

## 4. MONITORING IMPLEMENTATION PROCESSES THROUGH RIGHTS- FOCUSED ASSESSMENTS

Assessing and monitoring the legal, policy and institutional environment in a country is an essential part of monitoring the realization of the right to adequate food and the impacts of right to food measures. The latter are conditioned by the legal, policy and institutional environment. Understanding this environment assists in interpreting monitoring results and reach valid conclusions. It also identifies areas where actions are needed to make this environment more conducive to the realization of the right to adequate food. Right to Food Guideline 7 invites states to consider, in accordance with their domestic legal and policy frameworks and through possible constitutional or legislative review, to include provisions in their domestic law that facilitates the progressive realization of the right to adequate food. Legal, policy and institutional changes will occur over longer periods of time than changes in other more dynamic factors that also impact on the right to adequate food. An assessment of this environment is a good starting point as it also contributes to identifying aspects in that environment that are detrimental to realizing this right for all.

The implementation of right to food measures is conditioned by the availability of human and financial resources. Assessing and monitoring human resources is part of the institutional assessments. Financial resources are provided through public budgets and extra-budgetary funding, usually from donor sources. National public budgets, and allocation and expenditure trends therein, are a gauge of the existence of political will and commitment to achieve certain goals and targets, and the willingness of the public sector to act on that commitment. Monitoring public budgets provides information whether government is allocating public

resources over time in such ways that increasing support is given to realize the right to food within a reasonable time period.

## **LEGAL, POLICY AND INSTITUTIONAL SETTING OF THE RIGHT TO ADEQUATE FOOD MEASURES**

The assessment of the national legal framework should cover two sources of legal obligations: (i) international obligations as a result of the country having ratified international covenants, treaties, and other international agreements, and (ii) national laws and legal jurisprudence. Of particular interest is whether the international obligations have been validated in national laws.

### **International obligations and their validation in national laws**

The assessment may consist of a two-step process:

#### **Step 1:**

*An overview of relevant global and regional human rights treaties (binding conventions) that the state has ratified.*

The overview should cover: (i) any reservations made with respect to articles in these treaties that explicitly or implicitly protect the right to adequate food; (ii) the ratification of protocols enabling individuals to bring alleged violations to the attention of international mechanisms<sup>19</sup>; and (iii) protocols which protect the right to adequate food of specific groups<sup>20</sup>. Expertise in relevant international treaty obligations will be needed in this part of the assessment.

#### **Step 2:**

*An assessment of the extent to which international obligations are validated in national law and legislation.*

Legal expertise will be needed for this part of the assessment to know where to look in national law. This part of the assessment may be guided by relevant questions, such as:

- Are international treaties directly part of the national law (i.e. as international law)?
- Are the international treaty provisions incorporated in national law?
- Has national law been amended in order to meet international obligations?

<sup>19</sup> For example, the Optional Protocol to CEDAW regarding the rights of women, which is accessible at: <http://www.ohchr.org/english/law/cedaw-one.htm>

<sup>20</sup> For example, the Protocol on the Rights of Women in Africa, which is a Protocol to the African Charter on Human and Peoples' Right ( [http://www.achpr.org/english/\\_info/women\\_en.html](http://www.achpr.org/english/_info/women_en.html) )

- When international treaty obligations have been incorporated in national law in a different language, what are the differences in scope between the international obligation and the national law?
- Is the right to adequate food, as contained in Article 11 of the ICESCR accepted as an individual right or does the country (and its courts) take the position that the right to adequate food is an obligation of *programmatic* character that does not bestow on an individual a justiciable right?

### **The national legal framework**

The national legal framework is made up of:

- The national Constitution.
- Statutory laws.
- Case law.
- Customary law.

#### *The national Constitution*

With respect to the national Constitution, the assessment should identify whether:

- The right to adequate food is explicitly protected as a constitutional right.
- Aspects of the right to adequate food are protected by other constitutional rights (health, nutrition, social assistance, life in dignity, work ...etc.).
- The right to adequate food is protected only for certain groups, for example, nutrition rights of children.
- The constitution contains principles or state directives relevant to the right to adequate food.
- The right to adequate food is recognised as an individual right, and as such whether it is a justiciable right.
- State directives or principles play the role of guiding policy making, and/or serve to interpret the scope of other rights (right to life, for example).

Examples of the right to adequate food recognised as a constitutional right, or as a constitutional directive of state policy, are provided in the boxes below.

**BOX 4.1 - Examples of Constitutional Provisions: Right to Adequate Food****Constitution (1998) – Brazil:**

*Provision 227: It is the duty of the family, society and State, as an absolute priority, to guarantee the child and adolescent the right to life, health, food, education....*

**Constitution (1996) – South Africa:**

*Section 27.1(b) "...Everyone has the right to have access to ...sufficient food and water..."*

*Section 28.1(c) "...the right of every child to basic nutrition..."*

**BOX 4.2 - Examples of Constitutional Provisions: Directives of State Policy****Constitution (1950) – India:**

*Directive Principles of the State Policy:*

*...the state shall in particular direct its policy towards securing...an adequate means of livelihood*

**Constitution (1995) – Uganda:**

*National Objectives and Directive Principles of State Policy*

*Principle XIV: The State shall endeavour to fulfill fundamental rights of all Ugandans... and shall in particular ensure that...all Ugandans enjoy rights and opportunities and access to education and health services, clean and safe water, work, decent shelter, adequate clothing, food security...*

*Principle XXII: The State shall (a) take appropriate steps to encourage people to grow and store adequate food...encourage and promote proper nutrition through mass education and other appropriate means....*

**Statutory laws**

A wide array of statutory laws relevant to the right to adequate food exist in many countries. These cover topics such as food safety, access to natural resources (land, water, forests, fisheries, etc.) or private law areas such as inheritance law, labour legislation, social security and welfare legislation. Many of these laws have specific purposes and are not necessarily intended to ensure the enjoyment of the right to adequate food for all. As part of the assessment it is useful to make an overview of what is in place and then focus on the most relevant areas. Included should be laws that may have a negative impact on the enjoyment of the right to food, particularly for vulnerable groups.

