section 26(2), the question will be whether the legislative and other measures taken by the state are reasonable. A court considering reasonableness will not enquire into whether other more desirable or favourable measures could have been adopted, or whether public money could be spent. The question would be whether the measures that have been adopted are reasonable.<sup>47</sup>*

69. In developing jurisprudence on the right to food, Courts would inevitably be involved in balancing human rights concerns against political and budgetary realities, just as they are called on to do in adjudicating on many civil and political rights. Clearly, Courts should always exercise caution, but they need not be more fearful of the right to food than of other

<sup>47</sup> *Grootboom case*, op. cit., para 41.

human rights they must protect. The argument therefore should not stand in the way of recognizing justiciability.

#### D. Do resource implications prevent justiciability?

70. Perhaps the most often-voiced objection to the justiciability of economic and social rights concerns the resource implications involved. It is often argued that poorer countries simply cannot afford to recognize the right to food as a justiciable right. Wealthy countries would be more capable of affording such protection, but poor countries simply cannot do so. A number of responses have also been made in relation to this contention. First and foremost is the argument that respecting the right to food, as a negative obligation, does not entail any resource implications. Many steps that could be taken to protect and facilitate access to food would carry no, or minimal, costs and while, admittedly, other measures would require a dedication of financial resources, such measures would be subject to State discretion, progressive realization and the availability of such resources. Justiciability here would simply help bringing social spending within the ambit of the rule of law.

71. Additionally, it must be borne in mind that the realization of all human rights requires a dedication of State resources. For instance, organising elections or ensuring fair trials require a substantial allocation of resources. Furthermore, within the realm of civil and political rights, Courts have not shied away from issuing decisions that entail considerable cost implications. For instance, the European Commission on Human Rights' decision of *Jón Kristinsson v. Iceland*<sup>48</sup> led to the country having to establish a number of new Courts to ensure the separation of the judiciary from the executive powers. The financial implications of this decision were considerable.

72. One way in which to explicitly address the question of resources, is the one followed in the South African Constitution, which states the obligation to take measures "within available resources". Even without such an explicit provision, the lack of resources would continue to operate as a valid defence against a legal claim that the right to food had been violated. In such a case, Courts would examine what steps had been taken, the extent of available resources and how they are allocated, in seeking to protect the interests of the most vulnerable. The ICESCR also takes the "cost" argument into account as it obliges States Parties to take steps towards the realization of economic, social and cultural rights "to the maximum of available resources". The CESCR thus makes a distinction between a country's unwillingness to implement these rights and its inability to do so.

<sup>48</sup> Case No. 13/1989/173/229.



73. Another safeguard built into the ICESCR is the notion of “progressive realization”, which explicitly recognizes that countries may not be able to fulfil all economic, social and cultural rights for all people, immediately. In this regard, it is important to distinguish between dimensions of the right to food that can be implemented immediately and those that can only be fully realized over time.<sup>49</sup> Immediate measures would include stopping any State or non-State interference with the right to food, whereas progressive measures would include establishing and maintaining adequate safety nets for those unable to provide for themselves.

74. A Court or a quasi-judicial organ called upon to determine, in a particular case, whether the right to food has been violated, would be expected to take account of resource limitations when determining whether a violation has taken place and when determining appropriate remedies. Thus, if the State’s defence was that economic circumstances necessitated austerity measures, the Court might assess whether such measures had unreasonably affected the most vulnerable in society.

75. The “test of reasonableness” developed by the South African Constitutional Court in the *Grootboom* Case could be a valuable legal tool for other countries in such an assessment. In determining whether the State had complied with its obligations of progressive implementation or whether a defence of austerity was valid, a Court could evaluate whether measures were adopted to address problem areas and whether such measures were reasonable, both in their conception and implementation. In assessing the reasonableness of South African housing programmes in the *Grootboom* Case, State measures were considered in light of the social, economic and historical context and the capacity of institutions responsible for implementing housing programmes. The Court found that South African housing programmes failed to address the needs of the most desperate and thus failed against the standard of reasonableness.

76. The above-cited *PUCL* Case in India involved a revelation that over 50 million tons of food grains were lying idle in the premises of the Food Corporation of India (FCI) while there was widespread hunger in the country, especially in drought-affected areas. In this case, resources were clearly available and the Court felt no compunction in ordering the distribution of idle food stocks.

77. It should also be noted in this context that hunger and malnutrition carry costs both for the individuals and for societies as a whole. In certain

<sup>49</sup> See Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights of 1986, U.N. Document E/CN.4/1987/17, Annex, para. 8.

circumstances, therefore, it may be more expensive in the long run to take no steps to address malnutrition.

78. It may be concluded that limited resources do not, *per se*, affect the justiciability of the right to food. However, they may well affect the judgment as to whether or not, in a particular case, there has been a violation.

## V. POSSIBLE OUTCOMES OF JUDICIAL AND QUASI-JUDICIAL DECISIONS

79. According to CESCR General Comment 12, all victims of violations of the right to food should be entitled to adequate reparation at the national level, which “may take the form of restitution, compensation, satisfaction or guarantees of non-repetition”.<sup>50</sup> This section gives an overview of the types of redress generally available to Courts and quasi-judicial mechanisms, as well as remedies actually prescribed in the case law.

80. In the preceding chapter, the question of justiciability (for example, whether legal institutions can determine violations of the right to food in a meaningful way) has been answered in the affirmative. Appropriate remedies for violations of the right to food would, of course, depend on the nature of the violation. For example, if a law, State policy or official action violated the negative duty to respect the right to food, a Court might declare the law invalid, or order the cessation of the unlawful conduct. In addition, it might order the relevant authority to correct the defect in the law or issue an interdict preventing the threatened violation from occurring. In respect of the positive obligation to protect and fulfil, a Court may direct the State to enforce legislation or devise and implement a reasonable programme giving effect to the right to food. The highlighted jurisprudence demonstrates that a wide variety of remedies may be advanced which take into account available resources, margin of appreciation, progressive realization and the separation of powers. The following cases reveal the wide range of potential remedies that may be utilised by Courts in protecting and promoting the right to food.

81. Declaratory pronouncements are widely used in human rights cases at the international level. Thus, the United Nations Human Rights Committee routinely calls upon the State parties to “take effective and enforceable remedial action”, the details of which should be communicated to the Committee.

82. The Supreme Court of Switzerland in *Gebürder V. v. Regierungsrat des Kanton Berns*, cited above, deemed that it lacked the legal competence to

<sup>50</sup> CESCR, General Comment 12, op. cit., para. 32.

set priorities for the allocation of resources necessary to realize the right to minimum conditions of existence, including food. However, it determined that it could set aside legislation if the outcome of this legislative framework failed to meet the minimum claim required by constitutional rights. In this case, the exclusion of three non-nationals from social welfare legislation was found to be a violation of their right to food, despite the fact that they were illegal immigrants. The Swiss Federal Court decision determined that the right to food in this sense could be the foundation of a justiciable claim for official assistance.

**83.** In *Grootboom*, cited above, the South African Constitutional Court declared that there had been a violation of the right to housing and that the State housing programme had to include measures “to provide relief for people who have no access to land, no roof over their heads and who are living in intolerable conditions or crisis situations”.<sup>51</sup> The details of such a revised housing programme were however to be decided by the legislative and executive powers as monitored by the South African Human Rights Commission.

**84.** In a case before the Administrative Disputes Tribunal of the City of Buenos Aires, Argentina,<sup>52</sup> which concerned the exclusion of a family from a new food programme, “Vale Ciudad”, the Tribunal ordered the Secretary for Social Development (Buenos Aires) to incorporate the claimant and her family in the new food assistance programme on a provisional basis. Alternatively, the City Government could provide the family with the necessary food rations. The case demonstrates, on the one hand, that the threshold for an interim measure may be quite low in a case such as this, in which delay could have irreparable damage. On the other hand, the case demonstrates a flexible approach by a tribunal, providing the authorities with alternatives.

**85.** The Indian Supreme Court, in its interim orders in the *PUCL* Case, has given very detailed instructions to the State and Federal Governments for the implementation of eight different centrally-sponsored schemes for food security and the introduction of cooked mid-day meals in all government and government-assisted schools. However, with the exception of the mid-day meals, the orders relate to the implementation of programmes already established by the Government. The Court held that it is not possible to compel the State through the judicial process to make provision by statutory

<sup>51</sup> *Government of the Republic of South Africa and others v. Grootboom and others*, op. cit., para. 99.

<sup>52</sup> Expediente No EXP-6985/0: Maria Delia Cerrudo y otros c/ Gobierno de la Ciudad de Buenos Aires, cited in Background paper prepared by the Secretariat: Selection of case law on economic, social and cultural rights, UN document E/CN.4/2004/WG.22/CRP.1, November 2003, page 6

enactment to ensure implementation of those rights, but “where such legislation is already enacted by the State providing these basic requirements (...) the State can certainly be obligated to ensure observance of such legislation”.<sup>53</sup>

86. Unlike in the *Grootboom* Case, in the *TAC* Case, the South African Constitutional Court ordered immediate redress and direct action by the Government. In this, the Court ordered the State to remove the restriction and roll out a national comprehensive anti-HIV/AIDS programme. This case demonstrates a more direct order to the Government for specific action as the remedy, for example, the direct provision of the drug to all expectant mothers, but it refrained from instructing the Government as to how the national plan should be rolled out.

87. In the *Orissa Starvation Deaths Proceedings* cited above, the National Human Rights Commission of India held a series of hearings resulting in the State of Orissa agreeing that certain measures had to be taken, including the cessation of the practice of considering the existence of starvation solely on the basis of death, and the revision of the State Famine Code to bring it into line with the Constitutional provisions of the right to food (Article 21 on the right to life read together with State Directive Principles on livelihoods and nutrition in Articles 39 (a) and 47). It should also be noted that quasi-judicial bodies may have more scope than judicial organs in finding suitable solutions, or a friendly settlement, in particular cases, as was the case in the *Orissa Starvation Death Proceedings*.

88. The above shows that Courts and quasi-judicial bodies may call for specific measures or leave it to the executive or legislative branches to devise such measures. Courts will tread carefully before devising new programmes or ways of implementing rights, especially as the legitimacy of these bodies to make such decisions will be in focus; the more practical and well-reasoned their decisions, the greater legitimacy Court holdings will possess. Indeed, the examples show a number of remedies other than financial compensation, although the latter may remain appropriate in some cases.

## VI. CONCLUSION

89. From the above analysis, it may be persuasively concluded that there is nothing inherent in the right to food that dictates its non-justiciability at the national level. Indeed, there are powerful arguments in support of the justiciability of the right to food. First is the uncontested fact that the right

<sup>53</sup> See *PUCL case*, op. cit., Court orders of 28 November 2001.

is already justiciable in a number of countries, as the review of relevant case law has shown. Second, there is a fundamental principle in international human rights law whereby everyone has the right to an appropriate “effective remedy” when his/her right or rights have been violated.

90. All levels of obligations regarding the right to food can be and have been found to be justiciable. However, obligations to respect and to protect, as well as the obligation to extend the right to food on a non-discriminatory basis, are the least problematic. Obligations to facilitate and to fulfil may be evaluated on the basis of the reasonableness test, developed and applied by the South African Constitutional Court.

91. Ensuring that victims of violations of the right to food have effective access to justice at the national level, however, requires more than State and judicial recognition of justiciability. Awareness of the right to food and the obligations pertaining thereto need to be heightened amongst rights holders. Lawyers need to be educated so that they can argue effectively for the upholding of this right and judges need to acquire the knowledge to accept such arguments, when appropriate. In some countries, legislative action may also be advisable to ensure that the written law of the land adequately reflects the right to food and the obligations of all branches of the State to uphold it.

# IMPLICATIONS OF THE VOLUNTARY GUIDELINES FOR PARTIES AND NON-PARTIES TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

5

## I. INTRODUCTION

1. The World Food Summit: *five years later* decided on the elaboration of voluntary guidelines to support the efforts of Member States towards the progressive realization of the right to adequate food in the context of national food security (hereinafter referred to as Voluntary Guidelines). The main provision of international law concerning the right to food is contained in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>1</sup> This information paper sets out some considerations for determining the legal basis and legal implications of the voluntary guidelines for States that have ratified the ICESCR, to which there are currently 148 State Parties, and for those that have not ratified this treaty.

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<sup>1</sup> Dec. 16, 1966, 993 UNTS 3 (entry into force July 18, 1978).

**ICESCR, ARTICLE 11**

1. The States Parties to the present Covenant recognise 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, recognising to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognising 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 utilisation of natural resources;

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

## II. TREATIES, DECLARATIONS AND CUSTOMARY INTERNATIONAL LAW

2. The Vienna Convention on the Law of Treaties<sup>2</sup> defines a treaty as “an international agreement concluded between States in written form and governed by international law...” (Art. 2(1)(a)). In contrast, declarations, resolutions and other non-binding instruments may encompass strong political commitments or moral obligations, even though they are not legally binding. Non-binding instruments may serve the parties to a treaty to authoritatively interpret its terms, resolving any ambiguities that may exist. A non-binding instrument may also be adopted as a precursor to a treaty.

3. The Voluntary Guidelines are not meant to be legally binding. However, they may have a strong recommendatory force for States that are already bound by provisions of international law, insofar as the Voluntary Guidelines provide interpretation of such legal norms and guidance for their implementation.

<sup>2</sup> May 23, 1969, 1155 U.N.T.S. 331.

## A. International Covenant on Economic, Social and Cultural Rights

4. As noted above, 148 FAO and UN Member States have ratified the ICESCR. By ratifying the ICESCR, a State Party assumes the obligation to take steps “to the maximum of its available resources” in order to achieve “progressively the full realization” of the rights recognized in the ICESCR (Art. 2). The ICESCR requires States Parties to submit “reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.” (art. 16(1)). The ICESCR itself did not establish a special committee to review the reports; it merely stipulated that these reports are to be submitted to the UN Economic and Social Council (ECOSOC). ECOSOC adopted a series of resolutions in this regard that culminated in the establishment of the Committee on Economic, Social and Cultural Rights (CESCR) in 1985.<sup>3</sup>

### ICESCR, ARTICLE 2

1. 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 recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### General Comments

5. The CESCR has used its General Comments and analyses of State reports to clarify the meaning of ambiguous provisions of the ICESCR, thus providing the international community with analytical interpretations of the normative content of economic, social and cultural rights.

6. General Comments are addressed to the State Parties in general and are designed to provide guidance to them in discharging their reporting obligations under the ICESCR. The General Comment has evolved into an instrument in which the CESCR spells out its interpretation of different provisions of the ICESCR. General Comments are relied upon by the CESCR in evaluating States’ compliance with their obligations under the ICESCR.

<sup>3</sup> ECOSOC Resolution 1985/17 of May 22, 1985.



General Comments are now, as a rule, analytical and frequently address difficult issues of interpretation and policy. Over time, General Comments have become authoritative guideposts for the interpretation and application of the ICESCR.

7. The CESCR General Comment 3 (1990),<sup>4</sup> points out that “while the Covenant provides for progressive realization and acknowledges the constraints due to limits of available resources, it also imposes various obligations, which are of immediate effect.” Among these, the CESCR singles out two in particular: the undertaking of the States Parties to guarantee that the rights set out in the ICESCR will be exercised without discrimination; and the undertaking in Article 2(1) “to take steps.” Regarding the undertaking to take steps, the CESCR notes that although “the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned.”

8. General Comment 12 was adopted by the CESCR in 1999, in part as a response to objective 7.4 of the World Food Summit Plan of Action. It includes in its definition of the right to adequate food the requirement for physical and economic access at all times to adequate food or means for its procurement. Furthermore, the CESCR considers that the core content of the right to adequate food implies: (a) 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; and (b) the *accessibility* of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights. While acknowledging that the right to adequate food should be realized progressively, General Comment points out that States have a core obligation to take action to ensure that, at the very least, people under their jurisdiction have access to the minimum essential food that is needed to ensure their freedom from hunger

9. It is worth noting that the UN Commission on Human Rights and the UN General Assembly have welcomed<sup>5</sup> the work of the CESCR, including its General Comment 12. Similarly, the FAO Committee on World Food Security (CFS) welcomed General Comment 12 as an important step in implementing Objective 7.4 of the World Food Summit Plan of Action<sup>6</sup>.

<sup>4</sup> Report of the Committee on Economic, Social and Cultural Rights, Fifth Session, U.N. Doc. E/1991/23. E/C.12/1990/8, at 83 (1991).

<sup>5</sup> CHR Res. 2000/10, paragraph 8, GARES 57/226, paragraph 17, in which these bodies “welcome the work already done by the Committee on Economic, Social and Cultural Rights in promoting the right to adequate food, in particular its General Comment No. 12 (1999) on the right to adequate food”.

<sup>6</sup> Report of the 25th Session of the Committee on World Food Security, Rome, 31 May - 3 June 1999. FAO Document No. CL 116/10.

10. A review of the practice of States in reporting to the CESCR shows that general comments are normally taken into account. Furthermore, during the second session of the IGWG in October 2003, a number of countries referred to General Comment 12 as constituting the most complete and appropriate interpretation of the right to food.<sup>7</sup>

### Role of FAO in the ICESCR

11. The Voluntary Guidelines to be adopted within the framework of FAO may be linked to the ICESCR pursuant to several articles of the Covenant, in which a strong role for specialized agencies in promoting implementation of the ICESCR is foreseen. Article 18 provides that ECOSOC may arrange to receive reports by such agencies on, *inter alia*, “the particulars of decisions and recommendations regarding progress made in achieving the observance of the provisions of the Covenant falling within the scope of their activities.” Article 22 additionally provides that specialized agencies may decide, “each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation” of the ICESCR, based upon information brought to their attention by ECOSOC.

12. Finally, in Article 23, States Parties to the ICESCR agree that international action to achieve the rights recognized therein includes, *inter alia* the conclusion of additional conventions and the adoption of recommendations. Thus, the States Parties to the ICESCR have consented to the adoption of further international instruments including by specialized agencies within the field of their competence. Good faith compliance with the ICESCR would suggest that the States Parties owe due regard to any Voluntary Guidelines that are adopted in this context.

## B. UN Charter and Universal Declaration of Human Rights

13. All members of the United Nations have ratified the UN Charter and thus pledged to act individually and in cooperation with the Organization to promote, *inter alia*, higher standards of living and universal respect for and observance of human rights and fundamental freedoms (Art. 55). The Charter authorizes the ECOSOC to “make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.” (Art. 62(2)) According to Article 1 (3) of the Charter, one of the purposes of the United Nations is to “achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language

<sup>7</sup> For instance, Statement on behalf of GRULAC (Latin America and the Caribbean) during the debates at the second session of the Inter-Governmental Working Group, Rome 27-29 October 2003.

or religion”. The Universal Declaration of Human Rights (UDHR), which refers to the right to food in Art. 25,<sup>8</sup> is frequently invoked as enunciating the human rights obligations of UN Member States. It may be argued that the UN’s consistent reliance on the UDHR when applying the human rights provisions of the UN Charter compels one to conclude that the Declaration has come to be accepted as an authoritative interpretation of these provisions. The Member States of the UN would have agreed that they have an obligation under the Charter to promote “universal respect for, and observance of” the rights which the UDHR proclaims, thus including the right to food.<sup>9</sup>

14. Among non-binding instruments, declarations generally carry particular weight. They often restate norms and principles that already exist in customary law.<sup>10</sup> The continuous and consistent reference to the UDHR provisions on the right to food by the UN General Assembly and the Commission on Human Rights, also add to the status of the right to food in international law. Recent resolutions reaffirm the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger so as to be able to fully develop and maintain

<sup>8</sup> “Everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food,...” Adopted by General Assembly resolution 217 A (III) of 10 December 1948

<sup>9</sup> Courts have given effect to the UDHR in interpreting domestic laws. See e.g., *Boehm v. Superior Court*, 223 Cal Reprtr 716 (Ct. App. 1986) in which a state court used the standards of UDHR art. 25 to interpret the California Welfare and Institutions Code section 17 000 providing minimum assistance to the poor. A study several years ago found that more than 90 national constitutions since 1948 contain statements of fundamental rights inspired by the UDHR. More than two dozen constitutions explicitly refer to the UDHR. Annex 2 of the study lists national cases citing the UDHR and includes more than 200 opinions from 27 countries. In sum, the UDHR has served as a model for domestic constitutions, laws, regulations and policies; has been a source of judicial interpretation, a basis for action by inter-governmental organizations and diplomatic action; and has provided an inspiration to non-governmental organizations and individuals pressing for human rights in domestic law and international forums. See Hannum, H., “The Status of the Universal Declaration of Human Rights in National and International Law”, 25 Georgia. *Journal of International and Comparative Law* 287(1996).

<sup>10</sup> According to a 1962 statement of the United Nations legal advisor, “[i]n United Nations practice, a ‘declaration’ is a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated, such as the Universal Declaration of Human Rights....in view of the greater solemnity and significance of a ‘declaration’ it may be considered to impart, on behalf of the organ adopting it, a strong expectation that members of the international community will abide by it. Consequently, in so far as the expectation is gradually justified by state practice, a declaration may become recognized as laying down rules binding upon states.” E/3616/Rev.1, E/CN.4/832/Rev.1, Commission on Human Rights, Report of the Eighteenth Session, ECOSOC Supp. No. 8 (1962), paras.103-105.

their physical and mental capacities.<sup>11</sup> Different aspects of the right to food have also been recognized in declarations and plans of action resulting from international conferences.<sup>12</sup>

### C. Right to Food as customary international law

15. The right to food as customary international law depends upon finding sufficient state practice and *opinio juris* to establish the rule as one that is binding on all states. Custom as a general practice accepted as law requires both elements: the practice of states over time and the manifestation of conviction that the practice is obligatory. Treaties and other normative instruments can be utilized to show the existence of customary international law.<sup>13</sup> In this respect, it has been noted that “the right to food has been endorsed more often and with greater unanimity and urgency than most other human rights, while at the same time being violated more comprehensively and systematically than probably any other right.”<sup>14</sup> There are many historical examples of societies recognizing either the duty of governments to provide food or the entitlement of people to food and nutrition.<sup>15</sup> The right to food is widely recognized in constitutional law<sup>16</sup>

<sup>11</sup> See General Assembly Resolutions A/RES/57/226 adopted on 18 December 2002, and A/RES/56/155 adopted on 19 December 2001, operative paragraph 2. See also Commission on Human Rights resolutions 1999/24 (26 April 1999), 2000/10 (17 April 2000, adopted by a vote of 49-1, with 2 abstentions), 2001/25 (20 April 2001), 2002/25 (22 April 2002, adopted without a vote) and 2003/25 (22 April 2003 adopted by a vote of 51-1 with one abstention).

<sup>12</sup> See, for instance, the Universal Declaration on the Eradication of Hunger and Malnutrition, Report of the World Food Conference, Rome, 5-16 November 1974; and Rome Declaration on World Food Security and the World Food Summit Plan of Action, FAO of the UN, Report of the World Food Summit, 13-17 November 1996

<sup>13</sup> State practice and *opinio juris* can be derived from national laws, declarations of intergovernmental bodies, and treaties. *North Sea Continental Shelf Cases*, 1969 ICJ 27 (Feb.20). See also Restatement of Foreign Relations Law of the United States, which declares that “virtually universal participation of states in the preparation and adoption of international agreements recognizing human rights principles generally, or particular rights” can be evidence of customary international law. Restatement of the Law (Third) Foreign Relations Law of the United States § 701(1986).

<sup>14</sup> See Philip Alston, *International Law and the Human Rights to Food*, in *The Right to Food* (Philip Alston and Katarina Tomasevski eds., 1984) at 9.

<sup>15</sup> See P. Spitz, *Right to Food for Peoples and the People: A Historical Perspective*, in *The Right to Food*, 170-75 (Philip Alston and Katarina Tomasevski eds.), 1984; Robert Robertson, *Human Rights in the Twenty-First Century: A Global Challenge*, 451 (Pathleen Mahoney and Paul Mahoney, eds. 1993)

<sup>16</sup> FAO Document IGWG RTFG 2/INF 1, *Recognition of the right to food at the national level*, September 2003.

and in numerous international texts, some pre-dating the United Nations. The League of Nations adopted a Declaration on the Rights of the Child in 1924 which stated that mankind owes the child the best that it has to give and that “the child that is hungry should be fed.” (para 2).<sup>17</sup>

16. Among texts of the United Nations, the UDHR goes beyond a right to be free from hunger, to establish a right to food adequate for health and well-being (Art. 25). The ICESCR contains both “the right to an adequate standard of living, including food” (Art. 11(1)) and “the fundamental right of everyone to be free from hunger” (Art. 11(2)). General Comment 12 of CESCR calls the second an “absolute, a minimum standard,” and in this respect it can be argued that it reflects customary international law, while the first is to be progressively realized according to resources. Notably, the right to freedom from hunger is the only right that is qualified as “fundamental”, both in the ICESCR and in the International Covenant on Civil and Political Rights. The latter implies a right to food as part of the inherent right to life in Art. 6.<sup>18</sup> The nutritional aspects of the right to food also have a place in the Convention on the Rights of the Child (Arts. 24 and 27) and in the Convention on the Elimination of All Forms of Discrimination against Women (Arts. 12 and 14).