The steps in the assessment may consist of the following:

**Step 1:**

Establish criteria for inclusion of laws in the assessment.

**Step 2:**

Draw up an inventory of legal instruments most relevant to the right to adequate food.

**Step 3:**

Undertake an analysis of the provisions in the laws and their (possible) impact on the enjoyment of the right to adequate food.

**Step 4:**

Assess the administrative capacity of the institutions responsible for implementing the laws in the inventory of legal instruments.

If a national *food security and nutrition situation analysis* has been undertaken, such an analysis can help determine the relevance of certain laws, i.e. those laws that most directly relate to identified underlying causes of food insecurity and vulnerability in certain population groups. *A role and capacity analysis* can also be applied in this part of the assessment, as institutional capacity is directly linked to the implementation of laws.

Examples of questions to be addressed in the assessment include the following. To what extent do laws governing social assistance, access to land or water etc. include the most vulnerable and needy among their beneficiaries? To what extent are such laws implemented, particularly in favour of such groups? Where and under which conditions are they implemented? Do administrative processes foreseen in legislation *de facto* exclude certain groups from access to benefits (although they may not do so on the basis of the text of the law)?

### *Customary law*

In many countries, customary law relates to the realization of the right to adequate food because it regulates access to resources, such as land and water. The extent to which customary law plays a role should be analysed as well as the manner in which it interfaces with statutory law.

Conflicts between customary law and statutory law, and between customary law and human rights principles should be identified. For example, discrimination can often be an issue in customary law. As often much of customary law is unwritten, the assessment may only be able to cover this area of law roughly. Key informants familiar with customary law should be consulted.

### *Case law*

Case law gives meaning to the abstract provisions of a constitution or statutes. It shows how well people's rights are protected in practice. In many countries no right to adequate food case law exists. It is important to determine the overall attitude of the judiciary with respect to social and economic rights, and whether social and economic rights are regarded as justiciable individual rights. This may indicate how well future right to food cases will fare. If relevant case law exists, what kinds of remedies were granted in cases of violations of economic and social rights should be stated (damages, compensation, restitution; constitutional remedies such as declaring a law invalid, etc.).

Finally, questions need to be asked about recourse mechanisms for violations of the right to adequate food. The assessment should cover administrative, quasi-judicial and/or judicial recourse mechanisms that exist for violations of statutory and constitutional rights. Who can access them (individuals, groups, NGOs, etc.) and how they can be used? Is access to courts available to all layers of society and is it facilitated for the poor through a system of legal aid? Are there mechanisms such as public interest litigation or class actions in place through which the interests of the poor can often be better represented than through individual cases?

### **The policy framework**

The assessment of the policy framework may address two related dimensions: (a) the policy framework as a whole; and (b) the most relevant individual policies. The result of a causal analysis as part of the food security and nutrition situation analysis (see below) should show to what extent, and in which instances, political factors (for instance, resource distribution, political priorities or ideology) and the policy-making processes hamper or neglect the realization of the right to adequate food. The policy framework can either avoid developing adequate right to food policies (creating a policy gap) or existing policies are not consistent with right to adequate food principles and approaches. Criteria for the assessment of existing right to food policies may include both general and specific human rights principles.

#### *General criteria*

- Policies should include “objectives, targets, benchmarks and time frames” (see *Right to Food Guideline 3.3*).
- Policy objectives should not be conflicting or contradictory.
- Activities, outputs and objectives of individual policies should be coherent and financial resources should be adequate.
- Policies should regularly be monitored and evaluated.

*Human rights principles*

- Policies should address the underlying causes of food insecurity in certain population groups, as identified through causal analysis.
- Policies should comply with the principles of equity, non-discrimination, transparency and widespread participation in their implementation.
- Duty bearers and their responsibilities with respect to the policy's implementation should be clearly identified for accountability mechanisms to be useful.
- Accountability mechanisms should be established, accessible and known by duty bearers and rights holders.
- Obligations to achieve universal human rights for all should be enshrined in all policies. (i.e. compliance with Article 11 of the ICESCR).

Public policies to be included should comprise of specific food and nutrition policies and broader policies that indirectly impact on the food security and vulnerability situation of specific population groups. Specific food and nutrition policies often focus on the “availability”, “accessability” and “utilization” dimensions of food and nutrition security. In content they may include policies such as related to food production; food processing and fortification, nutrition; food and micronutrient supplementation; and education for dietary change. The criteria for the selection of food and nutrition policies and of broader policies to be analysed should clearly be set out.

The inclusion of specific public policies and strategies in the assessment should be guided by the findings and conclusions of the causal analysis of the food security and nutrition situation analysis (see below). Main development strategies where they have been formulated and are in effect, such as a poverty reduction strategy (PRSP), rural development strategy or a food and nutrition security strategy, should be the subject of the assessment. The extent to which human rights dimensions have been included is of special interest. An example is provided by the guiding principles of the Uganda Food and Nutrition Policy (2003).

A similar example is provided by the Zanzibar Strategy for Growth and Reduction of Poverty (ZSGRP - 2007) which has strong human rights underpinnings. The Zanzibar Food Security and Nutrition Policy (2008), formulated to establish policy in the areas of food security and nutrition in line with ZSGRP priorities and policy goals, has explicit human rights based implementation principles and makes specific mention of the right to adequate food.

**BOX 4.3 - Uganda Food and Nutrition Policy (2003): Selected Guiding Principles**

*2.3.1. Adequate food and nutrition is a human right.*

*2.3.4. The policy emphasises the cross-cutting nature of food and nutrition as they affect men, women and children.*

*2.3.7. Gender considerations and the needs of all vulnerable groups are integral to all components of the policy.*

*2.3.8. Uganda meets its national and international obligations as set out in national laws and international conventions, treaties and resolutions on the right to food.*

*2.3.9. In the planning, budgeting and implementation of the policy, a Rights-Based Approach, will be adopted to promote and protect the right to adequate food and nutrition and ensure participation of the rights' holders and accountability of duty bearers.*

**The institutional framework**

The expected output of this part of the assessment is to highlight to what extent the institutional performance contributes to non-enjoyment of the right to adequate food by certain population groups. The assessment should identify gaps in the institutional framework and weaknesses in the existing institutions. Implementation of right to adequate food policies and programmes and of the legal framework requires effective institutions at all levels. The cross-sectoral nature of these measures calls for coordination among government institutions at national, sub-national and local levels, and government-civil society partnerships. Identifying roles and responsibilities of the different sectors and levels of government should contribute to enhanced accountability. At the same time, institutional capacities need to be assessed (see below).

Firstly, carry out a rapid inventory of institutions and organisations at national, sub-national and local levels through a consensus-building exercise with key informants. Then the assessment may start, guided by several broad questions, such as:

- What are the main strengths of institutions for right to food implementation (e.g. right to food provides common vision that motivates staff, high level of coordination improves institution's performance)?
- What are the main constraints of institutions for right to food implementation (e.g. lack of capacity of public servants, lack of willingness of lower levels



to cooperate with the government, lack of information to adequately target interventions)?

- Which administrative regulations are conducive to the realization of the right to food (e.g. simple accountability mechanisms in place, transparent mapping of duty bearer responsibility)?
- Which administrative regulations are obstructive to the realization of the right to adequate food (e.g. complicated regulations, an inaccessible administrative system)?

Human rights institutions play an important role in supporting the realization of human rights. It is therefore particularly important to find out what kind of human rights institutions exist (human rights commission, ombudsman, etc.), whether their mandate encompasses the right to adequate food, and which tasks and powers they have. If a human rights institution exists and has a mandate that covers the right to adequate food, the question is whether it has acted upon that mandate and undertaken any right to adequate food activities. If a human rights commission exists, does it meet the requirements of the Paris Principles<sup>21</sup>? More details about the institutional mandates of human rights institutions (or other institutions that might monitor the realization of the right to adequate food) are discussed in volume I.

A relevant and complementary method is *role and capacity analysis* which is described in the following section. The *role analysis* is useful to establish the inventory of institutions and organisations that most directly have responsibilities for the realisation of the right to adequate food and to understand those responsibilities. The *capacity analysis* assesses the capacities of those institutions and organizations to meet those responsibilities or duties.

## INSTITUTIONAL ROLE AND CAPACITY ANALYSIS

The concept of capacity takes on a broad connotation when applying a human rights approach to practical development tasks. Capacity is then understood in a broader framework connecting the theoretical and practical knowledge and skills needed to undertake a task, with questions such as ‘who is supposed to decide that the task should be done’ (who is responsible for it being done) and ‘are resources available to undertake the task’ and other questions dealt with below.

The concept of ‘capacity’ is equally relevant to consider for rights holders and those with responsibilities related to the realization of human rights. Rights holders must know about their rights and have the necessary capacity for claiming them, while also take action to improve their own situation as far as possible with the

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<sup>21</sup> Principles relating to the status and functioning of national institutions for protection and promotion of human rights, adopted by UN General Assembly resolution 48/134 of 20 December 1993.

means and assets available to them. Amartya Sen and others talk about this as having *capabilities* to act on their own situation, looking at ‘capability’ as *freedom to act*. Another entry point is that of *empowerment* as a gradual process towards the capacity that enables individuals, groups, and institutions to promote and protect human rights, including the right to adequate food<sup>22</sup>.

*Role and capacity analysis* (RCA) originates in organizational theory and leadership building<sup>23</sup>. RCA can be applied to the delivery of many different programmes and services, such as, for example, food security and health programmes. Equally it can be applied to food security and vulnerability monitoring systems, and thus be part of an assessment of monitoring information systems (see chapter 7 below). At the same time, role and capacity analysis offers a solid framework which can incorporate a range of other approaches and methods. While the methodology was developed by and for programme staff in development organizations, it is equally valid for government departments and institutions, civil society organizations and research communities.