17. The 1993 Vienna Declaration and Programme of Action affirmed that “food should not be used as a tool for political pressure”<sup>19</sup>, and this has been repeated time and again in several resolutions by the UN General Assembly and the Commission on Human Rights cited above. In the Universal Declaration, Participating States unequivocally summed up their views on the Eradication of Hunger and Malnutrition of the World Food Conference: “Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental facilities.”<sup>20</sup> Similarly, the UN General Assembly has reaffirmed “that the right to food is a universal right which should be guaranteed to all people...”<sup>21</sup>

<sup>17</sup> League of Nations O.J. Spec. Supp. 23 (1924). Freedom from want was also one of the four freedoms proclaimed by President Franklin Roosevelt on Jan. 6, 1941. Franklin D. Roosevelt, The Annual Message to Congress, January 6, 1941, in 9 Public Papers and Address of Franklin D. Roosevelt, at 672 (S. Rosenman ed., 1941). U.S. President Clinton on World Food Day 1998 referred to the right to food as the most basic human right.

<sup>18</sup> Notably, the Human Rights Committee, in General Comment 6 of April 30, 1982, held that the right to life “has been too often narrowly interpreted. The expression “inherent right to life” cannot be understood properly in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”

<sup>19</sup> Vienna Declaration and Programme of Action, A/CONF.157/23) Part I, para. 31.

<sup>20</sup> 16th Plenary Meeting 16 Nov. 1974, para 1.

<sup>21</sup> GA RES. 166, UN GAOR, 39th Sess. (1984).

18. In the context of armed conflict, consistent State practice and *opinion juris* exist to prohibit the use of food deprivation as a weapon of warfare,<sup>22</sup> and there is also a duty to refrain from interfering with food destined for those threatened with hunger. The starvation of civilians as a method of warfare is prohibited in both international<sup>23</sup> and non-international armed conflict.<sup>24</sup> That prohibition is violated not only when denial of access to food causes death, but also when the population suffers hunger because of deprivation of food sources or supplies. The prohibition of starvation is elaborated upon in provisions prohibiting attacks against, or destruction of, items necessary for the survival of the civilian population, including foodstuffs and drinking water. The United Nations Security Council has reiterated that individuals impeding food deliveries during armed conflicts may be held individually responsible in Somalia and the former Yugoslavia.<sup>25</sup> Further evidence is seen in the fact that under the 1998 Rome Statute of the International Criminal Court, intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival is considered a war crime in international armed conflict.<sup>26</sup> More generally, the basic norms of international humanitarian law applicable in armed conflicts have been considered by the International Court of Justice as “intransgressible” in character.<sup>27</sup> Based on this statement by the Court, the International Law

<sup>22</sup> Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, arts. 20, 26; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 23; Protocol Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, arts. 54, 70. 1125 U.N.T.S. s, Protocol II Additional. At all times, the Genocide Convention prohibits the deliberate infliction of “conditions of life calculated to bring about its physical destruction in whole or in part” Art. II (c).

<sup>23</sup> The Geneva Convention Relative to the Protection of Civilian Persons in Time of War has been ratified by almost all States. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) have been ratified by the vast majority of States. Provisions guaranteeing access to humanitarian aid are considered part of customary international law and therefore binding on all States regardless of ratification.

<sup>24</sup> The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), stipulates, in article 14: “Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.”

<sup>25</sup> Somalia: U.N. SCOR, 3145th mtg., U.N. Doc. S/RES 794 (1992); Yugoslavia, 3106th mtg., UN Doc S/RES 700 (1992); and UN SCOR 3137th mtg., U.N. Doc. S/RES/787 (1992).

<sup>26</sup> For international armed conflict, see art. 8, para. 2 (a) (vii) and (b) (viii) of the Rome Statute; for non-international armed conflict, see art. 8, para. 2 (e) (viii).

<sup>27</sup> Legality of the Threat or Use of Nuclear Weapons, ICJ, Reports 1966, p. 226 at p. 257, para. 79.

Commission has considered that these norms may give rise to obligations of peremptory character that are not subject to derogation.<sup>28</sup>

19. The extent to which these texts give rise to legal commitments must be considered in the light of the UN Charter, to which all states are party, and general international law. In practice declarations are viewed as persuasive evidence of the existence and interpretation of rules of international law and contribute to the formation of new rules, influence the practice of States and organizations and legitimate claims and justifications in international relations.<sup>29</sup> Marshalling all the evidence, although there are dissenting opinions, the majority of commentators assert that “under international law there is currently found, minimally a treaty right<sup>30</sup> conjoined with a customary right to be free from hunger.”<sup>31</sup>

20. There is some contention as to whether the right to food is customary international law, and what the content of that norm would be. However, given that the Voluntary Guidelines are addressed to all FAO and UN Member States to promote implementation of the right to food as contained in numerous international treaties and as part of the obligations of United Nations Member States, pursuant to the Universal Declaration of Human Rights, the customary nature of the right to food could be left aside.

### III. LEGAL BASIS FOR VOLUNTARY GUIDELINES

#### A. World Food Summit

21. The World Food Summit in 1996 adopted the Rome Declaration on World Food Security and the World Food Summit Plan of Action. The Rome Declaration reaffirmed the right of everyone to have access to safe and nutritious food, “consistent with the right to adequate food and the fundamental right of everyone to be free from hunger”. In the Plan of Action, Objective 7.4 is “to clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger as stated in the International Covenant on Economic, Social and Cultural Rights and other relevant international and regional instruments.” In addition, Objective 7.4 urged States that have not

<sup>28</sup> Draft Articles on State Responsibility for Internationally Wrongful Acts contained in Report of the International Law Commission on its 53rd session, GA Official Documents 56th session Doc. A/56/10, comments on Article 40.

<sup>29</sup> North Sea Continental Shelf case at 4.

<sup>30</sup> See Katarina Tomasevski, ed., *The Right to Food: Guide Through Applicable International Law* (1987).

<sup>31</sup> Donald E. Buckingham, *A Recipe for Change: Towards an Integrated Approach to Food under International Law*, 6 *Pace Int'l L. Rev.* 285 (1994).



yet done so to ratify the ICESCR, and all Governments to make every effort to implement it.<sup>32</sup> The links between the concept of the right to food in the World Food Summit documents and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were thus clearly established.

22. Within the United Nations human rights system, both UN Charter-based bodies and Treaty bodies<sup>33</sup> responded to this call by the World Food Summit. The Committee on Economic, Social and Cultural Rights<sup>34</sup> (CESCR), which monitors implementation of ICESCR, adopted General Comment 12 on the Right to Adequate Food. Among the Charter-based bodies, both the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights<sup>35</sup> have undertaken studies on the Right to Food, with the Commission on Human Rights having appointed a Special Rapporteur on the topic who reports both to the Commission and to the General Assembly.<sup>36</sup> The links between the World Food Summit and the various human rights instruments have thus been further strengthened.

## B. Mandate of the IGWG

23. The Declaration adopted by the World Food Summit: *five years later* invited the FAO Council to “establish ... an Intergovernmental Working Group, with the participation of stakeholders, in the context of the WFS

<sup>32</sup> FAO, Report of the World Food Summit, Appendix, Rome 1997.

<sup>33</sup> Charter-based bodies are those not established by separate human rights treaty, but derive their authority directly from the UN Charter and subsequent resolutions. These include, in particular, UN General Assembly, ECOSOC, the Commission on Human Rights and the Sub-Commission on Promotion and Protection of Human Rights. Treaty bodies, by contrast, are those human rights bodies established under the various human rights treaties, such as the Human Rights Committee and the Committee Against Torture.

<sup>34</sup> ECOSOC created the CESCR to monitor implementation of the Covenant. Unlike the Human Rights Committee, the CESCR is not mandated to undertake its supervisory activities independently but is to assist ECOSOC in fulfilling its role under the Covenant.

<sup>35</sup> In 1999, the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Mr. Asbjørn Eide, updated his study on the right to food and to be free from hunger. The Special Rapporteur recognized the role played by the World Food Summit Plan of Action in changing attitudes and acknowledged the important contribution of General Comment No. 12 in clarifying the content of the right and of corresponding State obligations. He noted that international institutions were increasingly endorsing a human rights approach to food and nutrition issues and called on States, international organizations, NGOs and civil society to act in a concerted way to eliminate the scourge of hunger from humanity.

<sup>36</sup> In 2000, the Commission on Human Rights appointed Mr. Jean Ziegler (Switzerland) as its first Special Rapporteur on the right to food. He has since submitted a number of reports and mission reports to the Commission on Human Rights and to the General Assembly. See, for instance, UN documents E/CN.4/2001/53, 7 February 2001; E/CN.4/2002/58/Add.1, 23 January 2002; A/56/357, 27 August 2002.



follow-up, to elaborate, in a period of two years, a set of voluntary guidelines to support Member States' efforts to achieve the progressive realization of the right to adequate food in the context of national food security".<sup>37</sup> The reference to Member States in the Declaration implies that the Voluntary Guidelines shall apply to all FAO Member States. Resolutions adopted by the General Assembly<sup>38</sup> and the United Nations Commission<sup>39</sup> on Human Rights and its Sub-Commission also include a reference to "Member States" that strongly suggest that the Voluntary Guidelines are to be addressed to all FAO (and UN) Member States. The Working Group is open to the participation of all FAO and UN members.<sup>40</sup> This clearly suggests that the Voluntary Guidelines are intended for all States and not only for States Parties to the ICESCR.

24. The wording of the World Food Summit documents refers to the ICESCR with regard to the content of the right to adequate food and the fundamental right to be free from hunger. The implication of this could be that, while the Voluntary Guidelines are by themselves not legally binding, they should be based on existing international law, including the ICESCR. On the other hand, the wording of the mandate might also imply that the Voluntary Guidelines should focus only on that aspect of the right to food falling within the ambit of "progressive realization" as opposed to obligations of an immediate nature or those specifically related to the fundamental right to be free from hunger.

### C. Nature of the Voluntary Guidelines

25. The Vienna Convention on the Law of Treaties is clear in indicating that international agreements do not create obligations for States without their consent.<sup>41</sup> The Voluntary Guidelines, as their name indicates, are not intended to be legally binding. Both the form and content would suggest that they are recommendatory and are not meant to create any new legal obligations for any State. It also seems clear that while the ICESCR is highly relevant, the Voluntary Guidelines are not intended solely for those States that have ratified it. On the other hand, the Voluntary Guidelines cannot detract from obligations

<sup>37</sup> Declaration of the World Food Summit: five years later, Operative Paragraph 10.

<sup>38</sup> General Assembly Res. A/C.3/58/L.70, 18 November 2003, welcoming the work of the Intergovernmental Working Group to elaborate a set of voluntary guidelines to support the efforts of Member States to achieve the progressive realization of the right to adequate food in the context of national food security. See also General Assembly resolution A/RES/57/226, paragraph 14.

<sup>39</sup> Commission on Human Rights Res. 2003/25, welcoming the Voluntary Guidelines as a means to "support Member States efforts to achieve the progressive realization of the right to adequate food in the context of national food security and encourages them to continue their cooperation in this regard." (emphasis added).

<sup>40</sup> See Annex D, Report of the 123rd Session of the FAO Council, 28 October to 2 November 2002.

<sup>41</sup> Vienna Convention on the Law of Treaties, art. 34.

that States already have, whether under treaty or customary law, and should avoid giving the impression that their implementation would not suffice for implementing obligations under human rights law, such as the ICESCR.

26. It should also be borne in mind that the Voluntary Guidelines are for application in all countries, whatever their level of development, climate or wealth. The CESCR has noted in this regard : “The most appropriate ways and means of implementing the right to adequate food will inevitably vary significantly from one State Party to another. Every State will have a margin of discretion in choosing its own approaches, but the Covenant clearly requires that each State party take whatever steps are necessary to ensure that everyone is free from hunger and as soon as possible can enjoy the right to adequate food.”<sup>42</sup>

27. For practical purposes, it is hard to see how the Voluntary Guidelines could be applied if they do not provide the necessary definitions and principles to be applied when taking measures in the various fields addressed by these.

#### IV. CONCLUSION

28. In developing the Voluntary Guidelines, the IGWG may, in light of the above discussion, consider whether it should restate existing customary or treaty law, interpret existing customary or treaty law, progressively develop the right to food as it is contained in the ICESCR, or reaffirm the interpretations suggested by the CESCR in General Comment 12.

29. If the Voluntary Guidelines are based on the interpretations of the ICESCR, they would primarily facilitate the fullfilment of State Parties’ obligations under the ICESCR. However, FAO and UN Member States non-party to the ICESCR could also implement the Voluntary Guidelines to the extent possible and compatible with their existing legal obligations.

30. Alternatively, the Voluntary Guidelines could be drafted taking as a basis the right to food as contained in the Universal Declaration on Human Rights, other international legal instruments<sup>43</sup> or general international law.

31. If at least the right to be free from hunger is customary international law, then it will be automatically incorporated into the domestic law of many States pursuant to their national legal systems and constitutional processes;

<sup>42</sup> General Comment 12, para. 21.

<sup>43</sup> Including ICESCR, CEDAW, Convention on the Rights of the Child, Geneva Conventions and Protocols.

the Voluntary Guidelines can assist in giving further content to this right. In States that do not automatically incorporate customary international law, but whose constitutions or laws contain a right to food or duty of government to assist the needy, the Voluntary Guidelines may provide authoritative interpretation of the constitutional provision.

32. For States Parties to the ICESCR whose domestic legal systems elevate human rights treaties to constitutional status, the interpretative statements contained in General Comments and Voluntary Guidelines would have interpretive weight, although they would not be legally binding. The Voluntary Guidelines would provide further detail to the definition of the rights and obligations contained in General Comment 12.

33. States Parties to the ICESCR must report on measures taken and difficulties encountered in implementing the rights it contains, but few States provide sufficient and precise information on the right to food.<sup>44</sup> The Voluntary Guidelines could provide benchmarks and a framework for State reporting. They would assist the CESCR and could be endorsed or adopted by it as a framework for future State reporting and the CESCR's own evaluation of State reports.

34. The juridical value of the Voluntary Guidelines would be strengthened if the text makes specific reference to a customary international law right to food or is linked to the obligations of States Parties to the ICESCR or the United Nations Charter. The Voluntary Guidelines may set forth standards of conduct that give rise to strong political expectations if they refer to existing law to give them an authoritative basis and legitimacy. A certain weakness of command is explicit in the title "Voluntary Guidelines", but the degree of specificity may give them stronger force than vague or ambiguous standards in a binding text. Thus, soft or indeterminate formulation of the right to food in treaty texts may be strengthened by the Voluntary Guidelines.

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<sup>44</sup> FAO Document IGWG RTFG 2/INF 1, Recognition of the right to food at the national level, September 2003.

# RECOGNITION OF THE RIGHT TO FOOD AT THE NATIONAL LEVEL

## 6

### I. INTRODUCTION

1. The Right to Food has been recognized and affirmed at the international level on many occasions. But to what extent is international recognition reflected at the national level?
2. This paper provides an overview of the various ways in which the right to food is recognized in different countries. It gives an indication of the number of countries which recognize the right to food, the extent to which they do so, their understanding of this right, and the respective levels of protection provided. The paper is based primarily on reviews of State reports to the Committee on Economic, Social and Cultural Rights (CESCR) and on analysis of constitutional provisions.

#### ICESCR, ARTICLE 11

1. The States Parties to the present Covenant recognise 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, recognising to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognising 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 utilisation of natural resources;
  - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world supplies in relation to need.

**ICESCR, ARTICLE 2**

1. 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 recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**II. HUMAN RIGHTS TREATIES****A. Ratification**

3. The first step in the inquiry is to gauge the commitment of individual States to the Right to Food by measuring the status of ratification of food related human rights treaties. If on the one hand the adoption in international forums of resolutions and declarations is an important indicator of the level of awareness and will to proceed in protecting human rights, on the other hand the real legal commitment is only created through the national process leading to ratification of legally binding instruments.

4. States that have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) have recognized the right to adequate food as part of the right to an adequate standard of living, and the fundamental right to be free from hunger (Article 11 ICESCR). States Parties have committed themselves to progressively realizing this right, to the maximum of available resources through all appropriate means, including in particular legislative measures (Article 2 ICESCR). As of December 2003, 149 States were Parties (while 6 remained Signatories) to the ICESCR.

5. States Parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) have agreed to take special measures to eliminate discrimination against women, including insurance of equal access by rural women to food security measures (Article 14 CEDAW) and appropriate nutrition during pregnancy and lactation (Article 12:2 CEDAW). As of December 2003, 175 States were Parties to the CEDAW.

6. States Parties to the Convention on the Rights of the Child (CRC), have undertaken to respect and ensure the right to a standard of living adequate for

the child's physical, mental, spiritual, moral and social development (Article 27:1 CRC). 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, clothing and housing (Article 27:3 CRC).

7. The right of the child to the highest attainable standard of health (Article 24:1 CRC) must be implemented, *inter alia*, through the provision of adequate nutritious food and clean drinking water (Article 24:2:c CRC). In addition, States Parties shall ensure that parents and children are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents (Article 24:2:e CRC).

8. These rights are to be ensured for each child within a State Party's jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. (Article 2:1 CRC). As of December 2003 there are 193 State Parties to the CRC, which is close to universal ratification.

9. Annex I shows the status of ratification of the ICESCR, CEDAW and CRC.

## **B. International Covenant on Economic, Social and Cultural Rights**

10. The International Covenant on Economic, Social and Cultural Rights (ICESCR) is monitored by the Committee on Economic, Social and Cultural Rights (CESCR), established in 1987 by the Economic and Social Council (ECOSOC). The State Parties, according to Article 16 of the ICESCR, have the duty to report on the measures which they have adopted and the progress made in achieving the observance of the rights recognised therein. These reports are submitted to the CESCR every five years after the initial report which must be submitted within two years of ratification. If a report is not submitted, the CESCR may elect to review a State's compliance with the Covenant without a report. The CESCR submits annual reports to ECOSOC.

11. The CESCR has issued "General Guidelines regarding the form and contents of reports to be submitted by State Parties under articles 16 and 17 of the CESCR".<sup>1</sup>

<sup>1</sup> UN document E/C.12/1991/1 (Basic Reference Document), 17 June 1991.

According to these Guidelines, State Reports should contain the following information:

- > Current standard of living of its entire population, with particular attention to the changes occurred in the short period (e.g., in the last 5 – 10 years), also through statistical instruments;
- > The extent to which the right to adequate food has been realized in the country, through nutritional surveys and detailed information on malnutrition, dividing the population in groups depending on sex, age, race, origin, geographical collocation, and other similar criteria;
- > Recent legal and political developments and measures considered necessary by the Government to guarantee access to adequate food for each of the vulnerable or disadvantaged groups and for the worse-off areas;
- > Measures taken to improve methods of production, conservation and distribution of food, by making full use of technology and scientific knowledge;
- > Evidence of any groups lacking knowledge of principles of nutrition;
- > Agrarian reforms made in order to improve efficiency of the agrarian system;
- > Measures taken to ensure equitable distribution of world food supplies in relation to need, taking into account the problems of both food-importing and food-exporting countries.

12. These Guidelines reflect paragraphs 1 and 2 of Article 11 of the ICESCR, as well as paragraph 2 of Article 2 ICESRC, which forbids discrimination in relation to any of the rights recognized in the ICESCR. It should be noted that these guidelines precede General Comment 12 of 5 May 1999,<sup>2</sup> and are in the process of being revised to take account of normative developments in the understanding of the right to food.

### C. States' Reports to CESCR

13. In order to provide an overview of State Parties' understanding of State obligations relating to the right to adequate food and freedom from hunger, a survey of the 69 State Reports, submitted during the decade 1993-2003, was undertaken by the FAO Legal Office in July 2003. The main findings are reported below.

14. Thirty-two reports - almost half of those submitted - contain various statistics, such as on poverty levels, cost of living, food consumption, per capita consumption of goods and services, average income and average expenditure, economic production, agriculture. In general, a State report may

<sup>2</sup> UN document E/C.12/1999/5, General Comment 12, The right to adequate food (Article 11 of the Covenant).

cover a variety of issues, such as agriculture, economic production, health, social security, nutritional habits or poverty in general. This is an indication of a broad understanding of the enabling environment necessary for the enjoyment of the right to food by all.

15. Many State Parties report on institutional measures taken to implement the right to adequate food. In particular, food safety and control institutions and food security coordination mechanisms, such as specific bureaus, agencies or committees are mentioned. Such coordination mechanisms may also have a mandate to identify legislative gaps.

16. A vast majority of the Reports are selective in the issues they report on, choosing one or two they deem most important, and many provide only major statistics. Less than a dozen of the 69 Reports give a coordinated and complete representation of all aspects of the implementation of article 11 in the national legal systems.<sup>3</sup>

17. Legislative measures are mentioned in the vast majority of State Parties' Reports. Such measures normally fall into one of three broad categories:

- > Specific legal measures adopted in specific fields, in order to guarantee the direct implementation of the right to adequate food in those contexts<sup>4</sup>;
- > Analysis on general legislation forming the legal basis for the implementation of large-scale programmes and reforms<sup>5</sup>;
- > Description of legal instruments creating coordination mechanisms to implement the right to adequate food<sup>6</sup>.

18. Common law countries may report on relevant jurisprudence, in particular on instances where a court has created *ex novo* rules and constitutionally

<sup>3</sup> Bolivia, 1999 (UN doc.E/1990/5/Add.44); Japan, 1998 (UN doc.E/1990/6/Add.21); Panama, 2000 (UN doc. E/1990/6/Add.24); Paraguay, 1999 (UN doc. E/1989/5/Add.13); Philippines, 1997 (UN doc. E/1989/5/Add.11); Sri Lanka, 1997 (UN doc. E/1990/5/Add.32); Switzerland, 1996 (UN doc. E/1990/5/Add.33); Syrian Arab Republic, 1999 (UN doc.E/94/104/Add.23); Trinidad and Tobago, 2000 (UN doc. E/90/6/Add.30); Tunisia, 1996 (UN doc. E/1990/6/Add.14).

<sup>4</sup> See for instance Estonia, *Food Act, Consumer Protection Act, Public Health Act, Water Act, Packaging Act*, 2001 (UN doc.E/1990/5/Add.51); Finland, *Living Allowance Act*, 1999 (UN doc. E/C.12/4/Add.1); Japan, *Soil Productivity Improvement Law*, 1998 (UN doc.E/1990/6/Add.21).

<sup>5</sup> See for instance Brazil, *The Food and Nutritional Vigilance System (SISVAN)*, 2001 (UN doc. E/1990/5/Add.53); Bulgaria, *National Food and Nutrition Policy*, 1996 (UN doc. E/1994/104/Add.16); Canada, *National Plan of Action and Nutrition*, 1998 (UN doc. E/1994/104/Add.17); Ireland, *National Anti-Poverty Strategy (NAPS)*, 2000 (UN doc. E/1990/6/Add.29).

<sup>6</sup> See for instance Slovakia, *Subsistence Minimum Act*, 2001 (UN doc. E/1990/5/Add.49); Tunisia, *Seventh Economic and Social Development Plan*, 1996 (UN doc. E/1990/6/Add.14).



protected rights. In common law jurisprudence the right to a decent standard of living, free from need and starvation, has been recognized.<sup>7</sup>

19. Various programmes and plans may be presented in a Report of a State Party with regard to:

- > Agrarian reform<sup>8</sup>;
- > Economic growth plans<sup>9</sup>;
- > Social security measures<sup>10</sup>;
- > Distribution of land and resources<sup>11</sup>;
- > Public health measures<sup>12</sup>;
- > Special programmes to address the needs of a minority group or a particularly disadvantaged group<sup>13</sup>.

#### D. Applicability of the ICESCR at the national level

20. One of the measures consistently advocated by the CESCR is the incorporation of the provisions of the ICESCR in the constitutions or national legislation of the State Parties, to ensure that the provisions can be directly applied by national courts and other agencies. It should also be noted that some State Parties to the ICESCR follow the so-called monistic system, which means that once ratified, a treaty becomes part of the law of the land and thus

<sup>7</sup> See Israel, Judgment by the Israel's Supreme Court in the case of Gazmo v. Ishayahu (REC 4905/98) OF 19 March 2001, 2001 (E/1996/6/Add.32).

<sup>8</sup> See for instance Brazil, *National Agrarian Reform Programme*, 2001 (UN doc.E/1990/5/Add.53.); Colombia, *Agrarian Reform Bill*, 2000 (UN doc. E/C.12/4/Add.6); Philippines, *Comprehensive Agrarian Reform Programme*, 1997 (UN doc. E/1989/5/Add.11).

<sup>9</sup> See for instance Bolivia, *General Social and Economic Development Plan*, 1999 (UN doc. E/1990/5/Add.44); Tunisia, *Seventh Economic and Social Development Plan*, 1996 (UN doc. E/1990/6/Add.14).