### The analytical framework

The RCA provides an overarching *framework* for analysing processes involved in the realization of a human right (rather than being one specific method). The framework permits a systematic identification and organization of the roles and capacities of actors with responsibilities in relation to the right to adequate food (or any other human right). A number of other frameworks and methods can be applied in the analysis for which a variety of information (primary and secondary) will be relevant. The basic idea is that a range of duty bearers in society all play different roles for the fulfillment of a specific human right. These duty bearers can be found at household, community, regional and national levels. A *role analysis* seeks to identify the relevant duty bearers, understand their duties and assess the degree to which duty bearers meet their responsibilities. In the case of complete or partial failure to meet duties, this may not necessarily be due to unwillingness

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22 *Measuring empowerment is quite a challenge at this stage. In a recent World Bank Research Paper, Alsop and Heinsohn (2005) present a rather complex analytical framework that can be used to measure and monitor empowerment processes and outcomes. The measuring empowerment framework illustrates how to gather data on empowerment and structure its analysis. The framework can be used to measure empowerment at both the intervention level and the country level, as a part of poverty or governance monitoring. Since empowerment is also one of the established human rights principles that will ensure participation and help counteract discrimination, the framework should be particularly valid in monitoring the realization of human rights including the right to food.*

23 *In the right to food movement and the nutrition and human rights discourse role and capacity analysis entered on the scene in the beginning of this decade when the UN System Standing Committee on Nutrition (SCN) proposed this analysis as a tool for developing process indicators to monitor the realization of the rights to food, health and care (SCN, 2001). Initially developed by the UNICEF Regional Office of East and South Africa (UNICEF, 2000) to give practical guidance for programme staff to implement human rights based development programming, it has since been developed further by others (Gillespie 2001; Jonsson, 2003; Sabatini, 2005, and Engesveen, 2005). As a monitoring framework, it is unique in that it incorporates and starts from human rights principles.*

on the part of the duty bearers, but to a lack of *capacity* to do so. The concept of capacity as applied here is multi-dimensional and ‘decomposed’ into five dimensions as listed below. A capacity analysis seeks to investigate why duty bearers do not meet their duties, which could be explained by one or more of those dimensions of capacity. Specifically, the *gaps* in each of the dimensions that prevent duty bearers from meeting their obligations should be identified and assessed so that remedial actions can be proposed.

#### BOX 4.4 - Dimensions of Capacity of Duty Bearers

- Being **motivated** to implement measures for the enjoyment of rights, and accepting responsibilities to implement such measures.
- Having the **authority** to implement such measures.
- Having **access** to, and **controlling** economic, human and organizational **resources**.
- Being capable to **communicate** well with other duty bearers and rights holders.
- Being capable of making **rational decisions** and **learning from experience**.

A checklist approach can be adopted to guide the analysis under the two parts of RCA. A brief elaboration accompanies each analytical question on the checklist.

#### Role analysis

- **Who** are the duty bearers in relation to the realization of a certain human right in a specific setting? The identification of duty bearers must consider actors at all levels, from the individual right holder and his/her family all the way up to the highest national level, the State authority which is the ultimate duty bearer in human rights law, and even for actors at the supranational level. There is no preset answer to how many sets of duty bearers to be included; the selection will vary from situation to situation.
- **What** are their specific corresponding obligations and responsibilities (*duties*)? This part of the analysis should generate a list of obligations and responsibilities for different groups of duty bearers. While the State carries legal obligations under international human rights law, non-State actors also have responsibilities vis-à-vis the realization of human rights – which may or may not have been formalised in national legislation and regulations. The level of State obligations is traditionally categorised into the levels of respect, protect and fulfill through facilitation, provision or promotion. Some would argue that this categorisation should be equally applied to all duty bearers,

while others have suggested that it may be more valuable to use existing norms for best practices, such as may be found in international strategies and plans. Relevant sources to consult for preparing the list of obligations include those from the international human rights field: international and regional human rights conventions, General Comments and recommendations issued by the UN convention committees or other authoritative interpretations and elaborations from specific disciplines such as for example, from the field of nutrition by WHO, UNICEF and FAO.

- *How is their **performance** in meeting their duties?* Bearing the above list of duties in mind, it is necessary to investigate whether or not the various obligations are being met. The performance analysis may particularly draw on secondary data, but may also be complemented by relevant primary data if available. The need for primary data may be important where there is little previous information to draw on, or where it is anticipated that secondary data are not reliable or do not reflect the situation of vulnerable groups. However, as new data may need to be collected for the next part (the capacity analysis) one might consider whether or not to collect additional data reflecting the performance in meeting duties.

### Capacity analysis

- ***Why** are the identified duty bearers not meeting their duties?* The reason(s) may lie in one or more of the five elements of capacity. For each capacity element for each duty bearer a set of indicators may be created. While some of these indicators are universal,<sup>24</sup> many are highly context-specific and would need to be developed based on a good understanding of the local situation.
- ***What** are the gaps in their capacity hindering them from meeting their obligations and responsibilities?* Using the above framework, gaps in capacity will be found where observed (actual) capacity deviates from normative (desired) capacity. The primary aim of the analysis is to reveal such capacity gaps in order to plan interventions for change, targeted at specific duty bearers.

### A practical example of a role and capacity analysis

A comprehensive field test of the role and capacity analysis was undertaken in the Republic of the Maldives in the context of efforts to promote sound practices for breastfeeding in baby-friendly hospitals. The rights holders were mothers who had delivered in the hospitals and have a *right to be able to breastfeed* as part of their responsibility to provide the most adequate food for their newborn child. Other actors identified were duty bearers at the state authority level, as well as those executing

<sup>24</sup> For example, the right to information and right to participation are crucial components of the capacity to communicate; elements of 'good governance' form important norms for state capacity.

State policies regarding breastfeeding and Baby Friendly Hospital Initiatives (BFHI), i.e., the leadership and staff of the hospitals as public institutions.

The example shows how a role and capacity analysis can, in principle, be applied to any development issue that one would like to address with a rights-based approach. The question is how to extract the important elements while not making the task too time-consuming and costly.

### **Advantages and constraints of RCA**

RCA has several advantages as an assessment and analytical tool. These can be summarised as follows.