<sup>10</sup> See for instance Argentina, *Social Nutritional Programme (PROSONU)*, 1997 (UN doc. E/1990/6/Add.16); Panama, *Social Assistance Programme*, 2000 (UN doc. E/1990/6/Add.24).

<sup>11</sup> See for instance Armenia, *Programme of Land Reforms*, 1998 (UN doc. E/1990/5/Add.36); Philippines, *Comprehensive Agrarian Reform Programme*, 1997 (UN doc. E/1989/5/Add.11).

<sup>12</sup> See for instance Bulgaria, *Health Nutrition Information and Training Programme*, 1996 (UN doc. E/1994/104/Add.16); Mexico, *Nutrition and Health Programme*, 1997 (UN doc. E/1994/104/Add.18).

<sup>13</sup> See for instance Argentina, *Nutritional Programme for Mothers and Children (PROMIN)*, 1997 (UN doc.E/1990/6/Add.16); See also Australia, protection of health of indigenous, 1998 (UN doc. E/1994/104/Add.22); Panama, laws protecting indigenous ownership of land, 2000 (E/1990/6/Add.24); Paraguay, The Food and Nutritional Education Program – set up to improve living conditions in rural areas through health, nutrition and education programmes for vulnerable groups, 1999 (UN doc.E/1989/5/Add.13); Philippines, Government policies and social welfare focused on socially disadvantaged women, physically and mentally disabled persons and the more disadvantaged members of labour force, 1997 (UN doc. E/1989/5/Add.11).

applicable by courts. States which follow the dualist approach normally need to adopt specific legislation to this effect before the provisions of a treaty becomes applicable.

21. Based on a review of Constitutions and of State Parties Reports to the ICESCR, the FAO survey found that in 77 State Parties to the ICESCR the provision of international treaties such as the ICESCR are part of the domestic legal order and directly applicable, while in others the incorporation of such provision in the domestic system is subject to the adoption of specific national laws. In this regard, some countries have taken important steps to incorporate the entire Covenant,<sup>14</sup> while others took action to enforce single rights alone.<sup>15</sup> A full list of the State Parties where the ICESCR is part of the domestic legal order is provided in Annex II.

### III. NATIONAL CONSTITUTIONS

#### A. Dimensions of the Right to Food

22. The right to food is a multidimensional right, the realization of which depends on many factors. In a normal situation, for the majority of persons, the right to food is realized primarily through their own efforts, by producing or procuring the food they need. This depends on access to land and other productive resources and on access to paid employment. Some people are unable to provide for themselves, for reasons beyond their control - such as unemployment, age, sickness, disability, natural catastrophes, and war. Their food entitlements depend on transfer of food or cash from their families, communities, countries or international aid organizations. The right to adequate food also implies that the food obtained must be of adequate quality. This entails that food purchased on the free market or given as food aid must fulfil minimum safety standards. The right to food is linked to various other human rights, from property rights and access to justice, labour rights and the right to information and education.

23. Exploring the constitutional protection of the right to food therefore is a more complex endeavour than simply searching for keywords such as “food” or “nutrition”.<sup>16</sup> On the other hand, if the survey is to remain meaningful,

<sup>14</sup> See for instance Norway – the Human Rights Act of 21 May 1999 No.30 gave ICESCR, ICCPR and ECHR the force of Norwegian Law; Argentina – the 1994 Constitutional amendment included ICESCR into the National Constitution.

<sup>15</sup> See discusses in the following section on protection of single rights though constitutional provisions.

<sup>16</sup> This was the methodology followed in “The Right to Food in Theory and Practice”, FAO, Rome, 1998.

some limits must be set to its scope. The FAO Legal Office undertook a survey of all national constitutions in June and July 2003, using the following criteria for inclusion:

- > Explicit recognition of the right to food of everyone;
- > Explicit recognition of the right to food of specific groups (such as children, the elderly, pensioners, prisoners);
- > Implicit recognition of the right to food through explicit recognition of a wider right, such as the right to an adequate standard of living, a decent life or a livelihood;
- > Recognition of a right to social security for non-workers, which constitutes an implicit recognition of the right to food;
- > Recognition of the rights of the child, which can normally be taken to include their nutrition rights;
- > Recognition of a right to minimum wage for workers, enough to provide for the basic needs of the worker and his or her family, including food needs;
- > Recognition of the importance of agriculture, food safety or consumer rights through explicit provisions on rights or on a duty of the State;
- > Recognition of the right to health, in such a way as to include food rights.

24. There is considerable overlap between those different dimensions of protection and recognition of the right to food; some Constitutions contain provisions falling into most of these categories. On the other hand, some Constitutions contain no such provisions at all. Map No 1 aims at capturing the scope of recognition of the right to food in the world based on some of these dimensions.<sup>17</sup>

25. The most common constitutional provisions are formulated along the lines of the Universal Declaration of Human Rights, recognizing the right of everyone to an adequate standard of living, including food, clothes and shelter. Others refer to a decent living standard or life in dignity. Yet other constitutions list component rights only, such as food or nutrition. There are some Constitutions where the right to food as such is not mentioned, and reference is made only to the obligation of the State to ensure an adequate standard of living or level of nutrition of the population, which for the purpose of this paper is deemed equivalent to implicit recognition of the right to food.<sup>18</sup>

26. Constitutions that recognize the rights of the child almost always state that the parents have the obligation to feed their children; often they also contain

<sup>17</sup> The maps referred to in this paragraph and paragraph 32 are not included in this publication. They can be obtained from [Righttofood@fao.org](mailto:Righttofood@fao.org).

<sup>18</sup> For instance, Article 47 of the Constitution of India.

reference to obligations to provide state support to parents or to ensure the care of orphans. Specific groups other than children, whose food rights are specifically protected in some constitutions, include pensioners, the elderly, war widows, veterans and prisoners. Such provisions often coexist with more general provisions concerning the right to food.

CONSTITUTIONAL PROVISIONS FOR THE RIGHT TO FOOD	
1) CONSTITUTIONAL PROVISIONS MAKING DIRECT MENTION OF THE RIGHT TO FOOD, APPLICABLE TO THE WHOLE OF THE POPULATION <sup>19</sup>	22
2) EXPLICIT PROTECTION OF THE RIGHT TO FOOD OF A SPECIFIC GROUP	17
3) CONSTITUTIONS PROTECTING A BROADER RIGHT, INCLUDING THE RIGHT TO FOOD, SUCH AS ADEQUATE STANDARD OF LIVING, OR DIGNIFIED LIFE <sup>20</sup>	46
4) RIGHTS OF THE CHILD CONSTITUTIONALLY PROTECTED	66
5) CONSTITUTIONS RECOGNIZING A RIGHT TO SOCIAL SECURITY	114
6) CONSTITUTIONAL PROVISIONS ON MINIMUM WAGES	37
7) CONSTITUTION PROVIDES FOR STATE RESPONSIBILITY FOR FOOD SAFETY, CONSUMERS, PROMOTION OF AGRICULTURE ETC.	23
8) BROAD CONSTITUTIONAL PROVISIONS ON THE RIGHT TO HEALTH, WHICH COULD INCLUDE THE RIGHT TO FOOD	13
TOTAL NUMBER OF CONSTITUTIONS REVIEWED	203

27. Some constitutions contain reference to the resources available to the State in connection with the realization of the right to food, which echoes the International Covenant on Economic, Social and Cultural Rights (ICESCR) and should therefore be interpreted in accordance with the obligations of a State Party to that Covenant.

28. A statistical review of the results reveals that a majority of countries recognize some dimension of the right to food. The Table below gives a breakdown of the statistics. It should be noted that no account is taken of overlaps between the categories, of which there are some instances. It must also be acknowledged that these categories are by their nature loose, and the placement of a particular provision in one category rather than another may be disputable.

29. Annex II contains the full list of constitutional provisions.

<sup>19</sup> See Annex III: High level of constitutional protection of the right to food.

<sup>20</sup> See for instance Norway, which has a provision referring to all human rights recognized by Norway.

## B. Level of constitutional protection

30. Given the considerable overlap between the various constitutional provisions, which is not reflected above, a subjective judgment was made as to how strong the constitutional protection of the right to food is deemed to be. For instance, while the Constitution of Bolivia does not have a provision classified by the survey as explicit recognition of the right to food of the entire population, there are provisions about the right to food of various groups and the rights of the child and recognition of the right to an adequate standard of living, as well as protection of the right to social security and to a minimum wage.<sup>21</sup> Taken together, the constitutional protection of the right to food in Bolivia is, in fact, very strong.

31. Some countries do not have written constitutions. Nevertheless, the judiciary in those countries may recognize constitutional rights, and there are examples of the right to food having been so recognized in case law.<sup>22</sup> These countries have been taken into account in this survey.

32. Map 2 depicts the assessment of degree of constitutional protection in different countries on the basis of the cumulative constitutional provisions and direct applicability of the ICESCR noted in Annex II and partly reflected in Map 1. Annex III provides the complete list of countries and the assessment of the level of protection. It should be noted that this part of the survey did not distinguish between justiciable and non-justiciable provisions.

33. The conclusion of this – rather subjective – assessment is that a total of 57 countries<sup>23</sup> provide rather strong constitutional protection, and another 55 countries have medium level protection, while 28 countries provide some, but more limited, protection of the right to food. The majority of countries therefore recognizes and protects the right to food to some extent.

## IV. JURISPRUDENCE ON THE RIGHT TO FOOD

### A. Justiciability

34. The review of the constitutional protection of the different dimensions of the right to food referred to above does not distinguish between provisions

<sup>21</sup> See Articles 8, 157, 158, 164 and 199 of the Constitution of Bolivia.

<sup>22</sup> For instance, Israel, see *Gazmo vs Ishayahu* (REC 4905/98) delivered by the Supreme Court of Israel on 19 March 2001, quoted in Israel's report to the CESCR in 2001, UN doc. E/1990/6/Add.32, paragraph 284

<sup>23</sup> See Annex III, countries listed as having high and medium high protection.

that are justiciable, and those that are not. Nor does it give an indication as such whether the right to food is well protected in law or in practice. It should furthermore be noted that perceived justiciability may change over time, notwithstanding the original intention or interpretation. At the present time there is little jurisprudence available specifically on the right to food although a growing body of case law exists for various other economic, social and cultural rights.<sup>24</sup> The following sections will briefly review relevant jurisprudence from three countries in different continents.

## B. Switzerland

### **CONSTITUTION FÉDÉRALE DE LA CONFÉDÉRATION SUISSE ART. 12 Droit d'obtenir de l'aide dans des situations de détresse**

Quiconque est dans une situation de détresse et n'est pas en mesure de subvenir à son entretien a le droit d'être aidé et assisté et de recevoir les moyens indispensables pour mener une existence conforme à la dignité humaine.

35. An important case on the right to food and minimum subsistence comes from Switzerland. In 1996 the Swiss Federal Court, which is the highest court in Switzerland, recognized the right to minimum basic conditions, including “the guarantee of all basic human needs, such as food, clothing and housing” to prevent a situation where people “are reduced to beggars, a condition unworthy of being called human”. The case was brought by three brothers, state-less Czech refugees, who found themselves in Switzerland with no food and no money. They could not work, because they could not get a permit, and without papers they could not leave the country. Their request for assistance to the cantonal authorities in Bern was refused.<sup>25</sup>

36. The Court in this case deemed that it lacked the legal competence to set priorities for the allocation of resources necessary to realize the right to minimum conditions of existence, including food. However, it determined that it could set aside legislation if the outcome of this legislative framework

<sup>24</sup> Databases of such caselaw are available from various organizations, including the International Network on Economic, Social and Cultural Rights (ESCR-Net) [www.escr-net.org](http://www.escr-net.org), Interights [www.interights.org](http://www.interights.org) and the Nordic Human Rights Network [www.nordichumanrights.net/tema/tema3/caselaw/](http://www.nordichumanrights.net/tema/tema3/caselaw/) and the Centre for Housing Rights and Evictions (COHRE) [www.cohre.org/litigation](http://www.cohre.org/litigation).

<sup>25</sup> The right to food, Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2001/25 and General Assembly resolution of \*\*\*, UN document E/CN.4/2002/58, 20 December 2001, paragraph 58.

failed to meet the minimum claim required by constitutional rights. In this case, the exclusion of three non-nationals from social welfare legislation was found to be a violation of their right to food, despite the fact that they were illegal immigrants. The Swiss Federal Court decision determined that the right to food in this sense could be the foundation of a justiciable claim for official assistance.<sup>26</sup>

37. Transforming the hitherto unwritten constitutional right, the 1999 Swiss Constitution contains an explicit Constitutional provision on the right to assistance in situations of distress, as set out in the box above.

### C. India

38. The Indian Constitution recognizes the right to life, and contains a specific provisions related to food, as shown in the box below.

#### THE CONSTITUTION OF INDIA

##### Part III – Fundamental Rights

##### *Article 21: Protection of life and personal liberty*

No person shall be deprived of his life or personal liberty except according to procedure established by law.

##### Part IV – Directive Principles of State Policy

##### *Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health.*

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

39. According to the “Right to Food Campaign”, the year 2001 witnessed a time of widespread drought across the country. In many states, it was the second or third successive year of drought. In this time of crisis, state governments often failed to meet their responsibilities towards drought-affected citizens, as spelt out in their respective “famine codes” or “scarcity manuals”. This failure was all the more shocking in view of the country’s gigantic food stocks (approximately 50 million tonnes at that time).

<sup>26</sup> Langford, Malcolm, Right to Food in International Law: Obligations of States and the FAO, LLM Thesis presented to the European University Institute, Florence, dated 1 October 2001.

40. In response to this situation, the People's Union for Civil Liberties (Rajasthan) filed a writ petition in the Supreme Court in April 2001, demanding the immediate utilization of the country's food stocks for drought relief and prevention of hunger. The scope of the petition was not restricted to drought situations alone. It also focused on the general need to uphold the "right to food". The respondents to the lawsuit were the Union of India, all the state/UT governments, and the Food Corporation of India.<sup>27</sup>

41. The Supreme Court held its first hearing on 9 May 2001 and has held regular hearings in the case since then. The case is still ongoing, but a number of interim orders have been issued. In its Interim Order of 2 May 2003 the Court stated:

*"Article 21 of the Constitution of India protects for every citizen a right to live with human dignity. Would the very existence of life of those families which are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families? Reference can also be made to Article 47 which inter alia provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties."*<sup>28</sup>

42. The Supreme Court has thus formally recognized the right to food, and has ordered the central and State governments to take a number of measures to improve the situation. The justiciability of this right is therefore confirmed, and the Court has issued a number of orders to government, entailing expenditure of resources. Among the decisions of the court case to date are:

- > Benefits of eight nutrition-related schemes (PDS, Antyodaya, mid-day meals, ICDS, Annapurna, old-age pensions, NMBS and NFBS) have become legal entitlements;
- > All state governments have been directed to begin cooked mid-day meals for all children in government and government-assisted schools;
- > State and central governments have been ordered to adopt specific measures to ensure public awareness and transparency of assistance programmes;
- > Government of India must develop a system to ensure that all poor families are identified as Below Poverty Line;
- > Licences of ration shop dealers to be cancelled if they (i) do not open on time, (ii) overcharge, (iii) retain ration cards, (iv) make false entries in BPL cards, or (v) engage in black marketing;

<sup>27</sup> Right to Food Campaign (India) website, Legislative action. <http://www.righttofood.com>, consulted on 9 September 2003.

<sup>28</sup> PUCL vs. Union of India and others, Writ Petition (Civil) No.196 of 2001, available at [www.righttofood.com](http://www.righttofood.com)



- > Especially vulnerable groups have been identified amongst the poor, including widows, the elderly, infirm, disabled, pregnant and lactating women without assured means of subsistence, as well as “primitive tribes”;
- > All State Governments have been ordered to implement food for work schemes in scarcity areas.

43. In its Interim Orders of 2 and 8 May 2002, the Supreme Court appointed two Commissioners of the Court “for the purpose of monitoring the implementation of all orders relating to the right to food”. The Commissioners are empowered to enquire about any violations of these orders and to demand redress, with the full authority of the Supreme Court. They may enlist the assistance of NGOs and individuals. Resident Commissioners have also been appointed in each state, to assist the Commissioners of the Court. At the time of writing the Commissioners have submitted four reports to the Supreme Court, making a number of observations and recommendations.<sup>29</sup>

#### D. South Africa

44. The South African Constitution adopted in 1994 after the abolition of apartheid, is in many ways very progressive.

##### **CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA - CHAPTER 2 Bill of Rights**

###### ***Section 27: Health care, food, water and social security***

1. Everyone has the right to have access to –
  - ...(b) sufficient food and water, and
  - (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.

###### ***Section 28: Children***

1. Every child has the right -
  - ...(c) to basic nutrition, shelter, basic health care services and social services;

###### ***Section 35: Arrested, detained and accused persons***

2. Everyone who is detained, including every sentenced prisoner, has the right-
  - ...(e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment;

<sup>29</sup> www.righttofood.com, Commissioners’ work, consulted on 9 September 2003.

45. The way in which the social, economic and cultural rights are drafted leaves no doubt as to the justiciability of those rights. In section 7 (2) of the Constitution the State is required to respect, protect, promote and fulfil the rights in the Bill of Rights. Section 38 of the Constitution states that a class, group or individual can “approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights”.

46. The justiciability of social, economic and cultural rights in South Africa has been confirmed in a Supreme Court judgment, in the *Grootboom* case,<sup>30</sup> which concerned the right to adequate housing. The judgment developed a test of “reasonableness” against which to measure the performance of the government in dealing with the right to adequate housing, and established that priority must be given to those in desperate need.

47. The right to food is protected in three different articles of the Constitution, shown in the box above. While the general right to food is subject to available resources, no such limitation is listed on the nutrition rights of the child and of prisoners. In addition to the right to food being justiciable in South Africa, the Constitution also established a Human Rights Commission, with the mandate to monitor all human rights. The Commission has developed a set of questionnaires sent to relevant government departments at central and state levels, soliciting information about actions taken to implement the right to food.<sup>31</sup>

## V. CONCLUSIONS

48. Food-related rights are recognized to some extent in a majority of countries, often on the same basis as the right to food is recognized in the ICESCR. However, the actual respect, protection and fulfilment of this right remains elusive and in most countries there is lack of clear definition and understanding of the content of these rights at the national level, let alone clear justiciable provisions on the right to food as such.

49. The right to food is underdeveloped as of yet; the understanding of the right, its content, limitations and application by oversight mechanisms, remain largely unexplored. The progress in the realization of the right to food is also very uneven in the world; while hunger and malnutrition have been largely

<sup>30</sup> See *Government of the Republic of South Africa v. Grootboom* 2001 (1) SA 46 (CC).

<sup>31</sup> See presentation entitled “The Right to Food – The South African Experience” by Commissioner Charlotte McClain at the “Forum national sur le droit à une alimentation adéquate”, Bamako, Mali, 19 – 21 March 2003.

eradicated in some countries, yet in others the situation remains critical, and many people have no effective entitlements and no effective ways of holding their governments accountable if they suffer from hunger and malnutrition. The ICESCR specifies the adoption of legislative measures for the realization of the rights recognized in the ICESCR, yet very few countries have taken legislative steps regarding the right to food beyond simple constitutional provisions, which, while important first steps, probably do not suffice for effective action.

50. Specific legislation, such as framework law, is urgently needed in order to ensure the process side of the progressive realization of the right to adequate food in all its implications, especially in countries where incidence of under nutrition is high. As noted earlier, the right to food is a multidimensional issue and demands cross-sectoral approaches. This may inadvertently lead to less accountability on the part of the State. It is therefore of crucial importance to assign responsibilities for coordination of efforts and for the various areas and levels of government that may help or hinder the enjoyment of the right to adequate food.

51. To date there have been very few instances in which national courts have adjudicated on the basis of provisions related to food rights. However, there are some signs of progress in the strengthening of judicial and other mechanisms, and as jurisprudence and administrative review cases gradually build up, the ways and means by which effective remedies for violations of the right to food can be provided will become increasingly clear.

ANNEX I

# STATUS OF RATIFICATION OF RELEVANT TREATIES

The Table shows the status of ratification of three relevant human rights treaties, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The year refers to the entry into force of the instrument of ratification or accession. The symbol (s) denotes that the country in question has signed, but not ratified the instrument.

COUNTRIES	ICESCR	CEDAW	CRC
AFGHANISTAN	1983	2003	1994
ALBANIA	1992	1994	1992
ALGERIA	1989	1996	1993
ANDORRA	-	1997	1996
ANGOLA	1992	1986	1991
ANTIGUA AND BARBUDA	-	1989	1993
ARGENTINA	1986	1985	1991
ARMENIA	1993	1993	1993
AUSTRALIA	1976	1983	1991
AUSTRIA	1978	1982	1992
AZERBAIJAN	1992	1995	1992
BAHAMAS	-	1993	1991
BAHRAIN	-	2002	1992
BANGLADESH	1999	1984	1990
BARBADOS	1976	1981	1990
BELARUS	1976	1981	1990
BELGIUM	1983	1985	1992

COUNTRIES	ICESCR	CEDAW	CRC
BELIZE	2000 <sup>5</sup>	1990	1990
BENIN	1992	1992	1990
BHUTAN	-	1981	1990
BOLIVIA	1982	1990	1990
BOSNIA AND HERZEGOVINA	1992	1993	1992
BOTSWANA	-	1996	1995
BRAZIL	1992	1984	1990
BRUNEI DARUSSALAM	-	-	1996
BULGARIA	1976	1982	1991
BURKINA FASO	1999	1987	1990
BURUNDI	1990	1992	1990
CAMBODIA	1992	1992	1992
CAMEROON	1984	1994	1993
CANADA	1976	1982	1992
CAPE VERDE	1993	1981	1992
CENTRAL AFRICAN REPUBLIC	1981	1991	1992
CHAD	1995	1995	1990
CHILE	1976	1990	1990
CHINA	2001	1981	1992
COLOMBIA	1976	1982	1991
COMOROS	-	1994	1993
CONGO	1984	1982	1993
COOK ISLANDS	-	-	1997
COSTA RICA	1976	1986	1990
CÔTE D'IVOIRE	1992	1996	1991
CROATIA	1991	1992	1991
CUBA	-	1981	1991
CYPRUS	1976	1985	1991
CZECH REPUBLIC	1993	1993	1993
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA	1981	2001	1990
DEMOCRATIC REPUBLIC OF THE CONGO	1977	1986	1990
DENMARK	1976	1983	1991

COUNTRIES	ICESCR	CEDAW	CRC
DJIBOUTI	2003	1999	1991
DOMINICA	1993	1981	1991
DOMINICAN REPUBLIC	1978	1982	1991
ECUADOR	1976	1981	1990
EGYPT	1982	1981	1990
EL SALVADOR	1980	1981	1990
EQUATORIAL GUINEA	1987	1984	1992
ERITREA	2001	1995	1994
ESTONIA	1992	1991	1991
ETHIOPIA	1993	1981	1991
FIJI	-	1995	1993
FINLAND	1976	1986	1991
FRANCE	1981	1984	1990
GABON	1983	1983	1994
GAMBIA	1979	1993	1990
GEORGIA	1994	1994	1994
GERMANY	1976	1985	1992
GHANA	2000	1986	1990
GREECE	1985	1983	1993
GRENADA	1991	1990	1990
GUATEMALA	1988	1982	1990
GUINEA	1978	1982	1990
GUINEA-BISSAU	1992	1985	1990
GUYANA	1977	1981	1991
HAITI	-	1981	1995
HOLY SEE	-	-	1990
HONDURAS	1981	1983	1990
HUNGARY	1976	1981	1991
ICELAND	1979	1985	1992
INDIA	1979	1993	1993
INDONESIA	-	1984	1990
IRAN (ISLAMIC REPUBLIC OF)	1976	-	1994

COUNTRIES	ICESCR	CEDAW	CRC
IRAQ	1976	1986	1994
IRELAND	1990	1986	1992
ISRAEL	1992	1991	1991
ITALY	1978	1985	1991
JAMAICA	1976	1984	1991
JAPAN	1979	1985	1994
JORDAN	1976	1992	1991
KAZAKHSTAN	-	1998	1994
KENYA	1976	1984	1990
KIRIBATI	-	-	1996
KUWAIT	1996	1994	1991
KYRGYZSTAN	1994	1997	1994
LAO PEOPLE'S DEMOCRATIC REPUBLIC	2000 (s)	1981	1991
LATVIA	1992	1992	1992
LEBANON	1976	1997	1991
LESOTHO	1992	1995	1992
LIBERIA	1967 (s)	1984	1993
LIBYAN ARAB JAMAHIRIYA	1976	1989	1993
LIECHTENSTEIN	1999	1996	1996
LITHUANIA	1992	1994	1992
LUXEMBOURG	1983	1989	1994
MADAGASCAR	1976	1989	1991
MALAWI	1994	1987	1991
MALAYSIA	-	1995	1995
MALDIVES	-	1993	1991
MALI	1976	1985	1990
MALTA	1990	1991	1990
MARSHALL ISLANDS	-	-	1993
MAURITANIA	-	2001	1991
MAURITIUS	1976	1984	1990
MEXICO	1981	1981	1990
MICRONESIA (FEDERAL STATES OF)	-	-	1993