- RCA provides a comprehensive, human rights based framework to assess and monitor programmes and services for the enjoyment of the right to adequate food.
- RCA identifies areas for remedial follow-up actions to strengthen the capacity of duty bearers to meet their responsibilities, and thus improve potentially the programme/service effectiveness in producing outputs that contribute to the enjoyment of the right to adequate food. The effectiveness of follow-up capacity-strengthening actions can be monitored as part of process monitoring.
- RCA provides a basis for constructive dialogue between duty bearers and rights holders (or their representatives) because the constraints that the former face in meeting their responsibilities are identified and understood by rights holders.

It is important to be aware of potential constraints faced during the application of a RCA. The major constraint is that the analysis can become very extensive and complex, particularly when a large web of right holders and duty bearers are involved. It is tempting to include all relevant actors in a given situation, particularly where serious capacity gaps are found at more distant levels. However, it is necessary to balance complexity with focus in each specific situation. An initial qualitative assessment may reveal at which levels and among which duty bearers the capacity gaps appear to be the most serious, and then to focus the in-depth analysis at those levels and those duty bearers where remedial actions are the most urgently needed.

### **BOX 4.5 - Role and Capacity Analysis – Example of Breastfeeding and BFHI in the Maldives**

A case study in the Maldives undertook a role and capacity analysis of breastfeeding (BF) practices. The study focused on three groups of duty bearers: mothers, hospital staff and state authorities. The **roles** or **responsibilities** of each group were identified as follows. **Mothers:** ensure children's good nutrition through optimal BF. **Hospitals:** comply with the Ten Steps (to Successful Breastfeeding) of the Baby-Friendly Hospital Initiative (BFHI) and protect mothers from marketing of breast milk substitutes. **State authorities:** protect BF mothers from interference with BF, such as aggressive marketing of breast milk substitutes, respect good BF practices, and facilitate optimal BF conditions through appropriate policies and programmes. The capacity of each duty bearer group was assessed in its five dimensions as follows.

#### **Mothers:**

- be motivated to breastfeed having adequate knowledge about the benefits of BF;
- have the authority to make her own decisions about BF;
- have adequate resources for optimal BF, such as time, adequate BF skills, and a supportive environment;
- be capable of communicating BF problems and seek help; and
- be in a position to learn from the BF experience and make decisions based on correct information.

#### **Hospitals:**

- management and staff be motivated to implement the BFHI Ten Steps and understand their duty to do so;
- management and staff have the authority to plan and implement measures in accordance with BFHI Ten Steps, and to provide BF advice against traditional beliefs;
- have adequate human, financial and organizational resources to implement the BFHI Ten Steps;
- hospital staff capable to communicate with public officials, colleagues and BF mothers; and
- staff be capable to learn from experience and make rational decisions. Similarly, public authorities must be motivated and accept their duties with respect to the right to breastfeed, have adequate mandates to make decisions regarding BF measures, have adequate resources to implement those measures, communicate well with colleagues and BF mothers regarding those measures, and be capable of learning through monitoring of BF measures, and make new decisions based on the learning process.

The role and capacity analysis showed that: (a) about half of newborns were exclusively breastfed, (b) mothers had generally little knowledge of the benefits of exclusive breastfeeding, (c) home and hospital environments were not conducive to optimal BF practices, (d) a low percent of hospital staff had received appropriate training about exclusive BF practices, (e) hospital BF policies varied among hospitals, and less than 50 percent of hospital staffs received orientation about those policies, i.e. intra-hospital communication was poor, and staffs were not motivated to implement optimal BF conditions, (f) the BF policies of the Department of Public Health, though more extensive than the BFHI Ten Steps, were not implemented at BFHI hospitals, perhaps reducing national ownership of those normative measures, and (g) training in optimal BF practices provided by the State was infrequent due to a number of logistical, human resources and financial constraints.

Source: Engesveen (2005)



## MONITORING POLITICAL COMMITMENTS THROUGH PUBLIC BUDGET ANALYSIS

*Right to Food Guideline 12:* (i) encourages regional and local authorities to allocate resources for anti-hunger and food security purposes in their respective budgets, (ii) gives emphasis on the need for transparency and accountability in the use of public resources, particularly in the area of food security, (iii) encourages States 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 services and access to adequate food

As a means of addressing these issues from a human rights perspective, Public Budget Analysis (PBA) is an important tool of rights-focused monitoring as it focuses on implementation processes. In general, PBA:

- Addresses government's commitment to specific policy areas.
- Determines trends in programme spending with respect to whether human rights commitments receive a growing budget share over time in line with the progressive realisation of economic and social rights.
- Reviews public spending on policy and programme proposals, in order to monitor whether such proposals are reasonable and realistic, and the costs in line with government priorities.
- Helps to analyse impacts of budgetary choices on the food insecure and vulnerable population groups.
- Can assist with the assessment of the adequacy of public budgets relative to both international and national conventions and commitments.
- Can help to identify sources of new funding for proposed policies, strategies and programmes.

Public budget analyses can contribute to transparency in government planning and policy formulation, potentially enhance rights holders' effective participation in public budget discussions and provide rights holders and their representatives with information with which to hold government accountable.

Public budget analyses use existing information and data, and can generate process indicators that may contribute to detecting discriminatory practices and thus suggest remedial actions to eliminate discrimination. They can also generate process indicators that reflect implementation of specific policy instruments and thus analyse whether public budget allocations and expenditures are consistent with the progressive realization of ESCR. Finally, they may generate analytical

results that can contribute to maintain policy focus on the most vulnerable groups.