COUNTRIES	ICESCR	CEDAW	CRC
MONACO	1997	-	1993
MONGOLIA	1976	1981	1990
MOROCCO	1979	1993	1993
MOZAMBIQUE	-	1997	1994
MYANMAR	-	1997	1991
NAMIBIA	1995	1992	1990
NAURU	-	-	1994
NEPAL	1991	1991	1990
NETHERLANDS	1979	1991	1995
NEW ZEALAND	1979	1985	1993
NICARAGUA	1980	1981	1990
NIGER	1986	1999	1990
NIGERIA	1993	1985	1991
NIUE	-	-	1996
NORWAY	1976	1981	1991
OMAN	-	-	1997
PAKISTAN	-	1996	1990
PALAU	-	-	1995
PANAMA	1977	1981	1991
PAPUA NEW GUINEA	-	1995	1993
PARAGUAY	1992	1987	1990
PERU	1978	1982	1990
PHILIPPINES	1976	1981	1990
POLAND	1977	1981	1991
PORTUGAL	1978	1981	1990
QATAR	-	-	1995
REPUBLIC OF KOREA	1990	1985	1991
REPUBLIC OF REPUBLIC OF MOLDOVA	1993	1994	1993
ROMANIA	1976	1982	1990
RUSSIAN FEDERATION	1976	1981	1990
RWANDA	1976	1981	1991
SAINT KITTS AND NEVIS	-	1985	1990



COUNTRIES	ICESCR	CEDAW	CRC
SAINT LUCIA	-	1982	1993
SAINT VINCENT AND THE GRENADINES	1982	1981	1993
SAMOA	-	1992	1994
SAN MARINO	1986	-	1991
SAO TOME AND PRINCIPE	1995 (s)	2003	1991
SAUDI ARABIA	-	2000	1996
SENEGAL	1978	1985	1990
SERBIA AND MONTENEGRO	1992	1982	1991
SEYCHELLES	1992	1992	1990
SIERRA LEONE	1996	1988	1990
SINGAPORE	-	1995	1995
SLOVAKIA	1993	1993	1993
SLOVENIA	1992	1992	1991
SOLOMON ISLANDS	1982	2002	1995
SOMALIA	1990	-	2002 (s)
SOUTH AFRICA	1994 (s)	1996	1995
SPAIN	1977	1984	1991
SRI LANKA	1980	1981	1991
SUDAN	1986	-	1990
SURINAME	1977	1993	1993
SWAZILAND	-	-	1995
SWEDEN	1976	1981	1990
SWITZERLAND	1992	1997	1997
SYRIAN ARAB REPUBLIC	1976	2003	1993
TAJIKISTAN	1999	1993	1993
THAILAND	1999	1985	1992
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA	1994	1994	1991
TIMOR-LESTE	2003	2003	2003
TOGO	1984	1983	1990
TONGA	-	-	1995
TRINIDAD AND TOBAGO	1979	1990	1992

COUNTRIES	ICESCR	CEDAW	CRC
TUNISIA	1976	1985	1992
TURKEY	2003	1986	1995
TURKMENISTAN	1997	1997	1993
TUVALU	-	1999	1995
UGANDA	1987	1985	1990
UKRAINE	1976	1981	1991
UNITED ARAB EMIRATES	-	-	1997
UNITED KINGDOM	1976	1986	1992
UNITED REPUBLIC OF TANZANIA	1976	1985	1991
UNITED STATES OF AMERICA	1977 (s)	1980 (s)	1995 (s)
URUGUAY	1976	1981	1990
UZBEKISTAN	1995	1995	1994
VANUATU	-	1995	1993
VENEZUELA	1978	1983	1990
VIET NAM	1982	1982	1990
YEMEN	1987	1984	1991
ZAMBIA	1984	1985	1992
ZIMBABWE	1991	1991	1990
TOTAL REMAINING SIGNATURES	6	1	2
TOTAL RATIFICATIONS	149	175	193

## ANNEX II

# CONSTITUTIONAL PROTECTION OF THE RIGHT TO FOOD

The list below lists countries containing constitutional provisions under each category, with reference to the Article or Section of the Constitution in brackets.

## Constitutional provisions making direct mention of the right to food, applicable to the whole of the population

Bangladesh (15); Brazil (6); Democratic People's Republic of Korea (25); Ecuador (23); Ethiopia (90); Guatemala (99); Guyana (40); Haiti (22); Iran (Islamic Republic of) (3, 43); Malawi (13, 30); Namibia (95); Nicaragua (63); Nigeria (16); Pakistan (38); Panama (106); Puerto Rico (2); Republic of Moldova (47); South Africa (27); Sri Lanka (25); Suriname (24); Uganda (14, 22); Ukraine (48).

## Explicit protection of the right to food of a specific group

Bolivia (8); Brazil (208, 227); Colombia (44,46); Costa Rica (82); Cuba (9, 38); Dominican Republic (8); Ecuador (49,50); Guatemala (51); Honduras (121, 123); Panama (52); Paraguay (54, 57); Philippines (15); Peru (6); South Africa (28, 35); Sri Lanka (22); The former Yugoslav Republic of Macedonia (40); Uruguay (56).

## Constitutions protecting a broader right, including the right to food, such as adequate standard of living, or dignified life

Bangladesh (18); Belgium (23.1); Bolivia (158); Brazil (170); Canada (7); Colombia (46); Dem. Rep. of Congo (48); Cyprus (9); Dominican Republic (8); El Salvador (101); Eritrea (Preamble,10); Ethiopia (89); Finland (19); Germany (1); Ghana (36); Guatemala (119); Honduras (150); India (21, 47); Indonesia (28); Ireland (45); Liberia (8); Mozambique (41); Netherlands (20); Nigeria (16, 17); Norway (110 c); Pakistan (38); Paraguay (53); Peru (2);

Puerto Rico (2); Republic of Korea (34); Romania (43); Russian Federation (7); Sierra Leone (8); Slovakia (39); Spain (Preamble); Sudan (11); Sweden (2); Switzerland (12); Syrian Arab Republic (44); Tajikistan (1); The former Yugoslav Republic of Macedonia (40); Trinidad and Tobago (Preliminary, Sec. I); Turks and Caicos Islands (2); United Republic of Tanzania (8, 11); Vanuatu (5); Venezuela (3, 299).

### **Right of the child constitutionally protected**

Bahrain (5); Bolivia (199); Brazil (203); Bulgaria (47); Cambodia (48, 73); Capo Verde (71, 86); Colombia (44, 45, 50); Comoros (Preamble); Congo (33,34); Costa Rica (55); Côte d'Ivoire (6); Croatia (62); Cuba (9, 38); Ecuador (50); Egypt (10); El Salvador (35); Ethiopia (36); Guatemala (51); Haiti (260); Honduras (121, 123); Hungary (16); Iceland (76); India (39); Indonesia (28b); Ireland (45); Italy (31); Kuwait (10); Latvia (110); Lesotho (27); Lithuania (39); Namibia (15); Nepal (26); Nicaragua (105); Nigeria (17); Pakistan (35); Panama (52); Paraguay (53, 54); Peru (4); Philippines (15); Poland (72); Portugal (69); Puerto Rico (2); Qatar (22); Republic of Moldova (50); Romania (45); Russian Federation (7); Sao Tome and Principe (51); Seychelles (31); Slovenia (56); South Africa (28); Spain (39); Sri Lanka (22); Sudan (14); Suriname (37); Switzerland (11); Syrian Arab Republic (44); Tajikistan (340); Thailand (53); The former Yugoslav Republic of Macedonia (40, 42); Timor-Leste (18); Turkey (41, 61); Uganda (34); United Arab Emirates 916); Uruguay (41); Venezuela (78); Viet Nam (59, 65).

### **Constitutions recognizing a right to social security**

Albania (59); Algeria (59); Andorra (30); Angola (47); Armenia (33); Azerbaijan (38); Bahrain (3); Bangladesh (15); Belgium (23); Belarus (47); Bolivia (164); Brazil (203, 230); Bulgaria (51); Burkina Faso (18); Cambodia (36, 72, 75); Cape Verde (7, 67, 72); Chile (19); China (45); Hong Kong Province of China (36, 145); Colombia (44, 46, 47, 48, 49); Côte d'Ivoire (6); Croatia (57, 58, 64); Cuba (9, 48); Cyprus (9); Democratic People's Republic of Korea (72); Democratic Republic of the Congo (47, 50); Dominican Republic (8); Ecuador (55, 56, 57); Egypt (17); El Salvador (66, 70); Eritrea (21); Estonia (28); Ethiopia (41, 89); Finland (19); France (Preamble); Gabon (1); Georgia (32); Germany (20); Ghana (37); Greece (21, 22); Guatemala (94); Haiti (22, 260); Honduras (142); Hungary (70e); Iceland (76); India (41); Indonesia (34); Iran, Islamic Republic of (29); Ireland (45); Italy (38); Kazakhstan (24, 28, 29); Kuwait (11); Kyrgyzstan (27); Latvia (109); Liberia (8); Liechtenstein (26); Lithuania (48); Luxembourg (11, 23); Madagascar (30); Malawi (13); Maldives (28); Mali (17); Malta (Sec.17); Marshall Island (Sec. 15); Mexico (123); Mongolia (16); Namibia (95); Nepal (26); Netherlands (20); Nicaragua (82, 105); Nigeria (16, 17); Oman (12); Pakistan (38); Panama (109); Paraguay (58, 70, 95); Peru (4, 10, 11); Philippines (15); Poland (67, 69); Portugal (63, 72); Puerto Rico (2);

Qatar (23); Republic of Korea (34); Republic of Moldova (47, 51); Romania (33, 43, 45, 46); Russian Federation (7, 39); Sao Tome and Principe (27, 43); Saudi Arabia (27); Seychelles (37); Sierra Leone (8, 22); Slovakia (39); Slovenia (50); South Africa (27); Spain (41, 49, 50); Sri Lanka (22, 25); Sudan (11); Suriname (50); Sweden (2); Switzerland (12, 41); Syrian Arab Republic (46); Tajikistan (39); Thailand (52, 54, 55); The former Yugoslav Republic of Macedonia (34, 35, 36); Timor-Leste (20, 21, 56); Togo (33); Turkey (60, 61); Turkmenistan (34); Uganda (35); Ukraine (46); United Arab Emirates (16); United Republic of Tanzania (8, 11); Uruguay (44, 46, 67); Uzbekistan (39); Venezuela (80, 81, 86); Viet Nam (59, 67).

### **Constitutional provision of minimum wage**

Armenia (29); Azerbaijan (38); Belarus (42); Bolivia (157); Brazil (7); Bulgaria (48); Costa Rica (57); Croatia (55); Cuba (9); Democratic Republic of the Congo (37); Ecuador (35); El Salvador (37, 38); Guatemala (102); Honduras (128); India (43); Italy (36); Kazakhstan (28); Kyrgyzstan (29); Lesotho (30); Lithuania (48); Madagascar (63); Mexico (123); Namibia (95); Nicaragua (82); Nigeria (16); Norway (110); Panama (62); Paraguay (92); Peru (24); Portugal (59); Russian Federation (7); Slovakia (39); Spain (35); Turkey (55); Turkmenistan (31); Uzbekistan (39); Venezuela (91).

### **Constitution provides for State responsibility for food safety, consumers, promotion of agriculture etc.**

Andorra (29); Argentina (42); Brazil (200); Bulgaria (21); Cambodia (64); Costa Rica (46); Ecuador (42, 43); El Salvador (69); Germany (74); Guatemala (96); Haiti (247,249); Honduras (146, 347); Iran (43); Nicaragua (105); Panama (114); Paraguay (72); Philippines (13); Republic of Moldova (37); Sierra Leone (7); Spain (51); Ukraine (50); Venezuela (305); Yemen (9).

### **Broad constitutional provisions on the right to health, which could include the right to food**

Albania (59); Bangladesh (18); Burkina Faso (26); Cape Verde (68); Comoros (Preamble); India (47); Philippines (13); Portugal (64); Romania (33); Russian Federation (7); Seychelles (29); Spain (43); Uruguay (44).

### **State Parties to the ICESCR in which it is constitutionally directly applicable (Brackets refer to Article or Section of the Constitution, or to the source of the information)**

Albania (122); Algeria (132); Angola (21); Armenia (6); Austria (9); Azerbaijan (148,151); Belarus (21); Belgium (1993/1997 Report to CESCR); Benin (146); Brazil (5); Bulgaria (5:4); Burundi (10); Cambodia (31); Cape Verde (11);

Central African Republic (69); Chad (222); Congo (176); Costa Rica (7); Croatia (134); Cyprus (169); Czech Republic (10); Democratic Republic of the Congo (200); Djibouti (37); Ecuador (18); Egypt (151); El Salvador (144); Estonia (3); Ethiopia (9:4); Finland (1999 Report to CESCR); France (55); Gabon (114); Georgia (6); Germany (25); Ghana (37); Greece (28); Guatemala (46); Guinea (49); Honduras (16); Côte d'Ivoire (87); Kyrgyzstan (12); Latvia (89); Lithuania (138); Madagascar (82); Malawi (211); Mali (116); Republic of Moldova (8); Mongolia (10); Namibia (144); Netherlands (93); Nicaragua (46); Niger (132); Norway (110c); Paraguay (141); Peru (55); Philippines (XIII); Poland (91); Portugal (8:2); Republic of Korea (6); Romania (11); Russia (15:4); Rwanda (190); Senegal (79); Serbia and Montenegro (16, 124:2); Seychelles (48); Slovakia (11); Slovenia (8); Spain (10, 96); Sri Lanka (XXVI); Suriname (105, 106); Switzerland (189, 191); Tajikistan (10); The Former Yugoslav Republic of Macedonia (98); Timor-Leste (9); Togo (140); Turkey (90); Ukraine (9); Venezuela (23).

## ANNEX III

## ASSESSED LEVEL OF CONSTITUTIONAL PROTECTION

The list below shows the assessment made of whether the constitutional provisions of different countries, taken together, are deemed to be high, medium high, medium, medium low or low, with reference to the Article(s) or Section(s) of the Constitution in brackets.

### High level of constitutional protection of the right to food

- *These are the constitutions containing explicit provisions relating to the right to food.* Bangladesh (15); Brazil (6); Democratic People's Republic of Korea (25); Ecuador (23); Ethiopia (90); Guatemala (99); Guyana (40); Haiti (22); Iran (Islamic Republic of) (3, 43); Malawi (13, 30); Nicaragua (63); Nigeria (16); Pakistan (38); Panama (106); Puerto Rico (2); Republic of Moldova (47); South Africa (27); Sri Lanka (25); Suriname (24); Uganda (14, 22); Ukraine (48).

### Medium high level of constitutional protection of the right to food

- *These constitutions protect the right to food implicitly, through broader provisions dealing with the right to an adequate standard of living, as well as through provisions on either social security or worker's rights - or both, cumulatively, providing a high degree of protection of the right to food. The protection thus afforded may be in one or several sections of the Constitution.* Belgium (1, 23); Bolivia (8, 157, 158, 164, 199); Colombia (44, 46, 47, 48, 49); Congo, Democratic Republic of (37, 47, 48, 50); Cyprus (9); Dominican Republic (8); El Salvador (35, 37, 38, 66, 69, 70, 101); Eritrea (preamble, 10, 21); Finland (19); Germany (1, 20, 74); Ghana (36, 37); Honduras (121, 123, 128, 142, 146, 150, 347); India (21, 39, 41, 43, 47); Indonesia (28, 28b, 34); Ireland (45); Israel (courts); Liberia (8); Netherlands (20); Norway (110, 110c); Paraguay (53, 54, 57, 58, 70, 95); Peru (2, 4, 10, 11, 24); Republic of Korea (34); Romania (33, 43, 45, 46); Russian Federation (7, 39); Sierra Leone (7, 8, 22); Slovakia (39); Spain (Preamble, 35, 39, 41, 43, 49, 50, 51); Sudan (11, 14); Sweden (2); Switzerland (11, 12, 41); Syrian Arab Republic (44, 46); Tajikistan (1, 39, 340); United Republic of Tanzania (8, 11); The former Yugoslav Republic of Macedonia (34, 35, 36, 40, 42); Venezuela (3, 78, 80, 81, 86, 91, 299, 305).

## Medium level of constitutional protection of the right to food

- *These constitutions either protect the right to adequate standard of living, or social security and worker's rights.*

Armenia (29, 33); Azerbaijan (38); Belarus (42, 47); Bulgaria (48, 51); Croatia (55, 57, 58, 64); Cuba (9, 48); Italy (36, 38); Kazakhstan (24, 28, 29); Kyrgyzstan (27, 29); Lithuania (48); Madagascar (30, 63); Mexico (123); Mozambique (41); Portugal (59, 63, 72); Trinidad and Tobago (1); Turkey (55, 60, 61); Turkmenistan (31, 34); Turks and Caicos Islands (2); Uzbekistan (39); Vanuatu (5).

- *These countries provide for direct applicability of the ICESCR, which is assessed as equivalent to medium level of constitutional protection. Only those countries are listed which would otherwise not be listed at all or would be ranked as having lower level of protection.*

Albania (122); Algeria (132); Angola (21); Austria (9); Benin (146); Burundi (10); Cambodia (31); Cape Verde (11); Central African Republic (69); Chad (222); Congo (176); Costa Rica (7); Côte d'Ivoire (87); Czech Republic (10); Djibouti (37); Egypt (151); Estonia (3); France (55); Gabon (114); Georgia (6); Greece (28); Guinea (49); Latvia (89); Mali (116); Mongolia (10); Niger (132); Philippines (XIII); Poland (91); Rwanda (190); Senegal (79); Serbia and Montenegro (16, 124:2); Seychelles (48); Slovenia (8); Timor-Leste (9); Togo (140).

## Medium low level of constitutional protection of the right to food

- *These constitutions protect only the right to social security or the right to minimum wage.*

Andorra (30); Bahrain (3); Burkina Faso (18); Chile (19); China (45); Costa Rica (57); Timor-Leste (20, 21, 56); Hungary (70e); Iceland (76); Kuwait (11); Lesotho (30); Liechtenstein (26); Luxembourg (11, 23); Maldives (28); Malta (17); Marshall Islands (15); Nepal (26); Oman (12); Qatar (23); Sao Tome and Principe (27, 43); Saudi Arabia (27); Thailand (52, 54, 55); United Arab Emirates (16); Uruguay (44, 46, 67); Vietnam (59, 67);

## Low level of constitutional protection of the right to food

- *These constitutions have other, less important provisions, such as protection of the rights of the child, or promotion of agriculture, food safety etc.*

Argentina (42); Canada (7);<sup>32</sup> Comoros (Preamble); Yemen (9).

<sup>32</sup> It has been argued that this article protects social rights, but it is uncertain (See Right to Food Case Study: Canada).



# SAFETY NETS AND THE RIGHT TO FOOD

7

## INTRODUCTION

1. This note explores the role that social safety nets, and more specifically food safety nets, can play in realizing the right to food. We begin by briefly presenting the concept of food security and the obligations of the State within the right to food framework. We then explore the concept of food safety nets from a rights-based perspective. We finish by providing a more technical discussion of the key criteria to take into account when choosing a particular design, and we provide a description of different kinds of programs found around the world. Particular attention is paid to the choice between a cash or food-based transfer program.

## STATES' OBLIGATION TO PROVIDE FOR THE REALIZATION OF THE RIGHT TO FOOD

2. “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.”<sup>1</sup>

States must respect, protect and fulfil (facilitate and provide) the right to food. This means that States should proactively engage in activities which assure economic and physical access to adequate food. The obligation to fulfil the right to food includes an obligation to provide food directly or the means for its purchase, when individuals are unable for reasons beyond their control to provide for themselves and their families. Such circumstances include youth and old age, disability, illness and long-term unemployment. Victims of natural and man-made disasters may also be unable temporarily to provide their own food. The creation of appropriate safety nets is one way of fulfilling the obligation to provide food and achieve food security. The World Food

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<sup>1</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 12. General Comment No. 12 is an authoritative interpretation of the right to adequate food as contained in Article 11 of the International Covenant on Economic, Social and Cultural Rights to which currently 147 States are parties.

Summit defined food security as when “all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The four pillars of food security are availability, stability of supply, access and utilization.”

## SOCIAL SAFETY NETS AND FOOD SAFETY NETS

3. Social safety nets refer to cash or in-kind transfer programs which seek to reduce poverty through redistributing wealth and/or protect households against income shocks. Food safety nets are a subset of social safety nets, and aim to assure a minimum amount of food consumption and/or protect households against shocks to food consumption. Both social safety nets and food safety nets seek to assure a minimum level of well-being, a minimum level of nutrition, or help households manage risk, though often using different definitions or indicators of household or individual well being. While poverty and food insecurity are not necessarily the same phenomena, much overlap exists in terms of indicators. Social safety nets usually rely on different measures of poverty. Food safety nets may utilize these same measures or those more directly related to food insecurity.

4. Much has been written on the implementation of social safety nets.<sup>2</sup> However, food safety nets have received relatively less specific attention.<sup>3</sup> Both social safety nets and food safety nets use similar designs and instruments, examples of which will be described later, and both are likely to have both poverty and food insecurity impacts. However, neither social safety nets nor food safety nets will “solve” hunger or poverty. Instead, both must form an integral part of a larger policy of sustainable economic development which can provide jobs and economic opportunity. This wider policy framework must serve to fulfil the other right to food obligations, namely the obligation to respect, protect and facilitate the right to food.

5. The FAO advocates a twin track approach to achieving food security and the realization of the right to food. The first track includes measures to increase production, including by small farmers, as well as improve incomes. The second track includes food safety nets, or measures to broaden food access immediately for the food insecure. Food safety nets, as well as social safety nets, should be seen as development, however, not welfare. Reducing hunger and malnutrition lead to increased productivity and resilience to shocks through increased life expectancy, improved work ability (both in terms of

<sup>2</sup> See, for example, the following web site at the World Bank (<http://www1.worldbank.org/sp/safetynets/htm>).

<sup>3</sup> One recent exception would be Rogers and Coates (2002).

cognitive as well as physical ability) and better health. Increased individual productivity ultimately leads to greater economic growth.<sup>4</sup>

## REQUIREMENTS OF RIGHTS-BASED SAFETY NETS

6. A rights-based social or food safety net explicitly recognizes that its purpose is to fulfil rights rather than provide discretionary charity. Such a safety net is designed and implemented with full regard for all human rights and may be closely related to the realization of other rights, such as the right to health, education, work and participation.

7. The right to food does not imply that the State must provide for each and every individual an equal amount of food. Only those unable to provide for themselves for reasons beyond their control should be thus provided for. Budgetary limitations, moreover, may mean that a State is not able to provide for everyone in need. In this case, the obligation is to move towards that goal as expeditiously as possible, using a maximum of available resources, including those available from external sources. States also have a core obligation to, at the very least, provide the minimum essential level required to be free from hunger.

8. From a rights-based perspective, the key principle that must be respected in the design and implementation of safety nets is non-discrimination. Thus, targeting must be based on objective criteria and the safety net must neither in intent nor effect be discriminatory. The experience of many countries shows that there are wide disparities in actual enjoyment of the right to food according to race, sex and caste or class. Safety nets may thus have to specifically target traditionally disadvantaged groups. It should be noted that such “positive discrimination” is not unlawful under international law as long as it does not continue beyond the achievement of equal enjoyment of rights. It is thus fully compatible with human rights to target women as main beneficiaries.

9. The process of designing and implementing safety nets should also respect participatory principles and empower intended beneficiaries, who should be explicitly recognized as stakeholders. Seeking the views of the stakeholders also increases the transparency of the process and the accountability of the duty-bearers. Ideally, the legal system should contain a right to social assistance in certain circumstances. Rights and obligations must be reasonably explicit so as to allow for prompt and effective administrative and/or judicial recourse in cases in which individuals are denied their entitlements.

<sup>4</sup> For a review of the evidence on the relationship between hunger, nutrition and economic growth, see FAO, 2001.

Effective information strategies are necessary, so that individuals are aware of their rights and where they may lodge complaints.

10. Respecting human dignity in the process of providing social safety nets is essential. Care must also be made to find a balance between transparency and of protection of privacy. In some cultures it is considered shameful to receive assistance or people may for other reasons not want it to be known that they receive assistance, for instance if they are HIV/AIDS affected. On the other hand, access to information about who benefits from interventions is crucial in order to allow for public scrutiny and accountability. Recipients of social assistance should not be stigmatised as this would violate their human dignity.

## THE BROADER AIMS OF SAFETY NETS

11. Given the experience with social safety nets in both developed and developing countries, as will be shown in following section, safety nets can be seen as playing a much broader role than temporary providing for the right to food, by providing fungible resources which individuals or households can invest in productive activities, whether producing their own food or pursuing some non agricultural micro enterprise.

12. It should also be noted that most, but not all, food safety nets are compatible with market systems, and in fact the injection of resources to increase demand by consumers can foster development of local markets. When food safety nets involve in-kind subsidies, they can however, have a negative impact on markets, as discussed in greater detail below. Such interventions may be appropriate, however, when local markets are not well functioning.

13. If a safety net measure has a negative impact on local markets, this might mean that, while the realization of the right to food of some might be improved, the realization of the right to food, or of other rights, of others might be decreased. Under human rights law such a measure with retrogressive effects would require the most careful consideration and would need to be fully justified by reference to the totality of human rights and in the context of the full use of the maximum available resources.<sup>5</sup>

14. Food safety nets, if designed properly, can constitute a valuable component of national right to food strategy based on human rights principles that defines objectives, and formulates policies and corresponding benchmarks.

<sup>5</sup> See, Committee on Economic, Social and Cultural Rights, General Comment 3 The Nature of States Parties Obligations (1990), para. 9.

## KEY CRITERIA FOR CHOOSING A PARTICULAR DESIGN

15. The first key question choosing a particular food safety net design is to determine the nature of food insecurity within a given area, whether national, regional or local. The nature of food insecurity will determine key aspects of programme design. The following are a number of possible aspects of food insecurity which should be considered:

> *Seasonality*

In many countries, particularly in agricultural settings where rural food markets do not function very well, or where farmers are dependent on own production for home consumption or income, food insecurity may be seasonal in nature. In this situation, typically food insecurity is greatest in those months prior to the harvest of the primary food crop. If food availability is low at planting time this can have a serious negative impact on the next harvest and trigger a downward spiral in production and consumption.

> *Disasters/emergencies*

Susceptibility to disasters or emergency situations such as floods, droughts and war can be a cause of food insecurity, but the chronically hungry are also especially vulnerable to shocks. Some emergency situations may be unforeseen, but in most countries susceptibility to different types of disaster can be assessed, as well as household ability to weather these disasters, and thus a food safety net intervention in response can be designed beforehand.

> *Lack of assets*

A key structural cause of food insecurity is the low level of productive assets to which the poor have access. Lack of assets translates into low income, an inability to invest and accumulate assets, and ultimately a lack of purchasing power. The lack of assets can cause either chronic food insecurity, through the inability to generate income or produce enough food for home consumption, or make individuals and households more susceptible to food insecurity as a result of unforeseen shocks, whether at the household level (sickness, death, loss of job) or regional or national level (weather, etc.).

> *HIV/AIDS*

The spread of HIV/AIDS throughout much of Africa and other areas of the developing world is having a particularly insidious effect on individual and household food security. The disease strips households of both their adult income earners and available household labour for agricultural production, in many cases leaving children as orphans. The epidemic has an impact on food security beyond a particular household, as the shortage of farm labour can reduce the availability of locally produced food.

> *Intra-household*

In some cases, a household as a whole may be considered food secure (in terms of the per capita availability of income or calories, or some other measure), but some members of the household may be food insecure.

Similarly a household may be considered food insecure, but in many cases it is unlikely that all household members have the same level of food insecurity. Typically women, particularly pregnant or lactating women, and small children suffer from higher levels of food insecurity, as manifested by malnutrition, for example.

> *Knowledge of food needs*

A substantial amount of under-nourishment as well as malnourishment is attributable to lack of knowledge on the part of consumers as to the amount and mix of food required for a full and productive life. In such situations, the key need is for nutrition education.

> *Geography*

Food insecurity is unlikely to be spatially distributed in a uniform manner across a country or given area. Like poverty, food insecurity is often concentrated in certain regions or communities, or among certain types of households. Knowledge of the geographical distribution of food insecurity is important for the targeting of food safety nets, as well as for the design of the intervention itself.

> *Local food markets*

The existence and functioning of local food markets is a key determinant of the design of a food safety net. The existence of food insecurity in areas with well functioning and reasonably accessible food markets suggests that the problem is one of purchasing power; that is, that the food insecure do not have enough income to purchase sufficient levels of food. In this case, programmes should be focused on improving income generating opportunities and/or providing cash-based transfers. If food markets are not well functioning, then the supply of food may be the key underlying problem, which would suggest that a programme should provide food directly, or take measures to increase market supply and the functioning of local markets.

16. The second key aspect involves defining programme objectives. Is the envisioned food safety net supposed to alleviate temporary or structural food insecurity, or both? A structural programme would focus on building up household assets, whether they be human (education and health) or productive (land and cattle, agricultural technology, small business capital), as well as public goods, such as roads, available to food insecure households, so that individuals in the long run can avoid food insecurity. A temporary programme would focus on assuring that households have a minimum level of food security immediately. This type of programme would generally consist of cash or food aid provided directly to needy households, for a specific period of time. Some interventions combine both types of programmes. Other programme objectives could include empowerment of the poor, or women specifically, or addressing specific types of food insecurity, such as malnutrition among children. However, as a general rule, the greater the number of programme objectives, the less effective or efficient a given intervention is in meeting any individual objective.

17. A third key aspect involves administrative and budgetary resources. Administrative resources determine the capacity of a given government or organization to carry out an intervention. In many LDCs administrative capacity is extremely limited due to weak government institutions and a shortage of qualified personnel. Administrative limits may thus constrain the level of complexity and the reach of a given intervention. Tight budgets obviously constrain programme design, most clearly in forcing a decision between coverage and the size of a given transfer. For a given budget, the larger the transfer (or cost) per household, the smaller the population that can be covered.

18. The fourth aspect revolves around the relative roles of different levels of government and civil society. This depends in part on the institutional history of a given country, both in terms of the administrative and budgetary distribution of responsibility, as well as the desire to correct or avoid institutional programmes, such as lack of democracy at local levels. Another important decision involves the appropriate role of civil society, both beneficiaries and non beneficiaries, in administering, verifying and evaluating the implementation of a programme.

19. This issue is related to the fifth aspect, the politics, public opinion and tradition of a given country. These factors may govern what kind of food safety net is acceptable in the eyes of public opinion, or that with which it is politically feasible to propose and implement. The type of transfer is often a particularly sensitive topic; cash transfers for example are often less politically acceptable than food stamps.

20. Sixth, programme design is also guided by the type of incentive effects that policymakers want to promote or discourage. Positive incentive effects may include increased food consumption, better nutrition behaviour or increased political participation. Negative incentive effects include working less, cheating, increased consumption of alcohol or drugs, or local political corruption.

21. Seventh and lastly, and connected to the previous issue, the preferences of the target population should be considered. Potential beneficiaries may prefer a certain kind of programme for economic, social or cultural reasons. For example, households may prefer cash because it allows greater flexibility in meeting diverse needs, and indigenous communities may resist measures targeted at the individual or household level, preferring instead community based measures. Ignoring local preferences may reduce the impact of a given intervention.

22. Beyond these key criteria, a number of other elements are important to programme design.

- > *Targeting mechanism.* Most interventions are targeted towards a specific region or type of household, as budgetary and equity reasons compel

minimization of the leakage and undercoverage errors. The methodology chosen to reach that target population is a crucial decision which determines in large part the effectiveness of an intervention. Many methodologies are available (see a review in Coady, Grosh and Hoddinott, 2002), and choice depends on programme objectives and design, the availability of data, budget and the operational capacity of the implementing agency. Some programmes are considered self targeting, in that wages are so low, or requirements so high, that only the poorest households will participate. Such a self targeting scheme has other advantages and disadvantages.

- > *Choice of beneficiary.* For those programmes focusing on specific households, it is usually necessary to choose one adult as the person actually to receive the benefits of the programme. The choice of the beneficiary will depend on the programme objectives, but most cash and food-based transfer programmes now give priority to the responsible female in a household. This concept, which has become conventional wisdom in the development arena, is based on empirical evidence that females spend income differently than men. In particular, women are more likely to spend own-earned income on nutrition and children's health and education while men are more likely to allocate income under their control to tobacco and alcohol. These gender differences in the allocation of income seem to be especially relevant among poor households (see, for example, Haddad, Hoddinott and Alderman, 1997). However, among the effects of the HIV/AIDS pandemic is an increased number of child-headed households
- > *Exit criteria.* Ultimately exit criteria should be determined by the programme objectives. However, getting individuals or households off a programme is politically sensitive and often technically challenging. In some cases it is feasible for exit criteria to be determined by programme objectives. Conditional cash transfer programmes linking payments to education should terminate participation once children have reached a certain age, and temporary programmes should exit households once these households no longer need assistance. This last rule, common in the United States and Europe, is very difficult for logistical reasons to implement, even in middle income countries. Often, simple time based measures are imposed. In any case, for low income countries simple and transparent exit criteria should be established.
- > *Evaluation.* The important role that evaluation techniques should play in the selection, design, implementation and impact evaluation of food safety nets has gained increasing recognition in recent years. Evaluation techniques can serve to improve implementation and efficiency of programmes after interventions have begun, provide evidence as to the cost efficiency and impact of a specific intervention and provide information on comparison of interventions within and between policy sectors. They provide invaluable insight into the incentive structure and processes of an intervention, and as such form an essential part of policy design and of the agricultural and rural development process itself (Davis, 2003).



## DESIGN OPTIONS

23. Three main types of design options for food safety nets are in use among developing countries: cash-based, food access-based and food supply-based. Cash-based programmes provide a cash transfer to beneficiary households, sometimes in return for actions taken by beneficiary households. A first type of cash-based programme is one in which there are no strings attached to the cash transfer. An example is ActionAid's distribution of cash in parts of Ghana in 1994.<sup>6</sup> A second type includes conditional cash transfer programmes, which have become fashionable in the Latin America and the Caribbean region in recent years. The PROGRESA (later renamed OPORTUNIDADES) programme in Mexico (1996 to the present) is the most prominent example. Here, households receive cash conditional on certain actions, typically school attendance by children and receiving health examinations.<sup>7</sup> A third type is cash for work, in which households are paid to work on public works projects. An example would be the Maharashtra Employment Guarantee Scheme (MEGS) in India which was introduced in 1973.<sup>8</sup>

24. Food access-based programmes seek to improve the ability of food insecure households to acquire food. These programmes are based on the presumption that food markets exist and are functioning reasonably well; that is, that the food supply curve is virtually horizontal and that an increase in demand will not lead to a substantial increase in food prices. One type of food access-based programmes involves a cash transfer, but the cash must be spent on food expenditures. This is the case of the recently launched (February, 2003) *Carta Alimentação*, a key component of the *Fome Zero* anti-hunger programme in Brazil. Households are restricted to spending the transfers only on food items, which is verified by the household providing receipts for the amount of the transfer (Presidencia da Republica, 2003). A second type of food access-based programmes includes food stamps, which have been used in a number of developed and developing countries, including Sri Lanka.<sup>9</sup>

25. Food supply-based programmes directly provide food or nutritional supplements to individuals or households. Some types of these programmes are based on the assumption that food markets are not well functioning;

<sup>6</sup> See Buchanan-Smith, Jones and Abimbilla (1995), cited in Peppiatt, Mitchell and Holzmann (2001), for an evaluation of this programme.

<sup>7</sup> See Davis (2003) for a review of conditional cash transfer programmes in Latin America and the Caribbean.

<sup>8</sup> See Subbarao (2003) for a review of public works programmes.

<sup>9</sup> See Castaneda (1998) and Rogers and Coates (2002) for a review of the experience of food stamp programmes in developing countries.

that is, that an increase in demand would lead to mostly inflation, or simply food is not available. This is the case of direct food aid or food for work programmes, which constitute the primary food safety net implementation of the World Food Programme. Other types of these programmes assume that some members of the household are particularly vulnerable to food insecurity or malnutrition, and thus specific directed food interventions, such as school lunches or food supplement programmes, are necessary. These types of interventions have been employed in many developing and developed countries.

26. Many food safety nets combine elements of these different options. A mix of these design options is appropriate when the causes of hunger vary across regions, households and/or individuals, necessitating a heterogeneous response, when the causes of hunger are multiple within a household, or when one programme has multiple objectives. For example, in Brazil, under the auspices of the larger *Fome Zero* programme, the *Carta Alimentação* described above is accompanied by other local development initiatives at the municipal level, including for example adult literacy, water cistern provision, school feeding, as well as programmes more regional or national in scope, including land reform and support for small-scale agriculture. Another example is the PROGRESA programme, which combines a conditional cash transfer with nutritional supplements directed towards pregnant and lactating mothers and infant children.

## THE CHOICE BETWEEN CASH AND FOOD TRANSFERS

27. One of the most important decisions in designing a food safety net is between cash or food-based transfers. Both cash and food-based transfers effectively increase household income and thus the ability to acquire food. However, these programmes may have differential impacts on household food security (depending on how it is defined) and upon local markets. A cash-based transfer is appropriate when food markets work and access to food is the root cause of hunger. As discussed earlier, the food supply curve is virtually horizontal and an increase in demand will not lead to a substantial increase in food prices. A cash-based transfer should thus foster local market development, of not only foods, but other goods as well. Furthermore, unrestricted cash transfers allow poor households to invest and spend on what they consider most important. Studies have shown that even the poorest of the poor invest some portion of their transfer on self-employment or agricultural production activities.<sup>10</sup>

<sup>10</sup> See a review in Peppiatt, Mitchell and Holzmann (2001).

28. A food access-based approach, such as food stamps or restricted cash transfers, is also appropriate when local food markets work and access to food is the root cause of hunger. This approach will also foster local market development, primarily of food goods. Food access-based approaches have the advantage of being more politically acceptable, as we discussed earlier, because food is considered a merit good. It is very difficult to argue against providing food to the hungry. Food access-based transfers also may be more difficult to divert to “undesirable” consumption (such as alcohol), which is a concern in some quarters. Food access-based transfers also have lower transaction costs than food supply-based measures, but greater than cash-based measures, as programme design seeks to force spending on food items. On the downside, the restriction from spending on non food items also limits spending on investment, the potential importance of which we describe above. Further, restricting spending may spur other negative behaviour, such as cheating or selling food stamps on the black market.

29. A food supply-based approach is fundamentally different because it is most appropriate when an insufficient supply of food is the root cause of hunger. Cash in this case simply leads to inflation if markets are not working well or worse if food is simply not available as is the case in the worst of emergencies. As above, food supply-based programmes are also politically more acceptable. Moreover it is difficult to divert to undesirable consumption. Importantly, food aid is often donated and “free” to the receiving government. Further, food is essentially the currency of the WFP, the primary promoter of food based programmes around the world. On the downside, the availability of food aid may influence the selection of a non-optimal programme from the country’s perspective. Further, as with the food access-based approach, providing in-kind food aid limits investment or savings on the part of beneficiaries and may spur other negative behaviour, such as cheating or selling the food provided as aid.

30. Which of these types of programmes has a bigger impact on reducing hunger? Studies from the US (Fraker, 1990) show that food access-based transfers, such as food stamps, had a bigger impact on food consumption than cash-based transfers, though beneficiaries preferred receiving the cash. However, the impact of conditional cash transfer programmes on food consumption varies greatly across programmes in Latin America and the Caribbean. Given the disparities in income between the poor in the US and Latin America and the Caribbean, it is reasonable to expect a much higher marginal propensity to consume out of income in the latter, and thus less of a difference between the impact of food stamps and cash-access based transfers.

31. For both kinds of transfers, some diversion from food to non food consumption is likely take place. Households receiving food stamps may purchase as a result less food with their cash income (thus substituting between the two sources of income), or sell the food stamps on the black market at a

discount. Households receiving cash income may of course spend the income as they please. For both kinds of transfers such diversion may be good or bad. Good diversion may include the purchase of agricultural implements or school clothes; alcohol is the main bad diversion.

## CONCLUSIONS

32. Social and food safety nets serve as a method by which States may fulfil their obligation to provide for the implementation of the right to food of those that, for reasons beyond their control, cannot provide for it themselves. Social and food safety nets play a key role in fighting transitory and chronic hunger, including reducing the gravity of food emergencies, and thus in assuring the right to food. As all human rights are interdependent and interrelated, safety nets must be designed and implemented with due regard of other human rights, in particular other economic, social and cultural as well as political rights, and to the principle of non-discrimination. If adequately designed, safety nets can make an important contribution to poverty reduction and development through linkages with health, education and local economic activities. Given their important role in increasing productivity and thus economic growth, food safety nets should be thus considered investment and a contribution to long term development, not just welfare.

33. While conceptually the idea of a food safety net is straightforward, the formulation, design and implementation are complex. As we have described in this paper, many design possibilities exist. No specific programme design is better, *a priori*. A particular design should depend on local objectives and conditions. As such, design should be driven by the needs and circumstances of a particular country or region, and the views of the beneficiaries, rather than the needs and priorities of donor countries and agencies.

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# IMPLEMENTING THE RIGHT TO ADEQUATE FOOD: THE OUTCOME OF SIX CASE STUDIES

8

## A. INTRODUCTION

1. How can the human right to adequate food be implemented at the country level? This is the basic question that this paper sets out to explore. It is based on case studies on implementing the right to food in five countries and a meeting, held from 16-18 February 2004, in which these case studies were discussed.
2. The case studies seek to gather information about practical in-country experiences with different policies, programmes and mechanisms including legal frameworks, institutions and processes that are conducive to the realization of the right to adequate food of the population. In each case, shortcomings of current policies and practices are also covered in order to draw lessons from these. Compilation of such information through in-country case studies is intended to expand understanding of the progressive realization of the right to adequate food in the context of national food security.
3. A number of developing countries, as well as a member country of the Organisation for Economic Co-operation and Development (OECD), were selected for the case studies because of their experience in seeking to pursue a right-to-food approach to national food security. The countries selected were: Brazil, Canada, India, South Africa and Uganda. A separate study was undertaken of the Indian State of Orissa.
4. The case studies attempt to assess i) the extent to which a rights-based approach has been applied in activities related to food security; ii) how the implementation of this approach can be improved; iii) the extent to which the

country's experience is replicable; and iv) whether practical lessons can be learnt that can be used as input for the formulation of the Voluntary Guidelines.<sup>1</sup>

5. The case studies and the meeting focused on four major areas related to implementing the Right to Food: Food as a Human Right; the Policy Framework; the Legal Framework; and the Institutional Framework. In addition, a number of key issues related to operationalizing the right to food at the country level were examined. As annexes to this report, individual case studies (in English only) are available from the Food and Agriculture Organization of the UN (FAO), on request. They can also be obtained from the FAO website at [www.fao.org/righttofood](http://www.fao.org/righttofood).

## B. FOOD AS A HUMAN RIGHT

6. The right to adequate food and to be free from hunger is firmly established in international law, including the 1948 Universal Declaration of Human Rights (Article 25.1), the 1966 International Covenant on Economic, Social and Cultural Rights (Article 11.1 and 2) and the 1989 Convention on the Rights of the Child (Article 24.1). By ratifying these legal instruments, States recognize the obligation to *respect, protect and fulfil* (meaning to *facilitate* and - as a matter of last recourse - *provide for*) the progressive realization of the rights contained therein, including the right to adequate food. The right to adequate food is realized “when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement”, as defined in General Comment 12, an authoritative legal interpretation of this right.<sup>2</sup>

7. The country case studies are based on this internationally accepted understanding of the right to be adequate food. The studies also highlighted a number of common characteristics of a rights-base approach to food security, as follows.

<sup>1</sup> The Voluntary Guidelines are in the process of being developed by an Intergovernmental Working Group (IGWG) established by the FAO Council, following the World Food Summit: five years later. The guidelines are intended to support efforts to achieve the progressive realization of the right to adequate food in the context of national food security.

<sup>2</sup> General Comment 12 was issued by the UN Committee on Economic, Social and Cultural Rights, the treaty body of the International Covenant on Economic, Social and Cultural Rights (ICESCR), in response to a recommendation by the 1966 World Food Summit to clarify the content of the right to food and ways of its implementation. It defines in detail the normative content of the right to adequate food, deals with State Party obligations and lays down the general criteria for implementing this right.

8. A rights-based approach to food security emphasizes the satisfaction of people's basic needs as a matter of right, rather than of benevolence. In this approach, people hold their governments accountable and are participants in the process of human development, rather than passive recipients. A rights-based approach is not only concerned with the final outcome of abolishing hunger, but also with ways and tools by which that goal can be achieved. Application of human rights principles is integral to the process. Key human rights principles in policy making and implementation include: accountability, non-discrimination, transparency, empowerment and participation. An independent judiciary is also crucial for the effective protection of human rights at the national level.

9. A rights-based approach empowers rights holders by enabling them to become active participants in realizing the right to food. Such an approach requires accountability from all actors in the process of realizing the right to food. This may be achieved through legal, administrative, or political mechanisms. Rights holders, whether individuals, or groups under certain circumstances, can claim the respect, protection and fulfilment of their rights from their governments.

## C. POLICY FRAMEWORK

### An enabling policy environment

10. The importance of an enabling policy environment to achieve the right to adequate food is stressed in all the case studies. Although the countries studied have a variety of policies on food, there are some commonalities and lessons to be learnt as to what constitutes an enabling policy environment for the right to adequate food.

11. Public policies considered from a human rights perspective translate into a development approach in which the obligation to achieve universal human rights for all is the starting point. This in turn calls for a focus on those whose rights are not fully realized, and their participation in formulating, implementing and evaluating policies, rather than a top-down approach.

12. Public policy that recognizes the principle of indivisibility and interrelatedness of all human rights views the right to food as related to other rights, such as the right to water, health, work, housing, and other economic, social and cultural rights, as well as to civil and political rights, such as freedom of assembly, information and association. It also recognizes the over-arching right of non-discrimination. When public policy is based on the inseparability of human rights, one right cannot be used to the detriment of other rights.



## Centrality of human rights

13. Policy makers at the international level and in the countries covered by the case studies, are increasingly aware and accepting of the centrality of human rights to development and of the significance of a rights-based approach to food and nutrition security.

14. In South Africa, for instance, the right to food is enshrined in the Constitution and the South African Human Rights Commission (SARHC) is mandated to monitor the implementation of this right. Brazil is in the process of building an institutional structure that incorporates a vision of human rights, including the right to food among the principal objectives of the country's food security policy of Zero Hunger (*Fome Zero*). The Indian Constitution is construed as protecting the right to food as an integral part of the right to life. And in Uganda, measures to restore and promote constitutionalism, democracy, human rights, peace and stability, and efforts to advance decentralized, participatory governance are helping the emergence of an enabling political, social and economic environment for the right to food. An international environment supportive of human rights has played a significant role in this.

## Integrated and coordinated national plans

15. The development of an overarching and integrated food security policy based on human rights principles is central to the achievement of the right to adequate food at country level. An essential starting point of such policy is a thorough socio-economic analysis of the people whose right to food is violated or not realized, where they are located, and why they are vulnerable.

16. South Africa has a number of integrated policies, including an Integrated Rural Development Strategy (ISRDS), an Integrated Nutrition Programme, and an Integrated Food Security Strategy (IFSS). This strategy sets out the aims of the World Food Summit Declaration and Plan of Action and the Millennium Development Goals to halve hunger by 2015 and supports the Integrated Sustainable Rural Development Strategy (ISRDS). The IFSS calls for a cross-departmental and cross-sectoral management structure. It represents the most coherent departmental statement on food security policy in South Africa to date and reflects a rights-based approach to addressing food insecurity, although the cross-sectoral parts of the strategy still need further articulation.

17. Another example is the Food and Nutrition Policy (FNP) in Uganda. The FNP is the first Ugandan socio-economic policy which – while not explicitly framed within a human rights dimension – calls for a rights-based approach to its implementation. This is to be assured by a strategic action and investment plan.

18. Experiences from the countries also show that, for optimal effectiveness, national right to food and food security plans should reach across governmental departments, including finance and justice.

19. A highly decentralized federal state such as Canada presents complex issues of governance in terms of achieving priority attention for food security, the development and implementation of an integrated food and nutrition policy, and an adequate and secure social safety net informed by the human right to adequate food. As a result, Canadian food policy tends to be fragmented, despite a food security policy formulated in the follow-up to the World Food Summit, which recognizes the right to adequate food.

20. Such fragmentation could be overcome by developing an integrated national food and nutrition policy and a national action strategy with the goal of the optimal nourishment of the population. Such a national action plan would include the full participation of the relevant ministries, including federal and provincial justice departments, and representatives of civil society and the food industry. Ideally, the plan would set benchmarks, targets, time frames and accountability. It would also need to be costed and have appropriate funding mechanisms in place.

21. Social policy has tended to be fragmented also in Brazil. However, the Zero Hunger Programme is making a major effort towards better institutional coordination. Direct income transfer programmes are being unified under the *Bolsa Familia* programmes, under which low-income families are eligible for the monthly benefits of various programmes, on a case by case basis. One of its main programmes, the *cartao alimentacao* (food card) diverges from traditional policies of supplying basic food baskets to fight hunger, by linking consumers with low-purchasing power and small-holder food producers. The programmes will be decentralized, with state and municipal government playing an active role.

22. While coordination has its advantages, the case studies generally showed that decentralized control over right to food programmes, which encourages citizens' participation in decision making and provides for greater exercise of their rights and obligations, tends to reduce corruption. There were examples where misuse of public funds was contained through control either by central government or NGOs.