PBA results can thus contribute to the realization of economic and social rights because these results:

- Provide solid and often quantitative documentation, making use of the government's own budget figures and thus make human rights advocacy efforts more effective.
- Provide information with which communities can approach local government to demand that budgeted allocations for community-based services and infrastructures are actually expended.
- Strengthen the capacity of non-governmental agencies to assess progress and thereby report more effectively to international human rights monitoring bodies.
- Allow solid conclusions to be made that can be used to advocate policy changes that will further the realization of ESCR when working with legislatures and parliamentary committees on budget matters.
- Provide part of the evidence for presentation to courts in cases of rights violations.

### **What is public budget analysis?**

Budget analysis is basically an assessment of what government has allocated and has actually spent on various programmes and projects and on running government itself (including public debt servicing and repayment). Since the budgeting process takes place annually, PBA can be applied annually to monitor trends in allocations and expenditures. Actual allocations and expenditures need to be assessed against an objective, target or some other standard. Of particular interest is to monitor actual allocations and expenditures over time against policy and programme objectives and targets related to the reduction in food insecurity and vulnerability, especially among food insecure and vulnerable groups.

In planning a budget analysis, take into account that the full budget cycle consists of four consecutive stages. The purpose of the analysis will differ in relation to the four stages of the budget cycle as follows:

1. *Budget formulation and drafting*: Analyse the budget proposals, make alternative budget proposals, and influence policy decisions.
2. *Enactment of the budget*: Analysis of the budget in relation to policy commitments, analysis of the budget's impact on major policy objectives and



priorities, analysis of the budgetary process (transparency, participation), preparation of educational materials about the budget for different audiences.

3. *Budget implementation*: Monitor actual expenditures against budget allocations, and point to large discrepancies.
4. *Budget auditing*: Ex-post analysis of auditing reports to improve future budget analysis.

Budgets are usually divided into operating and capital budgets. Operating budgets include recurrent expenditures on programmes and public services, while capital budgets include infrastructure investments, the social and economic benefits of which are expected to extend well beyond the current budget year. Often budget analysis concentrates on operating expenditures, which is not a serious distortion if capital budgets are relatively small. On the other hand, the progressive realisation of ESCR may sometimes critically depend on long-term investments in infrastructure and should be taken into account in the budget analysis. An example may be school facilities for the realization of the right to education.

The first question to ask in undertaking PBA as a monitoring tool is therefore:

- What programmes, areas of the budget or types of allocations and expenditures ought to be included in the budget analysis?

For monitoring purposes it is important that the same reference frame be applied over time, in terms of what types of programmes, areas of the budget or types of allocations and expenditures are to be included in the analysis, to make a valid trend analysis of allocations and expenditures.

### **Different PBA approaches**

There is no blueprint for a PBA - the approach to be applied has to be tailored to the situation in order to find answers to different questions in each country. A good way to demonstrate this and the corresponding different approaches is to examine examples from other countries. So far most be learned from work with budget analysis related to children's rights. Specifically regarding food and nutrition security budget analysis, efforts are currently underway in Brazil to apply PBA methods. However, the work has not progressed sufficiently to draw lessons from it yet.

In designing a PBA three issues need to be decided:

- What to monitor in the budget; for example, how to define a pro-food security budget or a pro-right to food budget?

- Which specific programmes and expenditures in which institutions to monitor?
- What indicators need to be constructed to analyse and draw conclusions about whether government's commitments and policy priorities are reflected in the way public funds are allocated and expended over time?

Once these questions have been answered and adequate capacity is in place to decipher budget data (assuming that reasonable access to those data has been acquired), the PBA approach can be quite simple. It is important that *all budget allocation and expenditure figures be adjusted for inflation when comparing multiple years*. This is a simple procedure that applies the consumer price index (CPI) to the nominal allocations and expenditures for those years that are compared. The CPI has a fixed base year and prices in other years are expressed in terms of base year prices, thereby eliminating price effects. The result is what are called *real* allocations and expenditures or allocations and expenditures in *constant prices*.

In response to the question what to monitor in the budget, two general approaches emerge from available in-country experiences:

- *Institutional approach*: the budgets are totaled of all government institutions that have major responsibilities for achieving food security goals, or for the realization of the right to adequate food.
- *Programme approach*: the budgets are totaled of all programmes (and other governmental actions) that are identified to have specific food security objectives, irrespective of which institutions(s) has/ve responsibilities for those programmes.

A combination of the two approaches can also be applied in a PBA. The institutional approach is perhaps less solid, in that an institution will have multiple roles and responsibilities not all related to food security. This requires a more detailed analysis of institutional budgets to weed out allocations that relate to food security and for multiple institutions (see example from Mexico below).

Programmes on the other hand have more focused objectives and thus are more easily identified and the whole programme budget can be included to form the right to adequate food budget (see example from South Africa below)<sup>25</sup>.

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<sup>25</sup> When assessing and monitoring solely a particular programme, most of the PBA methods are applicable as well (see chapter 5). Here we are concerned with monitoring aggregate budget allocations and expenditures.