23. In Uganda central policy making, programme design, implementation, monitoring and evaluation is based on wide-ranging stakeholder consultations, including the private sector, civil society and other development partners within a framework of decentralized government.

## Balancing the components of food security

24. It is not always easy for food policies to balance the four components of food security: availability, stability, access and utilization. Until recently, the food security policies of South Africa and India, for instance, may have over-emphasized the availability of food by concentrating on increased food production for national self-sufficiency without paying sufficient attention to other factors hindering people's access to food.

25. In India, food policies since the 1960s have aimed at boosting food and agricultural production while attempting to ensure access by the poor to a minimum quantity of food grains through the public distribution system. The growth strategy in agriculture has emphasized subsidies to inputs such as power, water and fertilizer. Private capital has grown at a fast pace, particularly in the Green Revolution regions that experienced rapid agricultural growth. This has been accompanied by meagre investment in rural roads, irrigation and rural power.

26. The Government of India's National Agricultural Policy (2000) and related programmes have attempted to remedy these shortcomings by developing a regionally differentiated strategy for infrastructural development, based on agro-climatic conditions and natural resources as well as more effective mechanisms for the operation of a decentralised food procurement policy.

27. South Africa's current food security policies, in contrast to the policies of national self-sufficiency of the apartheid regime, recognize that sufficient food production and food availability at national level is not the only requirement for food security. Other factors such as the failure of livelihoods to guarantee access to sufficient food, may contribute to food insecurity despite national food sufficiency. This points to the importance of enabling people to feed themselves, and, where this is not possible, to put into place strategies, plans and programmes to address food insecurity.

## Balancing economic growth with the right to food

28. Planning is required to balance economic growth and trade policies with right to food policies. This can be illustrated in Uganda, which has a policy environment broadly oriented towards pro-poor development objectives. The principal development policy framework, the Poverty Eradication Action Plan (PEAP), seeks to balance economic growth with poverty reduction objectives; however, to date, more attention has been paid to the growth pillar than to targeted interventions or redistribution. The Plan for Modernization of Agriculture and the Food and Nutrition Policy (FNP), both of which have food and nutrition security as a major objective, seek to redress this imbalance.

29. While economic growth and pro-poor development policies can be complementary, under certain circumstances, economic growth policies can jeopardize the realization of the right to food for some. In Uganda, for example, the Government's drive to promote foreign investment to stimulate economic growth, has allegedly threatened, in some cases, to deprive small-holder farmers of land their key source of food and livelihood.

30. Policies for promoting privatization of social services, such as agricultural extension, need public regulation so that they do not impact negatively on the right to food. In Uganda, for instance, agricultural extension has been renamed the agricultural advisory services with a simultaneous shift towards private service provision. Farmer groups are expected to articulate their needs, and demand and receive service from private service providers. Care will have to be taken to ensure that small-holder farmers can access and afford these services.

### The nexus between food insecurity and inequalities

31. Non-discrimination and substantive equality are fundamental principles to be promoted in rights-based food security policies. Equitable access to resources and assets such as natural resources, including land, is very important for the right to food in rural areas. This can be seen in South Africa where land dispossession was a key feature of colonialism and apartheid. It has remained a critical and often contentious issue in the new democratic dispensation. Many people in the former homelands lack secure tenure rights or legal title to land they have inhabited and worked on for generations. This is a direct legacy of colonial dispossession, racist legislation and communal tenure. The result is a vicious cycle in which rural communities remain desperately poor, partly because they cannot use their only asset as collateral, for example to finance a modest cash-crop enterprise. Since the establishment of democracy in South Africa, a number of laws and policies have been adopted in an attempt to re-balance land ownership and protect tenure rights.

32. Brazil also has a legacy of unequal access to land that is proving difficult to redress despite efforts by the National Institute of Land Settlement and Reform, which was instrumental in settling 372 866 families between 1995 and 1999. The need for accelerated land reform has been emphasized by the United Nations Special Rapporteur for the Right to Food, and is promoted by the National Programme for the Promotion of Family Agriculture (PRONAF) and social organizations such as the Landless Workers' Movement (*Movimento dos Trabalhadores Rurais Sem Terra*).

33. Lessons learnt in Brazil show the need to develop public policies that encourage the economic improvement of the most vulnerable groups

including improved access to land and credit, and to tailor them to the particular needs and circumstances of vulnerable groups so that the needed resources can be channelled to them efficiently and effectively. As in many countries, however, policies to guarantee the right to food for the most vulnerable groups have not always succeeded.

34. While economic growth is central to achieving food security, social transfers are also needed to realize human rights. For example, even in a food secure country such as Canada that has been at the top of country rankings for the Human Development Index (HDI), economic growth policies have not completely ensured the right to food for its most vulnerable citizens. Structural changes and tight fiscal discipline in the nineties, are said to be at the root of deterioration in social services, which in turn has led to more reliance on private benevolence, such as food banks.

35. The core principle of the Integrated Food Security Strategy in South Africa is that food security should be addressed by ensuring that the target population gains access to productive resources and is empowered to obtain nutritious and safe food. Where a segment of the population is unable to gain access to productive resources, food security interventions will ensure access to income and job opportunities to enhance purchasing power. Finally, any segment of the target population that is still excluded as a result of disability or extreme destitution will receive relief from the State.

36. A rights-based approach to food requires that food is accessible to all. When people cannot provide food for themselves by their own means, plans or programmes need to be put in place to address their inability to access adequate food. Only when there are not enough resources to do this, or concrete means are lacking, should a strategy of targeting benefits primarily to the poorest families be followed. Even then, the goal should be to make the strategy universal in the medium term so that it reaches all the food insecure and vulnerable and not just the poorest.

37. In South Africa, for example, not everyone who is entitled to social security receives it, for lack of registration, information and other access problems. In addition, there are destitute persons who do not qualify for any assistance; i.e. if they are not old, young, disabled or sick enough for social security. The Basic Income Grant (BIG) Campaign has been launched by a group of NGOs in response to this shortcoming. The BIG Campaign argues that an entitlement for every single individual to a small monthly stipend would solve the problem of under-targeting and lack of registration, and allow individuals to use their energies productively. The grant would be recuperated through the tax system from those earning more than a certain minimum.

## D. LEGAL FRAMEWORK

38. The right of everyone to adequate food enjoys some degree of legal protection in each of the countries studied. This legal protection takes different forms, but each country has some way in which individuals and, in some cases, groups can claim adequate food as a right, rather than as a matter of benevolence.

### Constitutional protections

39. In some countries the right to food is written directly into the constitution, while in others the courts have interpreted the constitution as protecting the right to food. Different countries also have different types of legislation that protect the right and various legal mechanisms by which individuals and/or groups can claim it. In some countries the right is justiciable; i.e. claims brought to State authorities are enforceable by the courts. The constitutional protections and legislation of the countries studied are described below.

Justiciability of rights means that the courts can enforce the rights. The concept of justiciability of rights is not new. The Universal Declaration of Human Rights of 1948 calls for judicial remedies. Article 8 states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”. In a broader sense, justiciability could be understood as having access to an “effective remedy” of a legislative, administrative or judicial nature. This is the concept of effective remedy under the International Covenant on Civil and Political Rights (Article 2.3).

40. A legal basis for the right to food can be found in the constitutions of several of the countries examined by the case studies. This is strongest in South Africa whose Constitution directly makes provision for the right to food with three explicit references. It i) requires the State to take reasonable legislative and other measures, within its available resources, to progressively realize everyone’s right to access to sufficient food and water; ii) provides the right for every child to basic nutrition, shelter, basic health care services and social services; and iii) makes provision for every detained person and sentenced prisoner to have adequate nutrition.

41. The Constitution of South Africa also states that “the Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state” (section 8); and imposes the obligations on the State to respect, protect, promote and fulfil the provisions of the Bill of Rights. These detailed constitutional provisions provide an enabling environment for the progressive realization of the right to food and can be invoked in a court of law.

42. Even without such a strong constitutional framework with a clear justiciable right to food, support for this right and for its justiciability can be found in the constitutions of other countries.

43. A legal basis for the right to adequate food is present in the Constitution of Brazil, which contains several provisions that either directly or indirectly require the State to respect, protect and fulfil citizens' right to food. The 1998 Constitution established a nationally uniform minimum wage "capable of providing for the basic vital needs of housing, food, education, health" among others (art. 7). It stated that the family, society, and State had the duty "to guarantee the child and adolescent the right to life, health, food, education...." (art. 227). In 2003, a constitutional reform included the right to food as being a part of social rights for every citizen. The new text reads: "As defined by this Constitution, social rights include education, health, food, work, housing...."(art. 6)

44. Although the 1995 Constitution of Uganda does not recognize adequate food as a fundamental, justiciable right, it does protect and promote "fundamental and other human rights and freedoms", and stipulates that these "shall be respected, upheld and promoted by all organs and agencies of Government and by all persons". It also stipulates that the "State shall endeavour to fulfil fundamental rights of all Ugandans to social justice and economic development" and specifically refers to food security, adequate food and proper nutrition to which the State shall ensure access.

45. The Constitution of India distinguishes between: i) fundamental rights, which are primarily civil and political, and which are justiciable; and ii) social, economic and cultural rights, which are not. However, the right to life (a fundamental right) has, over the years, come to be interpreted as encompassing the social, economic and cultural rights contained in the Constitution as Directive Principles of State.

46. While the right to food is not explicitly written into the Constitution of Canada, the Charter of Rights and Freedoms (1982), as interpreted by the Supreme Court of Canada, does protect internationally recognized economic, social and cultural rights. The Supreme Court has also recognized the rights of Aboriginal peoples to traditional food gathering.

47. Irrespective of the existence of constitutional protection of the right to food, States that have ratified the relevant international human rights instruments accept to incorporate this and other human rights in national law.

### Case law and justiciability

48. A constitutional framework that can be interpreted to protect the right to food provides a basis for legal provisions that promote the progressive

realization of the right to food, as well as a yardstick against which legislation and policies can be measured.

49. In India, for instance, the Supreme Court has issued a number of Interim Orders in a Public Interest Litigation (PIL) case of which the central premise is that the right to food flows from the right to life guaranteed in the Article 21 of the Constitution. This case is awaiting final judgment.

50. Another effect of the Interim Orders has been to transform provisions of various schemes and programmes established by the Indian states and the central Government to the status of a legal entitlement for the populations concerned. These orders have i) stressed the utmost importance of provision of food to aged, infirm, disabled, destitute women and men, pregnant and lactating women and destitute children, especially when they or their family members do not have sufficient funds to provide food for them; ii) given direction to the States to see that all the public distribution system (PDS) shops are functioning; iii) ordered the States to implement food-for-work programmes in all scarcity areas; and iv) ordered implementation of the food based schemes, including mid-day meals in schools.

51. Elements of the right to food can also be found in federal and provincial laws of Canada, and in policies on agriculture, food safety, nutrition and health and the welfare state. Notably, in 2002, Quebec passed an Act to Combat Poverty and Social Exclusion, which commits the government to: “facilitating dignified access, for persons living in poverty, to a food supply that is both sufficient and nutritious, at reasonable costs...” (2002, c. 61, s. 9). Canada’s Action Plan for Food Security (1998) recognizes the links between poverty and domestic food insecurity.

52. On the legislative front in Uganda, a bill is being drafted for adoption by Parliament, which would provide the legal framework for the rights-based implementation of the Food and Nutrition Policy, with its action and investment plan and related institutional arrangements.

53. The Parliament of South Africa has conducted public hearings on food security and called on the Government to submit a Food Security Bill, which has been drafted by Government, but not yet submitted. Such a Bill would have to pass constitutional muster. On the other hand, the Government could also be held accountable under the Constitution for failing to take legislative action.

## Beyond legislation

54. Legal and constitutional recognition of the right to food is important but not sufficient to ensure its implementation, even if it is a justiciable right. Other elements need to be in place, including the rule of law, good governance, accountability, and people’s participation.



55. Efficient, accessible and workable legal mechanisms for claiming the right to adequate food are needed. An example of a potential legal mechanism can be found in Brazil in the public civil suit. This is the most important judicial instrument in Brazil for protecting rights. It not only protects individuals' rights, but makes it possible to enforce collective rights, including the right to food. Although individual persons cannot request a public civil suit, it can be claimed by a state or municipality, an NGO, a public or mixed enterprise or directly through a government ministry. The public civil suit has been used in connection with a wide range of social rights, including health, environmental and consumers' rights. Although it has not yet been used for the right to food, the public civil suit has the potential to be used to protect this right.

56. An independent judiciary capable of exercising its responsibility is also crucial in guaranteeing the right to food. This may require reform of the judiciary. Because of their particular historical and socio-economic situations, South Africa and Brazil, for example, need to redress racial and gender imbalances in the judiciary at all levels.

57. Training of judges and lawyers on human rights, the right to food and international conventions and increased exchanges with national and international human rights organizations may also be needed. The country case study on Brazil noted that Brazilian judges need greater knowledge of human rights norms and the obligations of the judiciary at the international level. This is also generally the case in other judiciary systems in the world.

58. All three spheres of government - executive, legislative and judicial - should be clear as to their obligations to respect, protect and fulfil the right to adequate food. The South African Constitution is very clear on the responsibility of each of the main branches. In Brazil, on the other hand, the awareness of the judiciary of its obligation to protect the economic rights of the most vulnerable is not clear. Judges generally consider dealing with the vulnerability of particular social groups to be the exclusive province of public policy. Hence compliance with international treaties and programmatic norms is considered to be an activity proper to the executive branch. Canadian courts have been reluctant to recognize economic and social rights under the Canadian Charter of Rights and Freedoms.

## **National human rights institutions and mechanisms**

59. National human rights institutions also have a prime role to play in monitoring the implementation of the right to food, as well as in receiving complaints from groups and individuals. Several countries have human rights commissions or similar mechanisms that play important roles in ensuring the right of everyone to adequate food. National human rights organizations are most effective when they are fully autonomous and have authority to issue recommendations.

60. The South African Human Rights Commission (SAHRC) is a constitutionally entrenched body mandated to promote respect for, and to monitor and assess the observance of human rights. Its functions are elaborated in the South African Human Rights Commission Act. This Act makes provision for the Commission to litigate on behalf of a group or person and to advise the State on rights-related legislation. The Commission has a broad mandate that covers the full range of human rights issues and recognizes the universality, interdependence, interrelatedness, and indivisibility of human rights. It is an independent and impartial body that reports directly to Parliament, and is established in accordance with the Paris Principles.

### PARIS PRINCIPLES

The Paris Principles were developed in 1991 at a meeting in Paris of human rights institutions. These principles, subsequently endorsed by the UN Commission on Human Rights and the UN General Assembly, have become the foundation and reference point for the establishment and operation of national human rights institutions. The key criteria of the Paris Principles are: independence guaranteed by statute or constitution; autonomy from government; pluralism, including in membership; a broad mandate based on universal human rights standards; adequate powers of investigation; and sufficient resources.

61. The SAHRC has a specific responsibility to monitor the progressive realization of the economic, social and cultural rights recognized in the Constitution. To this effect, it has developed a number of questionnaires or “protocols”, to which the different governmental departments are bound to respond. The SAHRC has recommended, among other things, the development of a legislative framework on the right to food. The Constitutional Court also requested the SAHRC to monitor implementation of its landmark judgment in a case on the interpretation of the right to adequate housing.

62. Brazil has a Special Secretariat for Human Rights, which, however, lacks the full autonomy and pluralism required by the Paris Principles. This weakness has been partially compensated for by the *Ministerio Público*, an autonomous governmental body for the defence of individual and collective rights. Operating at both the federal and state levels, the *Ministerio Público* is currently the most important institution in Brazil that assists citizens to obtain legal protection. This institution is able to initiate inquiries into violations of basic rights and to issue recommendations to the Government. It has acted in connection with the right to food, particularly regarding malnutrition among children and indigenous groups and in connection with the National School Food Programme. This body is also intended to guarantee participation of the beneficiaries of policies

and programmes; to cooperate with NGOs in promoting human rights; and to create new fora for coordination and consensus building.

63. Recently, the Brazilian Department of Justice, in collaboration with NGOs, established the position of a national rapporteur on the right to food, water and rural land, whose function it is to monitor the realization of these rights. This was the initiative of the Economic, Social and Cultural Human Rights Platform - Brazil, a national network of civil society organizations (CSOs) and was based on the model of the United Nations special rapporteurs.

64. Uganda has an independent constitutional body, the Uganda Human Rights Commission (UNHRC). This Commission has brought the issue of the right to food before the Government's Constitutional Review Commission, suggesting that the right to adequate food be given the status of a fundamental, justiciable right. It also was one of the key organizers of a national seminar on the right to food held in 2003. The success of the UHRC can be explained both by its constitutional mandate and its application by a proactive group of commissioners and staff. Their advocacy has found positive resonance among key decision makers and is taking roots among a broader spectrum of stakeholders.

65. The National Human Rights Commission (NHRC) of India is also an independent and autonomous body. Over more than a decade, the Supreme Court of India and the National Human Rights Commission have been parties to a civil society debate that has led to a substantive transformation of the perspective of benevolence into a perspective of human rights. Prompted by a civil society submission concerning the situation of the right to food in the State of Orissa, the NHRC has been instrumental in gaining recognition that destitution and chronic distress, rather than mortality alone, are proof of starvation; and that starvation constitutes a gross denial and violation of the fundamental right to be free from hunger.

66. The Supreme Court of India has appointed two commissioners to look into persisting grievances regarding violations of rights that are not amenable to established procedures of redress. It is obligatory for the State Governments to provide information that the commissioners require. The latter have been empowered to recommend a course of action to the Governments to ensure compliance of the directions of the Court.

### **Role of civil society**

67. The country studies showed that civil society can play a crucial role in putting pressure on all spheres of government, as well as assist vulnerable groups to empower themselves to claim their rights and improve their access to recourse mechanisms, including the courts.

68. In South Africa, for example, the Treatment Action Campaign (TAC), a broad social movement, brought a case relating to socio-economic rights and in particular the right to health care to the South African Supreme Court and was instrumental in shaping the Government's decision to act.

69. In India, the People's Union for Civil Liberties (PUCL) filed a case regarding the right to food in Rajasthan. The pressure brought to bear on central and State Governments by non-governmental organizations in this Public Interest Litigation has had results in many states, but in others the Interim Orders of the Supreme Court have been partly or totally ignored. On the other hand, it must be acknowledged that India is a vast country and many of its states are very resource poor. This clearly points also to the need to examine the federal level organization and funding of social programmes.

## E. INSTITUTIONAL FRAMEWORK

### Allocation of responsibilities, coordination and accountability

70. Implementing right to food policy and legal frameworks requires effective institutions at all levels. The cross-sectoral nature of the right to food requires efforts of coordination across government ministries and offices at the national, sub-national and local levels. Clarifying the allocation of roles and responsibilities between the different sectors and levels of government leads to better accountability and more effective action.

71. In Brazil the right to food is the guiding principle of the country's food security policy, *Fome Zero*. It is institutionally enshrined in the new Ministry for Social Justice that incorporates the former Special Ministry for Food Security and Combating Hunger (MESA) as a secretariat in the new ministry. Another cornerstone of the institutionalization of the right to food approach in Brazil is the re-creation of the National Food Security Council (CONSEA) as a forum for civil society participation.

72. A beginning has been made in Uganda to establish institutional arrangements for overseeing a rights-based approach to food security. The new Food and Nutrition Council has been tasked with coordinating and joining the forces of duty bearers and rights holders.

73. Accountability is central to an effective institutional framework for the implementation of the right to food. The State must establish mechanisms to ensure the accountability of those who are responsible for the implementation of this right.

74. In South Africa, the Government has proposed the establishment of food security officers at the local level who would report to the “cluster” of social sector ministries. The draft Food Security Bill also foresees the establishment of a Food Security Council which would play a pivotal role in policy coordination.

### **Changing from benevolence to a rights-based approach**

75. In Canada, according to the case study, benevolent approaches to meet the food needs of hungry people in the form of charitable food banks have become institutionalized over the past twenty years and have, at least partially, relieved the State (federal, provincial and territorial governments) of its obligations to respect, protect and fulfil the right to food through ensuring adequate social security entitlements. Demands on food banks continue to grow. Institutional measures would be required to revert to a rights-based approach.

### **Implementation strategies**

76. An important lesson learnt from the case studies is that right to food policy needs to be accompanied by an implementation strategy with clear, quantified targets and benchmarks, as well as the allocation of institutional responsibilities and accountability. Furthermore, implementation needs to be monitored and evaluated according to rights-based indicators.

77. A useful starting point would be a national audit of all policies, programmes and other initiatives geared towards the realization of the right to access adequate food in order to help identify which existing elements are working and why, as well as to provide a basis for corrective action.

## **F. OPERATIONALIZING THE RIGHT TO FOOD: SOME KEY ISSUES**

### **Awareness building and education**

78. Awareness building is key to operationalize the right to food. Citizens must be aware of their rights while public servants must be instilled with a clear consciousness of obligation. This is possible only through appropriate policies on information and education that also encourage people to utilize their rights.

79. In South Africa, one of the functions of the South African Human Right Commission is to develop an awareness of human rights among the people of South Africa. In Brazil the National Rapporteur’s Office for the Right to Food, Water, and Rural Land conducts research on the exercise of the different rights, and writes national reports, aimed especially at policy

makers. A national seminar in Uganda, sponsored by the International Project on the Right to Food in Development (IPRFD), played a significant role in awareness building in the country. The NGO Right to Food Movement in India has organized a number of events, including public hearings in which persons suffering from hunger have told their stories.

**80.** Awareness building is needed at all levels, including that of the media and the voluntary and the corporate sectors to counterbalance the tendency among some in these sectors to consider hunger and food poverty as a matter of charity and not as a political issue of social justice and human rights.

**81.** Awareness building can be institutionalized in the educational system through inclusion of nutrition and basic human rights education in primary and secondary school curricula and in relevant higher education curricula; e.g. professional education: agricultural, health, nutritional and environmental sciences and business, education, law, social work and social policy. Civil servants who are responsible for implementing the right to food could benefit from in-service training. Community education, especially geared towards vulnerable groups is another way to contribute to the improvement of food and nutrition security at the local level.

**82.** In South Africa, a number of universities and academic institutions conduct research on food insecurity and vulnerability, including the University of Natal, which offers post-graduate courses in food security. Other research institutions include the Community Law Centre of the University of Western Cape and the Centre for Human Rights of the University of Pretoria which both focus on the right to food in their academic research.

## Capacity building

**83.** All the case studies showed that there is a critical need to build capacity, as well as to raise awareness, to ensure that policies are implemented. Duty bearers and rights holders often lack the capacity to use the instruments available for the realization of the right to adequate food. Capacity development using a rights framework requires targeting both rights holders and duty bearers. It should be directed at communities and households as well as to those in the public and private sphere.

## Identifying the vulnerable and targeting benefits

**84.** An overriding challenge that emerges from the country experiences is inadequate attention to identifying those whose right to food is not realized. No matter how much emphasis is given in the overall policy environment to reduce poverty and food and nutrition insecurity, mechanisms to identify the food insecure and to understand the reasons for their vulnerability are needed.

85. Implementation plans are generally vague in defining target groups or the vulnerable in sufficient detail to be operationally relevant. This is not so much a question of technical obstacles linked to data and analytical capacities as it is a question of a fundamental approach to development. Strategies and action plans must be based on a thorough socio-economic assessment of different groups of people, in order for national food security plans to identify the food insecure and vulnerable groups. Vulnerability mapping can be useful in this regard. A human rights approach, through its constant concern with those whose right is not realized or violated and why, is a powerful tool to sharpen the focus on people.

86. In identifying vulnerable groups, there is a need to address those with HIV/AIDS and other chronic diseases so that holistic food and nutrition plans can be developed for and with people living with these diseases.

### **Monitoring and Indicators**

87. Indicators for the progressive realization of the right to adequate food would make it possible to measure the extent to which policy, legal and institutional frameworks are effective. An initial step in formulating such indicators and benchmarks is coming to a common understanding and consensus of rights-based indicators and benchmarks. Process indicators are needed, as well as progress indicators, in order to measure effectiveness of elements such as legal mechanisms, judiciary reform, and the participation of CSOs.

88. In South Africa, the judiciary has provided invaluable guidance on what progressive realization of some of the economic and social rights entail. However, commonly understood indicators of progress in service delivery are still needed, and the State needs to set clearer goals and objectives. The setting of targets with clear deliverables is key and should be done in consultation with vulnerable groups. This would assist the South Africa Human Rights Commission which is tasked to monitor the progressive realization of these economic and social rights by organs of State.

89. The administration of programmes aimed at the progressive realization of the right to food could be improved by involving the stakeholders in monitoring and designing projects. Indicators for assessing public participation, budgetary practices and effective implementation are required for this.

### **Role of civil society**

90. There is a growing recognition of the importance of a participatory approach and the inclusion of civil society in designing and implementing food-based schemes. The case studies revealed that civil society plays significant roles in operationalizing the right to food in many countries. Community based organizations and NGOs are at times more successful than central or

state administered programmes in reaching the poor. Civil society also plays a significant role in monitoring the implementation of the right to food in several of the countries examined.