**BOX 4.6 - Monitoring Health Budgets in Mexico**

*To derive an overall health budget, the budgets of the Ministry of Health and of a decentralised health fund were added to the health budgets of two social security institutions. The total budgets of the latter two institutions covered also retirement benefits, which had to be separated from the health-related expenditures. Between 1998 and 2002, the health budget increased during the first three years, but fell in 2002. The decrease in 2002 was due to a decrease in health expenditures of one institution, which accounted for close to half of the total health expenditures, while the health budgets of the remaining three institutions remained stable or increased slightly.*

*Source: Fundar-IBP.Dignity Counts (2004)*

**BOX 4.7 - Monitoring Child Socio-Economic Rights in South Africa**

*The Children's Budget Unit of IDASA (NGO) in Pretoria defined the Government's commitment of the realization of children's rights by monitoring the actual (2002/3, 2003/4) and projected (2004/5, 2005/6, 2006/7) expenditures of three programmes which are targeted at children: (i) Foster Care Grant Programme, (ii) Care Dependency Grant Programme, and (iii) Child Support Grant Programme. Expenditures and allocations were obtained for each province and the country as a whole. The results indicated that the combined expenditure of the three programmes increased over time, including as a percent of the total public budget. Expenditures of the Child Support Grant Programme increase the greatest each year. There was a marked difference among the provinces in the annual increase in spending on these three programmes.*

*Source: IDASA (2004)*

A national food and nutrition strategy or policy may also detail the programmes through which it is to be implemented. With both approaches, pro-right to food budgets can be developed at different levels of government, i.e. national, provincial or district level. When programmes are co-funded at national and sub-national levels, the respective budget allocations should be analysed separately for national, state or provincial, municipal or district levels.

Important information to have will be how policy priorities may change over time and how priorities may differ at various levels of government, as reflected in programme allocations (and expenditures) in national, state and district level budgets. In order to illustrate an application of PBA a specific example is given from Brazil.

### *The Brazil experience*<sup>26</sup>

Monitoring of the food and nutrition security budget allocation and expenditure is still largely in a development stage in Brazil. The few civil society organizations (IBASE and INESC) and semi-autonomous government institutions (IPEA and CONSEA) that are applying, or intend to apply a PBA of food and nutrition use the programme approach. The two CSOs define the food and nutrition security budget slightly differently:

- IBASE selects public actions and programmes it considers to be directly or indirectly related to food and nutrition security.
- INESC monitors budget allocations and expenditures in different areas of public policy, one of which is the agricultural sector, with food and nutrition security being considered as a sub-sector.

#### **BOX 4.8 - Food and Nutrition Security Budget – National Food Security Council, Brazil**

*The food and nutrition security budget defined by the National Food Security Council (2005), and used to make budget proposals to the executive branch of government, consists of 16 food and nutrition related areas, which in turn cover a total of 59 programmes. Each programme is divided into specific public actions, ranging from 1 to 13 actions per programme, for a total of 186 public actions or activities. The food and nutrition areas are: (1) biodiversity and traditional populations, (2) fisheries and aquaculture, (3) agrarian reform, credit and conservation, (4) smallholder agriculture, (5) healthy foods, (6) surveillance and health care, (7) sanitation, (8) structural interventions (employment, small scale production in poor communities, small businesses), (9) school feeding, (10) food access, (11) collection and processing of recyclable waste in rural and urban areas, (12) income transfers, (13) food and nutrition security in indigenous populations, (14) food and nutrition security in Afro-Brazilian populations, (15) food and nutrition security in semi-arid regions, and (16) food marketing and storage. As is clear, the target groups for the programmes and public actions are in some cases defined. The inclusion of non-food sectors points to a holistic and multi-sector approach to food and nutrition security.*

IPEA on the other hand analyses the federal budget focusing on social expenditures broken down in twelve areas - food and nutrition being one area. Only government actions which directly influence food and nutrition are included, while actions that influence food and nutrition indirectly are considered part of other social areas, such as health, education, land tenure, employment, etc. Thus, for example, the inter-relatedness and interdependence of ESCR are not considered in these approaches. After due consultations among CONSEA members and with relevant ministries, a technical working group of CONSEA recently identified sixteen policy priority areas in food and nutrition security, encompassing a total of 59 programmes which make up the food and nutrition security budget. Allocations and expenditures were to be monitored

<sup>26</sup> ABRANDH (2005).

by CONSEA and its CSO partners from 2006. This has also enabled CONSEA to make concrete budget proposals for food and nutrition security to the Federal Presidency and to examine the 2006 budget bill against its food and nutrition security budget proposals. However, additional experience from Brazil shows that the political space for civil society to participate in the budget formulation process may well be limited.

#### **BOX 4.9 - Civil Society Participation in Public Budget Formulation in Brazil**

*The Federal Presidency invited two large NGO networks, ABONG and Inter-Redes, to organise at national and state levels, civil society consultations and debates on the 2004 - 7 Pluriannual Plan (PPA). The PPA links economic planning to the budgeting process, i.e. the PPA establishes policy priorities that should be reflected in the public budget. After the consultations were completed, ABONG and Inter-Redes produced a report that synthesised, among other things, the policy priorities proposed by civil society, which were concentrated on social sector policies. However, the 2004 - 7 PPA mostly reflects the macro-economic goals of the Government and the emphasis it places on the development of several economic sectors, such as agro-business. Nevertheless, it was an opportunity for civil society to learn more about the economic planning and budgeting processes.*

### **PBA indicators and their interpretation**

Once the food and nutrition security/right to adequate food budget monitoring framework has been established, PBA indicators have to be defined and interpreted from a human rights perspective. These indicators will need to be constructed in each country, depending on the purposes for which public budget monitoring is undertaken and on budget data availability and access. A review of budget monitoring reports from several countries identify a number of indicators that are normally included in the PBA. A list of typical indicators is presented below.