91. Civil society organizations have played an essential role in promoting the human right to food in Brazil. One of the most important initiatives was the creation of the Brazilian Food and Nutrition Security Forum (*Fórum Brasileiro de Segurança Alimentar e Nutricional*, or FBSAN) in 1998. This is a network of organizations, social movements, individuals, and institutions now comprising over 100 organizations with representation in all of the country's states. The overwhelming importance of the civil society movement was obvious in the beginning of Luiz Inácio Lula da Silva's presidency as the majority of CSOs and NGOs backed his food security programme known as Zero Hunger (*Fome Zero*).

92. One of the most important efforts to create a system for monitoring the realization of social rights has emerged from a group of prosecutors in the federal *Ministerio Publico* who have shown interest in publicizing and promoting the right to food, as well as in influencing public policy in this area. As a result, 26 federal prosecutors, in collaboration with a number of social organizations, created a public civil inquiry to monitor public policy and funding designed to realize the right to food.

93. In India, 2001 witnessed a major landmark in terms of people's awareness of and participation in anti-poverty programmes, particularly regarding distribution of food to the needy. Following monsoon failure for the third successive year and the incapacity of several state Governments to provide food to poor drought-affected people, a number of NGOs and public spirited citizens launched the people's Right to Food Movement in India. This movement has spread in many states, particularly those with a high concentration of poverty and starvation. The movement has created an awareness of legal entitlements among disempowered citizens and has also helped to improve accountability in the official machinery and local power structures dealing with social programmes.

94. Civil society across Canada plays an important role in advancing the priority of food security and the debate about the human right to food. However, despite a recommendation by the National Action Plan that the sector also perform a national monitoring function, it is financially too weak to do this. Civil society organizations are more prominent at provincial and local levels where they advance the right to food and food security through the activities of charitable food networks, alternative community food projects, voluntary-cooperative-public partnerships, food security networks, farm organizations, and food policy councils, as well as conduct research, public education and policy advocacy.



## G. CONCLUSIONS

95. Human Rights are above all about empowerment and accountability. A rights-based approach shifts the focus from technocratic to political solutions and to greater equality in power relations and wealth/income distribution. It emphasises State obligations rather than political will when addressing food insecurity, poverty and the empowerment of rights holders. Enabling policy, legal and institutional frameworks are important to achieve the right to food.

96. Public policies considered from a human rights perspective translate into a development approach in which the obligation to achieve universal human rights for all is the starting point. This in turn calls for a focus on those whose rights are not fully realized, and their participation in formulating, implementing and evaluating policies, rather than a top-down approach.

97. The development of an overarching and integrated food security policy based on human rights principles is central to achieve the right to adequate food at country level. It is not always easy for food policies to balance the four components of food security: availability, stability, access and utilization. Sufficient food production and food availability at national level is not the only requirement for food security. Policies must also take into consideration the importance of livelihoods and equitable access to resources to guarantee access to sufficient food. Planning is required to ensure that economic growth and trade policies are supportive of poverty reduction and right to food policies. When people cannot feed themselves by their own means, programmes need to be put in place to address the inability of the poor to access adequate food.

98. Legal protection of the right to food is essential. This takes different forms in different countries. In some countries the right to food is written directly into the constitution, while in others the courts have interpreted the constitution as protecting the right to food. Different countries also have different types of legislation that protect the right, and various legal mechanisms by which individuals and/or groups can claim it. In some countries claims relating to the right to food can be brought to the courts.

99. Legal and constitutional recognition of the right to food is important but not sufficient to ensure its implementation, even if it is a justiciable right. Other elements need to be in place, including the rule of law, good governance and accountability. Efficient, accessible and workable legal mechanisms for claiming the right to adequate food are needed. An independent judiciary capable of exercising its responsibility is crucial in guaranteeing the right to food. Judges and lawyers need to be aware of rights provisions in this regard. National human rights institutions have a prime role to play in monitoring

the implementation of the right to food, as well as in receiving complaints from groups and individuals.

**100.** Implementing right to food policy and legal frameworks requires effective institutions at all levels. The cross-sectoral nature of the right to food requires efforts of coordination across government ministries and offices at the national, sub-national and local levels. Accountability is central to an effective institutional framework for the implementation of the right to food. The State must establish mechanisms to ensure the accountability of those who are responsible for the implementation of this right.

**101.** Right to food policy needs to be accompanied by implementation strategies with clear, quantified targets and benchmarks, as well as the allocation of institutional responsibilities and accountability. Strategies and action plans must be based on thorough socio-economic assessments for national food security programmes to target food insecure and vulnerable groups. Indicators for the progressive realization of the right to adequate food would make it possible to measure the extent to which policy, legal and institutional frameworks are effective.

**102.** Awareness raising, human rights education and capacity building are needed on a large scale to realize the right to food. In the long run, these measures will help lead to a shift in the perception of governments and civil society so that economic, social and cultural human rights become an intrinsic part of societal values.

**103.** There is a growing recognition of the importance of a participatory approach and the inclusion of civil society in designing and implementing programmes to facilitate or provide access to food. Civil society contributes significantly to operationalizing the right to food in many countries by advocating for policy change, by monitoring implementation, and by helping groups and individuals and groups claim their rights.

## LIST OF CASE STUDIES

Case study on the Right to Food in Brazil  
 Right to Food Case Study: Canada  
 Right to Food Case Study: South Africa  
 Right to Food Case Study: Uganda  
 Right to Food Case Study: India

The above documents are available in English from FAO and can be obtained from: [www.fao.org/righttofood](http://www.fao.org/righttofood).

# VOLUNTARY GUIDELINES

to support the progressive realization of  
the right to adequate food  
in the context of national food security

Adopted by the 127th Session of the FAO Council  
November 2004

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS  
Rome, 2005

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## Foreword

In 1996, at the World Food Summit, Heads of State and Government reaffirmed “the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.” The declaration of the World Food Summit: five years later, in June 2002, reaffirmed the importance of strengthening the respect of all human rights and fundamental freedoms and invited “the FAO Council to establish an Intergovernmental Working Group to develop a set of Voluntary Guidelines to support Member States’ efforts to achieve the progressive realization of the right to adequate food in the context of national food security”.

An Intergovernmental Working Group was established in November 2002 and working relationships, in particular with the Office of the High Commissioner for Human Rights and the Special Rapporteur on the Right to Food, were strengthened. After two years of intense and constructive negotiations and discussions among members of the Intergovernmental Working Group and its Bureau as well as representatives of stakeholders and civil society, the Voluntary Guidelines were adopted by the FAO Council in November 2004.

The Voluntary Guidelines represent the first attempt by governments to interpret an economic, social and cultural right and to recommend actions to be undertaken for its realization. The objective of the Voluntary 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. Relevant stakeholders could also benefit from such guidance. The Voluntary Guidelines cover the full range of actions to be considered by governments at the national level in order to build an enabling environment for people to feed themselves in dignity and to establish appropriate safety nets for those who are unable to do so. They can be used to strengthen and improve current development frameworks, particularly with regard to social and human dimensions, putting the entitlements of people more firmly at the centre of development.

The Voluntary Guidelines represent a step towards integrating human rights into the work of agencies dealing with food and agriculture, such as FAO, as called for by the United Nations Secretary-General within his UN reforms. They provide an additional instrument to combat hunger and poverty and to accelerate attainment of the Millennium Development Goals.

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FAO is committed to strengthening its capacity, with the help of Member States, to assist willing governments to implement the Voluntary Guidelines. The Organization looks forward to cooperating with governments and other key actors that wish to pursue rights-based approaches to poverty reduction and are interested in realizing the right to adequate food in the context of national food security by implementing the Voluntary Guidelines. Striving to ensure that every child, woman and man enjoy adequate food on a regular basis is not only a moral imperative and an investment with enormous economic returns; it also signifies the realization of a basic human right.



**Jacques Diouf**

Director-General


*Food and Agriculture Organization  
of the United Nations*

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## Preface

1. The eradication of hunger is clearly reflected in the target set at the World Food Summit to reduce the number of undernourished people to half their present level no later than 2015 and as agreed by the Millennium Summit to “halve the proportion of people who suffer from hunger” by the same year.
2. In the Rome Declaration on World Food Security, Heads of State and Government “reaffirm[ed] the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.” Objective 7.4 of the World Food Summit Plan of Action established the task: “to clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger, as stated in the International Covenant on Economic, Social and Cultural Rights and other relevant international and regional instruments, and to give particular attention to implementation and full and progressive realization of this right as a means of achieving food security for all.”
3. The Plan of Action “invite[d] the UN High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programmes of the UN system and appropriate intergovernmental mechanisms, to better define the rights related to food in Article 11 of the Covenant and to propose ways to implement and realize these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all.”
4. In response to the invitation by the World Food Summit, and following several international consultations, the Committee on Economic, Social and Cultural Rights adopted General Comment 12, which provided its experts’ views on the progressive realization of the right to adequate food.
5. In Paragraph 10 of the Declaration adopted at the 2002 World Food Summit: *five years later*, Heads of State and Government invited the Council of the Food and Agriculture Organization of the United Nations to establish at its 123rd session an Intergovernmental Working Group (IGWG), in the context of the World



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Food Summit follow-up, with the following mandate: “to elaborate, with the participation of stakeholders, in a period of two years, a set of voluntary guidelines to support Member Nations’ efforts to achieve the progressive realization of the right to adequate food in the context of national food security”.

**6.** The objective of these Voluntary 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 Plan of Action of the World Food Summit. Relevant stakeholders could also benefit from such guidance.

**7.** The Voluntary Guidelines take into account a wide range of important considerations and principles, including equality and non-discrimination, participation and inclusion, accountability and rule of law, and the principle that all human rights are universal, indivisible, interrelated and interdependent. Food should not be used as a tool for political and economic pressure.

**8.** In developing these Voluntary Guidelines, the IGWG has benefited from the active participation of international organizations, non-governmental organizations (NGOs) and representatives of civil society. The implementation of these Guidelines, which is primarily the responsibility of States, should benefit from the contribution of all members of civil society at large, including NGOs and the private sector.

**9.** These Voluntary Guidelines are a human rights-based practical tool addressed to all States. They do not establish legally binding obligations for States or international organizations, nor is any provision in them to be interpreted as amending, modifying or otherwise impairing rights and obligations under national and international law. States are encouraged to apply these Voluntary Guidelines in developing their strategies, policies, programmes and activities, and should do so without discrimination of any kind, such as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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# Introduction

## Basic instruments

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10. These Voluntary Guidelines have taken into account relevant international instruments,<sup>1</sup> in particular those instruments in which the progressive realization of the right of everyone to an adequate standard of living, including adequate food, is enshrined.

**Universal Declaration of Human Rights, 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, 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:

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<sup>1</sup>References in the Voluntary Guidelines to the International Covenant on Economic, Social and Cultural Rights and other international treaties do not prejudice the position of any State with respect to signature, ratification or accession to those instruments.

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- (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.

**International Covenant on Economic, Social and Cultural Rights,  
Article 2:**

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, 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.


2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

11. Among others, Articles 55 and 56 of the Charter of the United Nations are relevant to these Voluntary Guidelines.

**UN Charter, Article 55**

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;

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- b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
  - c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

**UN Charter, Article 56**

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

12. Other international instruments, including the Convention of the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women, the four Geneva Conventions and their two Additional Protocols also contain provisions relevant to these Voluntary Guidelines.

13. These Voluntary Guidelines have taken into account the commitments contained in the Millennium Declaration, including the development goals, as well as the outcomes and commitments of the major UN conferences and summits in the economic, social and related fields.

14. The IGWG has also taken into account several Resolutions from the United Nations General Assembly and Commission on Human Rights and the General Comments adopted by the Committee on Economic, Social and Cultural Rights.

**The right to adequate food and the achievement of food security**

15. Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The four pillars of food security are availability, stability of supply, access and utilization.

16. The progressive realization of the right to adequate food requires States to fulfil their relevant human rights obligations under international law. These

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Voluntary Guidelines aim to guarantee the availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals; physical and economic accessibility for everyone, including vulnerable groups, to adequate food, free from unsafe substances and acceptable within a given culture; or the means of its procurement.

**17.** States have obligations under relevant international instruments relevant to the progressive realization of the right to adequate food. Notably, States Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) have the obligation to respect, promote and protect and to take appropriate steps to achieve progressively the full realization of the right to adequate food. States Parties should respect existing access to adequate food by not taking any measures that result in preventing such access, and should protect the right of everyone to adequate food by taking steps so that enterprises and individuals do not deprive individuals of their access to adequate food. States Parties should promote policies intended to contribute to the progressive realization of people's right to adequate food by proactively engaging in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. States Parties should, to the extent that resources permit, establish and maintain safety nets or other assistance to protect those who are unable to provide for themselves.

**18.** States that are not Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are invited to consider ratifying the ICESCR.

**19.** At the national level, a human rights-based approach to food security emphasizes universal, interdependent, indivisible and interrelated human rights, the obligations of States and the roles of relevant stakeholders. It emphasizes the achievement of food security as an outcome of the realization of existing rights and includes certain key principles: the need to enable individuals to realize the right to take part in the conduct of public affairs, the right to freedom of expression and the right to seek, receive and impart information, including in relation to decision-making about policies on realizing the right to adequate food. Such an approach should take into account the need for emphasis on poor and vulnerable people who are often excluded from the processes that determine policies to promote food security and the need for inclusive societies free from

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discrimination by the State in meeting their obligations to promote and respect human rights. In this approach, people hold their governments accountable and are participants in the process of human development, rather than being passive recipients. A human rights-based approach requires not only addressing the final outcome of abolishing hunger, but also proposing ways and tools by which that goal is achieved. Application of human rights principles is integral to the process.

GUIDELINE 1

**Democracy, good governance,  
human rights and the rule of law**

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**1.1** States should promote and safeguard a free, democratic and just society in order to provide a peaceful, stable and enabling economic, social, political and cultural environment in which individuals can feed themselves and their families in freedom and dignity.

**1.2** States should promote democracy, the rule of law, sustainable development and good governance, and promote and protect human rights and fundamental freedoms in order to empower individuals and civil society to make demands on their governments, devise policies that address their specific needs and ensure the accountability and transparency of governments and state decision-making processes in implementing such policies. States should, in particular, promote freedom of opinion and expression, freedom of information, freedom of the press and freedom of assembly and association, which enhances the progressive realization of the right to adequate food in the context of national food security. Food should not be used as a tool for political and economic pressure.

**1.3** States should also promote good governance as an essential factor for sustained economic growth, sustainable development, poverty and hunger eradication and for the realization of all human rights including the progressive realization of the right to adequate food.

**1.4** States should ensure, in accordance with their international human rights obligations, that all individuals, including human rights defenders of the progressive realization of the right to adequate food, are accorded equal protection under the law and that due process is guaranteed in all legal proceedings.

**1.5** 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 realization of the right to adequate food.

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## GUIDELINE 2

### **Economic development policies**

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**2.1** In order to achieve the progressive realization of the right to adequate food in the context of national food security, States should promote broad-based economic development that is supportive of their food security policies. States should establish policy goals and benchmarks based on the food security needs of their population.

**2.2** States should assess, in consultation with key stakeholders, the economic and social situation, including the degree of food insecurity and its causes, the nutrition situation and food safety.

**2.3** States should promote adequate and stable supplies of safe food through a combination of domestic production, trade, storage and distribution.

**2.4** States should consider adopting a holistic and comprehensive approach to hunger and poverty reduction. Such an approach entails, *inter alia*, direct and immediate measures to ensure access to adequate food as part of a social safety net; investment in productive activities and projects to improve the livelihoods of the poor and hungry in a sustainable manner; the development of appropriate institutions, functioning markets, a conducive legal and regulatory framework; and access to employment, productive resources and appropriate services.

**2.5** States should pursue inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land-use, and, as appropriate, land-reform policies, all of which will permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labour, capital and management, and encourage conservation and sustainable management of natural resources, including in marginal areas.

**2.6** Where poverty and hunger are predominantly rural, States should focus on sustainable agricultural and rural development through measures to improve access to land, water, appropriate and affordable technologies, productive and financial resources, enhance the productivity of poor rural communities, promote the participation of the poor in economic policy decisions, share the benefits of



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productivity gains, conserve and protect natural resources, and invest in rural infrastructure, education and research. In particular, States should adopt policies that create conditions that encourage stable employment, especially in rural areas, including off-farm jobs.

**2.7** In response to the growing problem of urban hunger and poverty, States should promote investments aimed at enhancing the livelihoods of the urban poor.

### **GUIDELINE 3**

#### **Strategies**

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**3.1** States, as appropriate and in consultation with relevant stakeholders and pursuant to their national laws, should consider adopting a national human-rights based strategy for the progressive realization of the right to adequate food in the context of national food security as part of an overarching national development strategy, including poverty reduction strategies, where they exist.

**3.2** The elaboration of these strategies should begin with a careful assessment of existing national legislation, policy and administrative measures, current programmes, systematic identification of existing constraints and availability of existing resources. States should formulate the measures necessary to remedy any weakness, and propose an agenda for change and the means for its implementation and evaluation.

**3.3** These strategies could include objectives, targets, benchmarks and time frames; and actions to formulate policies, identify and mobilize resources, define institutional mechanisms, allocate responsibilities, coordinate the activities of different actors, and provide for monitoring mechanisms. As appropriate, such strategies could address all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food. They could also address access to resources and to markets as well as parallel measures in other fields. These strategies should, in particular, address the needs of vulnerable and disadvantaged groups, as well as special situations such as natural disasters and emergencies.

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**3.4** Where necessary, States should consider adopting and, as appropriate, reviewing a national poverty reduction strategy that specifically addresses access to adequate food.

**3.5** States, individually or in cooperation with relevant international organizations, should consider integrating into their poverty reduction strategy a human rights perspective based on the principle of non-discrimination. In raising the standard of living of those below the poverty line, due regard should be given to the need to ensure equality in practice to those who are traditionally disadvantaged and between women and men.

**3.6** In their poverty reduction strategies, States should also give priority to providing basic services for the poorest, and investing in human resources by ensuring access to primary education for all, basic health care, capacity building in good practices, clean drinking-water, adequate sanitation and justice and by supporting programmes in basic literacy, numeracy and good hygiene practices.

**3.7** States are encouraged, *inter alia* and in a sustainable manner, to increase productivity and to revitalize the agriculture sector including livestock, forestry and fisheries through special policies and strategies targeted at small-scale and traditional fishers and farmers in rural areas, and the creation of enabling conditions for private sector participation, with emphasis on human capacity development and the removal of constraints to agricultural production, marketing and distribution.

**3.8** In developing these strategies, States are encouraged to consult with civil society organizations and other key stakeholders at national and regional levels, including small-scale and traditional farmers, the private sector, women and youth associations, with the aim of promoting their active participation in all aspects of agricultural and food production strategies.

**3.9** These strategies should be transparent, inclusive and comprehensive, cut across national policies, programmes and projects, take into account the special needs of girls and women, combine short-term and long-term objectives, and be prepared and implemented in a participatory and accountable manner.

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**3.10** States should support, including through regional cooperation, the implementation of national strategies for development, in particular for the reduction of poverty and hunger as well as for the progressive realization of the right to adequate food.

#### GUIDELINE 4

### **Market systems**

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**4.1** States should, in accordance with their national law and priorities, as well as their international commitments, improve the functioning of their markets, in particular their agricultural and food markets, in order to promote both economic growth and sustainable development, *inter alia*, by mobilizing domestic savings, both public and private, by developing appropriate credit policies, by generating sustainable adequate levels of national productive investment through credits in concessional terms and by increasing human capacity.

**4.2** States should put legislation, policies, procedures and regulatory and other institutions in place to ensure non-discriminatory access to markets and to prevent uncompetitive practices in markets.

**4.3** States should encourage the development of corporate social responsibility and the commitment of all market players and civil society towards the progressive realization of the right of individuals to adequate food in the context of national food security.

**4.4** States should provide adequate protection to consumers against fraudulent market practices, misinformation and unsafe food. The measures toward this objective should not constitute unjustified barriers to international trade and should be in conformity with the WTO agreements.

**4.5** States should, as appropriate, promote the development of small-scale local and regional markets and border trade to reduce poverty and increase food security, particularly in poor rural and urban areas.

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- 4.6** States may wish to adopt measures to ensure that the widest number of individuals and communities, especially disadvantaged groups, can benefit from opportunities created by competitive agricultural trade.
- 4.7** States should strive to ensure that food, agricultural trade and overall trade policies are conducive to fostering food security for all through a non-discriminatory and market-oriented local, regional, national and world trade system.
- 4.8** States should endeavour to establish well functioning internal marketing, storage, transportation, communication and distribution systems, *inter alia*, to facilitate diversified trade and better links within and between domestic, regional and world markets, as well as to take advantage of new market opportunities.
- 4.9** States will take into account that markets do not automatically result in everybody achieving a sufficient income at all times to meet basic needs, and should therefore seek to provide adequate social safety nets and, where appropriate, the assistance of the international community for this purpose.
- 4.10** States should take into account the shortcomings of market mechanisms in protecting the environment and public goods.

## **GUIDELINE 5**

### **Institutions**

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- 5.1** States, where appropriate, should assess the mandate and performance of relevant public institutions and, where necessary, establish, reform or improve their organization and structure to contribute to the progressive realization of the right to adequate food in the context of national food security.
- 5.2** To this end, States may wish to ensure the coordinated efforts of relevant government ministries, agencies and offices. They could establish national intersectoral coordination mechanisms to ensure the concerted implementation, monitoring and evaluation of policies, plans and programmes. States are encouraged to involve relevant communities in all aspects of planning and execution of activities in these areas.

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**5.3** States may also wish to entrust a specific institution with overall responsibility for overseeing and coordinating the application of these guidelines, bearing in mind the Declaration and Programme of Action of the 1993 Vienna World Conference on Human Rights and taking due account of existing agriculture conventions and protocols. In order to ensure transparency and accountability, the functions and tasks of this institution would need to be clearly defined, regularly reviewed and provision made for adequate monitoring mechanisms.

**5.4** States should ensure that relevant institutions provide for full and transparent participation of the private sector and of civil society, in particular representatives of the groups most affected by food insecurity.

**5.5** States should take measures, where and if necessary, to develop, strengthen, implement and maintain effective anticorruption legislation and policies, including in the food sector and in the management of emergency food aid.

## **GUIDELINE 6**

### **Stakeholders**

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**6.1** Recognizing the primary responsibility of States for the progressive realization of the right to adequate food, States are encouraged to apply a multistakeholder approach to national food security to identify the roles of and involve all relevant stakeholders, encompassing civil society and the private sector, drawing together their know-how with a view to facilitating the efficient use of resources.

## **GUIDELINE 7**

### **Legal framework**

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**7.1** States are invited to consider, in accordance with their domestic legal and policy frameworks, whether to include provisions in their domestic law, possibly including constitutional or legislative review that facilitates the progressive realization of the right to adequate food in the context of national food security.

**7.2** States are invited to consider, in accordance with their domestic legal and policy frameworks, whether to include provisions in their domestic law, which may include their constitutions, bills of rights or legislation, to directly implement the

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progressive realization of the right to adequate food. Administrative, quasi-judicial and judicial mechanisms to provide adequate, effective and prompt remedies accessible, in particular, to members of vulnerable groups may be envisaged.

**7.3** States that have established a right to adequate food under their legal system should inform the general public of all available rights and remedies to which they are entitled.

**7.4** States should consider strengthening their domestic law and policies to accord access by women heads of households to poverty reduction and nutrition security programmes and projects.

## **GUIDELINE 8**

### **Access to resources and assets**

**8.1** States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination. Where necessary and appropriate, States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources.

**8.2** States should take steps so that members of vulnerable groups can have access to opportunities and economic resources in order to participate fully and equally in the economy.

**8.3** States should pay particular attention to the specific access problems of women and of vulnerable, marginalized and traditionally disadvantaged groups, including all persons affected by HIV/AIDS. States should take measures to protect all people affected by HIV/AIDS from losing their access to resources and assets.

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**8.4** States should promote agricultural research and development, in particular to promote basic food production with its positive effects on basic incomes and its benefits to small and women farmers, as well as poor consumers.

**8.5** States should, within the framework of relevant international agreements, including those on intellectual property, promote access by medium- and small-scale farmers to research results enhancing food security.

**8.6** States should promote women's full and equal participation in the economy and, for this purpose, introduce, where it does not exist, and implement gender-sensitive legislation providing women with the right to inherit and possess land and other property. States should also provide women with secure and equal access to, control over, and benefits from productive resources, including credit, land, water and appropriate technologies.

**8.7** States should design and implement programmes that include different mechanisms of access and appropriate use of agricultural land directed to the poorest populations.

#### *GUIDELINE 8A*

##### **Labour**

**8.8** States should take measures to encourage sustainable development in order to provide opportunities for work that provide remuneration allowing for an adequate standard of living for rural and urban wage earners and their families, and to promote and protect self-employment. For States that have ratified the relevant instruments, working conditions should be consistent with the obligations they have assumed under the International Covenant on Economic, Social and Cultural Rights, relevant ILO Conventions and other treaties including human rights conventions.

**8.9** In order to improve access to the labour market, States should enhance human capital through education programmes, adult literacy and additional training programmes, as required, regardless of race, colour, gender, language, religion, political opinion, national or social origin, property, birth or other status.

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*GUIDELINE 8B*

**Land**

**8.10** States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities.

*GUIDELINE 8C*

**Water**

**8.11** Bearing in mind that access to water in sufficient quantity and quality for all is fundamental for life and health, States should strive to improve access to, and promote sustainable use of, water resources and their allocation among users giving due regard to efficiency and the satisfaction of basic human needs in an equitable manner and that balances the requirement of preserving or restoring the functioning of ecosystems with domestic, industrial and agricultural needs, including safeguarding drinking-water quality.

*GUIDELINE 8D*

**Genetic resources for food and agriculture**

**8.12** States, taking into account the importance of biodiversity, and consistent with their obligations under relevant international agreements, should consider specific national policies, legal instruments and supporting mechanisms to prevent the erosion of and ensure the conservation and sustainable use of genetic resources for food and agriculture, including, as appropriate, for the protection of relevant traditional knowledge and equitable participation in sharing benefits arising from the use of these resources, and by encouraging, as appropriate, the participation of local and indigenous communities and farmers in making national decisions on matters related to the conservation and sustainable use of genetic resources for food and agriculture.



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*GUIDELINE 8E*

**Sustainability**

**8.13** States should consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased, sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil, and promote the sustainable management of fisheries and forestry.

*GUIDELINE 8F*

**Services**

**8.14** States should create an enabling environment and strategies to facilitate and support the development of private and public sector initiatives to promote appropriate tools, technologies and mechanization in the provision of relevant services, including research, extension, marketing, rural finance and microcredit, to enable more efficient food production by all farmers, in particular poor farmers, and to address local constraints such as shortage of land, water and farm power.

**GUIDELINE 9**

**Food safety and  
consumer protection**

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**9.1** States should take measures to ensure that all food, whether locally produced or imported, freely available or sold on markets, is safe and consistent with national food safety standards.

**9.2** States should establish comprehensive and rational food-control systems that reduce risk of food-borne disease using risk analysis and supervisory mechanisms to ensure food safety in the entire food chain including animal feed.

**9.3** States are encouraged to take action to streamline institutional procedures for food control and food safety at national level and eliminate gaps and overlaps in inspection systems and in the legislative and regulatory framework for food. States are encouraged to adopt scientifically based food safety standards, including standards for additives, contaminants, residues of veterinary drugs and pesticides, and microbiological hazards, and to establish standards for the packaging,

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labelling and advertising of food. These standards should take into consideration internationally accepted food standards (Codex Alimentarius) in accordance with the WTO Sanitary and Phytosanitary Agreement (SPS). States should take action to prevent contamination from industrial and other pollutants in the production, processing, storage, transport, distribution, handling and sale of food.

**9.4** States may wish to establish a national coordinating committee for food to bring together both governmental and non-governmental actors involved in the food system and to act as liaison with the FAO/WHO Codex Alimentarius Commission. States should consider collaborating with private stakeholders in the food system, both by assisting them in exercising controls on their own production and handling practices, and by auditing those controls.

**9.5** Where necessary, States should assist farmers and other primary producers to follow good agricultural practices, food processors to follow good manufacturing practices, and food handlers to follow good hygiene practices. States are encouraged to consider establishing food safety systems and supervisory mechanisms to ensure the provision of safe food to consumers.

**9.6** States should ensure that education on safe practices is available for food business operators so that their activities neither lead to harmful residues in food nor cause harm to the environment. States should also take measures to educate consumers about the safe storage, handling and utilization of food within the household. States should collect and disseminate information to the public regarding food-borne diseases and food safety matters, and should cooperate with regional and international organizations addressing food safety issues.

**9.7** States should adopt measures to protect consumers from deception and misrepresentation in the packaging, labelling, advertising and sale of food and facilitate consumers' choice by ensuring appropriate information on marketed food, and provide recourse for any harm caused by unsafe or adulterated food, including food offered by street sellers. Such measures should not be used as unjustified barriers to trade; they should be in conformity with the WTO agreements (in particular SPS and TBT).

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**9.8** Developed countries are encouraged to provide technical assistance to developing countries through advice, credits, donations and grants for capacity building and training in food safety. When possible and appropriate, developing countries with more advanced capabilities in food safety-related areas are encouraged to lend assistance to less advanced developing countries.

**9.9** States are encouraged to cooperate with all stakeholders, including regional and international consumer organizations, in addressing food safety issues, and consider their participation in national and international fora where policies with impact on food production, processing, distribution, storage and marketing are discussed.

## **GUIDELINE 10**

### **Nutrition**

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**10.1** If necessary, States should take measures to maintain, adapt or strengthen dietary diversity and healthy eating habits and food preparation, as well as feeding patterns, including breastfeeding, while ensuring that changes in availability and access to food supply do not negatively affect dietary composition and intake.

**10.2** States are encouraged to take steps, in particular through education, information and labelling regulations, to prevent overconsumption and unbalanced diets that may lead to malnutrition, obesity and degenerative diseases.

**10.3** States are encouraged to involve all relevant stakeholders, in particular communities and local government, in the design, implementation, management, monitoring and evaluation of programmes to increase the production and consumption of healthy and nutritious foods, especially those that are rich in micronutrients. States may wish to promote gardens both at home and at school as a key element in combating micronutrient deficiencies and promoting healthy eating. States may also consider adopting regulations for fortifying foods to prevent and cure micronutrient deficiencies, in particular of iodine, iron and Vitamin A.

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**10.4** States should address the specific food and nutritional needs of people living with HIV/AIDS or suffering from other epidemics.

**10.5** States should take appropriate measures to promote and encourage breastfeeding, in line with their cultures, the International Code of Marketing of Breast-milk Substitutes and subsequent resolutions of the World Health Assembly, in accordance with the WHO/UNICEF recommendations.

**10.6** States may wish to disseminate information on the feeding of infants and young children that is consistent and in line with current scientific knowledge and internationally accepted practices and to take steps to counteract misinformation on infant feeding. States should consider with utmost care issues regarding breastfeeding and human immunodeficiency virus (HIV) infection on the basis of the most up-to-date, authoritative scientific advice and referring to the latest WHO/UNICEF guidelines.

**10.7** States are invited to take parallel action in the areas of health, education and sanitary infrastructure and promote intersectoral collaboration, so that necessary services and goods become available to people to enable them to make full use of the dietary value in the food they eat and thus achieve nutritional well-being.

**10.8** States should adopt measures to eradicate any kind of discriminatory practices, especially with respect to gender, in order to achieve adequate levels of nutrition within the household.

**10.9** States should recognize that food is a vital part of an individual's culture, and they are encouraged to take into account individuals' practices, customs and traditions on matters related to food.

**10.10** States are reminded of the cultural values of dietary and eating habits in different cultures and should establish methods for promoting food safety, positive nutritional intake including fair distribution of food within communities and households with special emphasis on the needs and rights of both girls and boys, as well as pregnant women and lactating mothers, in all cultures.

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## GUIDELINE 11

### **Education and awareness raising**

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**11.1** States should support investment in human resource development such as health, education, literacy and other skills training, which are essential to sustainable development, including agriculture, fisheries, forestry and rural development.

**11.2** States should strengthen and broaden primary education opportunities, especially for girls, women and other underserved populations.

**11.3** States should encourage agricultural and environmental education at the primary and secondary levels in order to create a better awareness in new generations about the importance of conserving and making sustainable use of natural resources.

**11.4** States should support higher education by strengthening developing country university and technical faculties of agriculture-related disciplines and business to carry out both education and research functions, and by engaging universities throughout the world in training developing country agriculturalists, scientists and businesspeople at the graduate and post-graduate levels.

**11.5** States should provide information to individuals to strengthen their ability to participate in food-related policy decisions that may affect them, and to challenge decisions that threaten their rights.

**11.6** States should implement measures to make people improve their housing conditions and their means for food preparation, because they are related to food safety. Such measures should be made in the educative and infrastructure fields, especially in rural households.

**11.7** States should promote, and/or integrate into school curricula, human rights education, including civil, political, economic, social and cultural rights, which includes the progressive realization of the right to adequate food.

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**11.8** States are encouraged to promote awareness of the importance of human rights, including the progressive realization of the right to adequate food.

**11.9** States should provide proper training to officials responsible for the implementation of the progressive realization of the right to adequate food.

**11.10** States should raise public awareness of these guidelines and continuously provide and improve access to them and to relevant human rights laws and regulations, particularly in rural and remote areas.

**11.11** States may wish to empower civil society to participate in the implementation of these guidelines, for instance through capacity building.

## GUIDELINE 12

### **National financial resources**

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**12.1** Regional and local authorities are encouraged to allocate resources for anti-hunger and food security purposes in their respective budgets.

**12.2** States should ensure transparency and accountability in the use of public resources, particularly in the area of food security.

**12.3** States are encouraged to promote basic social programmes and expenditures, in particular those affecting the poor and the vulnerable segments of society, and to protect them from budget reductions, while increasing the quality and effectiveness of social expenditures. States should strive to ensure that budget cuts do not negatively affect access to adequate food among the poorest sections of society.

**12.4** States are encouraged to establish an enabling legal and economic environment to promote and mobilize domestic savings and attract external resources for productive investment, and seek innovative sources of funding, both public and private at national and international levels, for social programmes.

**12.5** States are invited to take appropriate steps and suggest strategies to contribute to raise awareness of the families of migrants in order to promote

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efficient use of the remittances of migrants for investments that could improve their livelihoods, including the food security of their families.

### **GUIDELINE 13**

#### **Support for vulnerable groups**

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**13.1** Consistent with the World Food Summit commitment, States should establish Food Insecurity and Vulnerability Information and Mapping Systems (FIVIMS), in order to identify groups and households particularly vulnerable to food insecurity along with the reasons for their food insecurity. States should develop and identify corrective measures to be implemented both immediately and progressively to provide access to adequate food.

**13.2** States are invited to systematically undertake disaggregated analysis on the food insecurity, vulnerability and nutritional status of different groups in society, with particular attention to assessing any form of discrimination that may manifest itself in greater food insecurity and vulnerability to food insecurity, or in a higher prevalence of malnutrition among specific population groups, or both, with a view to removing and preventing such causes of food insecurity or malnutrition.

**13.3** States should 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. Effective accountability and administrative systems are essential to prevent leakages and corruption. Factors to take into account include household and individual assets and income, nutrition and health status, as well as existing coping mechanisms.

**13.4** States may wish to 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**

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**14.1** 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

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provide for themselves. As far as possible, and with due regard to effectiveness and coverage, States should consider building on existing capacities within communities at risk to provide the necessary resources for social safety and food safety nets to fulfil the progressive realization of the right to adequate food. States may wish to consider the benefits of procuring locally.

**14.2** States and international organizations should 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.

**14.3** Although the design of social and food safety nets will depend on the nature of food insecurity, objectives, budget, existing administrative capacity and local circumstances such as levels of food supply and local food markets, States should nonetheless ensure that they adequately target those in need and respect the principle of non-discrimination in the establishment of eligibility criteria.

**14.4** States should take steps, to the extent that resources permit, so that any measure of an economic or financial nature likely to have a negative impact on existing levels of food consumption of vulnerable groups be accompanied by provision for effective food safety nets. Safety nets should be linked to other complementary interventions that promote food security in the longer term.

**14.5** In situations where it has been determined that food plays an appropriate role in safety nets, food assistance should bridge the gap between the nutritional needs of the affected population and their ability to meet those needs themselves. Food assistance should be provided with the fullest possible participation of those affected, and such food should be nutritionally adequate and safe, bearing in mind local circumstances, dietary traditions and cultures.

**14.6** States should consider accompanying food assistance in safety net schemes with complementary activities to maximize benefits towards ensuring people's access to and utilization of adequate food. Essential complementary activities include access to clean water and sanitation, health care interventions and nutrition education activities.



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**14.7** States, in the design of safety nets, should consider the important role of international organizations such as FAO, IFAD and WFP, and other relevant international, regional and civil society organizations that can assist them in fighting rural poverty and promoting food security and agricultural development.

## **GUIDELINE 15**

### **International food aid**

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**15.1** Donor States should ensure that their food aid policies support national efforts by recipient States to achieve food security, and base their food aid provisions on sound needs assessment, targeting especially food insecure and vulnerable groups. In this context, donor States should provide assistance in a manner that takes into account food safety, the importance of not disrupting local food production and the nutritional and dietary needs and cultures of recipient populations. Food aid should be provided with a clear exit strategy and avoid the creation of dependency. Donors should promote increased use of local and regional commercial markets to meet food needs in famine-prone countries and reduce dependence on food aid.

**15.2** International food-aid transactions, including bilateral food aid that is monetized, should be carried out in a manner consistent with the FAO Principles of Surplus Disposal and Consultative Obligations, the Food Aid Convention and the WTO Agreement on Agriculture, and should meet the internationally agreed food safety standards, bearing in mind local circumstances, dietary traditions and cultures.

**15.3** States and relevant non-state actors should ensure, in accordance with international law, safe and unimpeded access to the populations in need, as well as for international needs assessments, and by humanitarian agencies involved in the distribution of international food assistance.

**15.4** The provision of international food aid in emergency situations should take particular account of longer-term rehabilitation and development objectives in the recipient countries, and should respect universally recognized humanitarian principles.

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**15.5** The assessment of needs and the planning, monitoring and evaluation of the provision of food aid should, as far as possible, be made in a participatory manner and, whenever possible, in close collaboration with recipient governments at the national and local level.

## **GUIDELINE 16**

### **Natural and human-made disasters**

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**16.1** Food should never be used as a means of political and economic pressure.

**16.2** States reaffirm the obligations they have assumed under international humanitarian law and, in particular, as parties to the 1949 Geneva Conventions and/or the 1977 Additional Protocols thereto with respect to the humanitarian needs of the civilian population, including their access to food in situations of armed conflict and occupation, *inter alia*,

Additional Protocol I provides, *inter alia*, that “[t]he starvation of civilians as a method of warfare is prohibited” and that “[i]t is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them, for their sustenance value to the civilian population or to the adverse party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive”, and that “these objects shall not be made the object of reprisals”.

**16.3** In situations of occupation, international humanitarian law provides, *inter alia*: that to the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; that it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the Occupied Territory are inadequate; and that if the whole or part of the population of an Occupied Territory is inadequately

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supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.<sup>2</sup>

**16.4** States reaffirm the obligations they have assumed regarding the protection, safety and security of humanitarian personnel.

**16.5** States should make every effort to ensure that refugees and internally displaced persons have access at all times to adequate food. In this respect, States and other relevant stakeholders should be encouraged to make use of the Guiding Principles on Internal Displacement when dealing with situations of internal displacement.

**16.6** In the case of natural or human-made disasters, States should provide food assistance to those in need, may request international assistance if their own resources do not suffice, and should facilitate safe and unimpeded access for international assistance in accordance with international law and universally recognized humanitarian principles, bearing in mind local circumstances, dietary traditions and cultures.

**16.7** States should put in place adequate and functioning mechanisms of early warning to prevent or mitigate the effects of natural or human-made disasters. Early warning systems should be based on international standards and cooperation, on reliable, disaggregated data and should be constantly monitored. States should take appropriate emergency preparedness measures, such as keeping food stocks for the acquisition of food, and take steps to put in place adequate systems for distribution.

**16.8** States are invited to consider establishing mechanisms to assess nutritional impact and to gain understanding of the coping strategies of affected households in the event of natural or human-made disasters. This should inform the targeting, design, implementation and evaluation of relief, rehabilitation and resilience building programmes.

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<sup>2</sup> 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, Articles 55, 59.

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## GUIDELINE 17

### **Monitoring, indicators and benchmarks**

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**17.1** States may wish to establish mechanisms to monitor and evaluate the implementation of these guidelines towards the progressive realization of the right to adequate food in the context of national food security, in accordance with their capacity and by building on existing information systems and addressing information gaps.

**17.2** States may wish to consider conducting “Right to Food Impact Assessments” in order to identify the impact of domestic policies, programmes and projects on the progressive realization of the right to adequate food of the population at large and vulnerable groups in particular, and as a basis for the adoption of the necessary corrective measures.

**17.3** States may also wish to develop a set of process, impact and outcome indicators, relying on indicators already in use and monitoring systems such as FIVIMS, so as to assess the implementation of the progressive realization of the right to adequate food. They may wish to establish appropriate benchmarks to be achieved in the short, medium and long term, which relate directly to meeting poverty and hunger reduction targets as a minimum, as well as other national and international goals including those adopted at the World Food Summit and the Millennium Summit.

**17.4** In this evaluation process, process indicators could be so identified or designed that they explicitly relate and reflect the use of specific policy instruments and interventions with outcomes consistent with the progressive realization of the right to adequate food in the context of national food security. Such indicators could enable States to implement legal, policy and administrative measures, detect discriminatory practices and outcomes, and ascertain the extent of political and social participation in the process of realizing that right.

**17.5** States should, in particular, monitor the food security situation of vulnerable groups, especially women, children and the elderly, and their nutritional status, including the prevalence of micronutrient deficiencies.

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**17.6** In this evaluation process, States should ensure a participatory approach to information gathering, management, analysis, interpretation and dissemination.

## **GUIDELINE 18**

### **National human rights institutions**

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**18.1** States that have as a matter of national law or policy adopted a rights-based approach, and national human rights institutions or ombudspersons, may wish to include the progressive realization of the right to adequate food in the context of national food security in their mandates. States that do not have national human rights institutions or ombudspersons are encouraged to establish them. Human rights institutions should be independent and autonomous from the government, in accordance with the Paris Principles. States should encourage civil society organizations and individuals to contribute to monitoring activities undertaken by national human rights institutions with respect to the progressive realization of the right to adequate food.

**18.2** States are invited to encourage efforts by national institutions to establish partnerships and increase cooperation with civil society.

## **GUIDELINE 19**

### **International dimension**

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**19.1** States should fulfil those measures, actions and commitments on the international dimension, as described in Section III below, in support of the implementation of the Voluntary Guidelines, which assist States in their national efforts in the progressive realization of the right to adequate food in the context of national food security as set forth by the World Food Summit and the World Food Summit: *five years later* within the context of the Millennium Declaration.

## International cooperation and unilateral measures

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1. In the context of recent major international conferences, the international community has stated its deep concern over the persistence of hunger, its readiness to support national governments in their efforts to combat hunger and malnutrition and its commitment to cooperate actively within the global partnership for development, which includes the International Alliance Against Hunger.
2. States have the primary responsibility for their own economic and social development, including the progressive realization of the right to adequate food in the context of national food security. Stressing that national development efforts should be supported by an enabling international environment, the international community and the UN system, including FAO, as well as other relevant agencies and bodies according to their mandates, are urged to take actions in supporting national development efforts for the progressive realization of the right to adequate food in the context of national food security. This essential role of international cooperation is recognized, *inter alia*, in article 56 of the Charter of the United Nations as well as in the outcomes of major international conferences such as the Plan of Implementation of the World Summit on Sustainable Development. Food should not be used as a tool of economic and political pressure.
3. States are strongly urged to take steps with a view to the avoidance of, and refrain from, any unilateral measure not in accordance with international law and the charter of the United Nations that impedes the full achievement of economic and social development by the populations of the affected countries and that hinders their progressive realization of the right to adequate food.

## Role of the international community

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4. Consistent with commitments made at various international conferences, in particular the Monterrey Consensus, developed countries should assist developing countries in attaining international development goals, including those contained in the Millennium Declaration. States and relevant international organizations

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according to their respective mandates should actively support the progressive realization of the right to adequate food at the national level. External support, including South–South cooperation, should be coordinated with national policies and priorities.

### **Technical cooperation**

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5. Developed and developing countries should act in partnership to support their efforts to achieve the progressive realization of the right to adequate food in the context of national food security through technical cooperation, including institutional capacity building, and transfer of technology on mutually agreed terms, as committed in the major international conferences, in all areas covered in these guidelines, with special focus on impediments to food security such as HIV/AIDS.

### **International trade**

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6. International trade can play a major role in the promotion of economic development, and the alleviation of poverty and improving food security at the national level.

7. States should promote international trade as one of the effective instruments for development, as expanded international trade could open opportunities to reduce hunger and poverty in many of the developing countries.

8. It is recalled that the long-term objective referred to in the WTO Agreement on Agriculture is to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets.

9. States are urged to implement commitments expressed at various relevant international conferences and the recommendations of the São Paulo Consensus (the eleventh session of the United Nations Conference on Trade and Development) including, for example, those reproduced below:

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**75.** Agriculture is a central element in the current negotiations. Efforts should be intensified to achieve the internationally agreed aims embodied in the three pillars of the Doha mandate, namely substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. The negotiations on agriculture taking place in the WTO should deliver an outcome that is consistent with the ambition set out in the Doha mandate. Special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall take fully into account development needs in a manner consistent with the Doha mandate, including food security and rural development. Non-trade concerns of countries will be taken into account, as provided for in the Agreement on Agriculture, in accordance with paragraph 13 of the Doha Ministerial Declaration.

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**77.** Efforts at extending market access liberalization for non-agricultural products under the Doha Work Programme should be intensified with the aim of reducing or, as appropriate, eliminating tariffs, including tariff peaks, high tariffs and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Negotiations should take fully into account the special needs and interests of developing countries and LDCs, including through less than full reciprocity in reduction commitments.

**10.** Such measures can contribute to strengthening an enabling environment for the progressive realization of the right to adequate food in the context of national food security.

## **External debt**

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**11.** States and relevant international organizations should, as appropriate, pursue external debt relief measures vigorously and expeditiously in order to release resources for combating hunger, alleviating rural and urban poverty and promoting sustainable development. Creditors and debtors must share the responsibility for



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preventing and resolving unsustainable debt situations. Speedy, effective and full implementation of the enhanced heavily indebted poor countries (HIPC) initiative, which should be fully financed by additional resources, is critical. Furthermore, all official and commercial creditors are urged to participate in this initiative. Heavily indebted poor countries should take or continue to take policy measures required to ensure the full implementation of the HIPC initiative.

### **Official development assistance**

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12. Consistent with the Monterrey Consensus, developed countries should assist developing countries in attaining international development goals, including those contained in the Millennium Declaration, by providing adequate technical and financial assistance and by making concrete efforts towards the targets for ODA of 0.7 percent of GNP to developing countries and 0.15 percent to 0.2 percent of GNP to least developed countries. This should be linked to efforts to improve the quality and effectiveness of aid, including through better coordination, closer integration with national development strategies, greater predictability and stability and genuine national ownership. Donors should be encouraged to take steps to ensure that resources provided for debt relief do not detract from ODA resources intended to be available for developing countries. Developing countries are encouraged to build on progress achieved in ensuring that ODA is used effectively to help achieve development goals and targets. In addition, voluntary financial mechanisms supportive of efforts to achieve sustained growth, development and poverty eradication should be explored.

### **International food aid**

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13. States that provide international assistance in the form of food aid should regularly examine their relevant policies and, if necessary, review them to support national efforts by recipient States to progressively realize the right to adequate food in the context of national food security. In the broader context of food security policy, States should base their food aid policies on sound needs assessment that involves both recipient and donors and that targets especially needy and vulnerable groups. In this context, States should provide such assistance in a manner that takes into account the importance of food safety, local and

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regional food production capacity and benefits, and the nutritional needs as well as cultures of recipient populations.

### **Partnerships with NGOs/CSOs/private sector**

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14. States, international organizations, civil society, the private sector, all relevant non-governmental organizations and other stakeholders should promote the strengthening of partnerships and coordinated action, including programmes and capacity development efforts, with a view to strengthening the progressive realization of the right to adequate food in the context of national food security.

### **Promotion and protection of the right to adequate food**

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15. The organs and specialized agencies related to human rights should continue to enhance the coordination of their activities based on the consistent and objective application of international human right instruments, including the promotion of the progressive realization of the right to adequate food. The promotion and protection of all human rights and fundamental freedoms must be considered a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights, including the progressive realization of the right to adequate food, is a legitimate concern of all Member States, the international community and civil society.

### **International reporting**

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16. States may report on a voluntary basis on relevant activities and progress achieved in implementing the Voluntary Guidelines on the progressive realization of the right to adequate food in the context of national food security, to the FAO Committee on World Food Security (CFS) within its reporting procedures.

This publication presents seven information papers and a case studies report that were prepared during the negotiation process preceding the adoption of the *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*. The information papers cover issues that were controversial during negotiations, or complex legal questions for which clarification was requested. The case studies report summarizes the outcome of studies commissioned in five countries to gather information about practical in-country experiences with different policies and programmes that are conducive to realizing the population's right to adequate food. The full text of the *Voluntary Guidelines* is also included. Development practitioners in governments, development agencies, civil society and academia concerned with realizing the right to food should find the publication a valuable aid to decision-making.

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