#### **A List of Indicators Generated by Public Budget Analysis**

- ✓ INDICATOR A: TOTAL ALLOCATIONS TO THE RIGHT TO FOOD BUDGET (RTFB), BY BUDGET YEAR
- ✓ INDICATOR B: TOTAL ACTUAL EXPENDITURES ON THE RTAF BUDGET, BY BUDGET YEAR
- ✓ INDICATOR C:  $B/A*100\%$
- ✓ INDICATOR D:  $A/TOTAL\ BUDGET\ ALLOCATIONS*100\%$
- ✓ INDICATOR E:  $[(A - B) RTFB/(A - B)TOTAL\ BUDGET]*100\%$
- ✓ INDICATOR F:  $A\ AND\ B/GROSS\ DOMESTIC\ PRODUCT*100\%$
- ✓ INDICATOR G:  $A\ AND\ B/TOTAL\ NUMBER\ OF\ PERSONS$

Within the context of rights-focused monitoring, the interpretation of these indicators is as follows:

**Indicator A:**

Budget allocations to a right to food budget in each year. Comparing successive years tells what the changes in budget allocations are over time. Are these changes consistent with political commitments and policy priorities with respect to the progressive realisation of the right to adequate food? Increasing values in subsequent years would indicate that increasingly public resources are allocated for the realisation of the right to adequate food.

**Indicator B:**

Actual budgetary expenditures under a right to adequate food budget in each year. Comparing successive years tells what the changes in budget expenditures are over time. Are these changes consistent with political commitments and policy priorities with respect to the progressive realization of the right to adequate food? Increasing values in subsequent years would indicate that public resources are increasingly being spent for the realisation of the right to adequate food.

**Indicator C:**

The percent of allocations of the right to adequate food budget that have actually been spent. A value close to 100 indicates that all allocated funds have been spent (by the end of the budget year). A value substantially below 100 indicates poor performance by the budget implementers. This may be a basis to ask responsible officials to account for the discrepancy and to find ways to improve budget implementation performance.

**Indicator D:**

The right to food budget allocations as a percent of the total budget allocations in each year. This indicator is similar to A, except that it adjusts for fluctuations in the overall budget allocations. If this percentage shows little change over time, it means that the right to food budget allocations fluctuate by the same amount as the overall budget allocations. A higher percent in a year that the overall budget allocations were reduced means that right to food budget allocations are “protected”, i.e. did not suffer the same decline as the overall budget.

**Indicator E:**

The ratio of implementation of the right to food budget to the implementation of the overall budget. Implementation refers to the difference between allocations and actual expenditures. This is particularly critical at the end of the budget year. An increasing ratio over time indicates that the implementation of the right to food budget is increasingly worse than the implementation of the overall budget. This may be good grounds to hold responsible officials accountable for this poor performance, specifically with respect to the right to food budget.

**Indicator F:**

Right to food budget allocations and expenditures in relation to the gross domestic product. Within a monitoring framework, this indicator tells whether changes in the right to adequate budget follow the same trend as changes in the gross domestic product. It may be a partial answer to the question whether government is making full use of available resources.



**Indicator G:**

Right to food budget allocations and expenditures on a per capita basis. Comparisons over time are adjusted for changes in population or changes in the number of people to be targeted as food insecure and vulnerable. If per capita right to food budget allocations and expenditures are increasing over time, it may mean that progress is made with the progressive realization of the right to adequate food.

A few additional points are worth mentioning here. These are:

- In order to establish *trends* in real budget allocations and expenditures, a minimum number of yearly observations is required - at least five years.
- With either the institutional or programme approach, it may be useful to break down indicators (assuming sufficient data) by institution or programme to make more concrete proposals for remedial action.
- From a human rights perspective a breakdown by sub-national administrative units (province, district or municipality) tells an interesting story about the geographical distribution of right to food budget allocations and expenditures.
- Breakdowns by specific population groups (demographic or livelihood characteristics) are important from a human rights perspective and help answer the question: are the food insecure or vulnerable households or individuals benefitting more than others? This may be less difficult to do under the programme approach when programmes have defined target groups, for example, the case of Brazil.

**Constraints in applying PBA methods**

Country level experience shows that several constraints may be expected in applying PBA methods to monitor government's commitment to the right to adequate food. These include:

- Non-government budget analysts may not have access to detailed budget information<sup>27</sup>. Budget figures that are released by government are often partial and are highly condensed. The detailed budget data needed to undertake a comprehensive analysis may not be available.
- Public budgets are complex and a certain expertise is required to interpret public budgets. This expertise is often very much confined to budget technicians in government institutions. Published budget data are not often accompanied by useful and detailed documentation to aid in the interpretation. Rights holder groups find it difficult to understand public budgets because of their complexity.
- Those who have PBA expertise have often not been exposed to human rights principles; limiting the human rights interpretation given to PBA results.

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<sup>27</sup> In Brazil the only budget database available to civil society organisations is the database of the Chamber of Deputies. This database is normally updated every 2 to 4 weeks.

- An element of discontinuity may be introduced in budget monitoring over time when the budget make-up changes and certain budget allocations are included in others, or changes title, and are not easily detected in the make-up of the new budget.

Additional constraints may exist that limit the interpretation of PBA results and that public budget monitors should be aware of and take into account:

- Budget analysis results can reflect what is allocated and what has been spent, but not *what ought to be spent*. Policy and programme objectives and priorities should guide budgetary allocations and expenditures, including commitment to the progressive realization of the right to adequate food; analysis of budget allocations and expenditures without direct reference to policy and programme objectives and priorities tells little about implementation of government's commitments.
- Actual budget expenditures may differ from enacted budgets, and actual expenditure data become usually not available until long after the budget year has finished. Few governments publish changes to the budget during the implementation stage. When the differences between actual expenditures and approved allocations are small, this is not a serious limitation, but if the differences are large and no information is available about how the budget is actually being implemented, the budget analysis results may be misleading.
- Budget analysis does not provide direct insights into the *effectiveness* and *efficiency* of actual expenditures, and how well the poor are actually being targeted. There is a need to complement budget analysis results with on-the-ground assessments, review and analysis of programme and project documentation and with direct reference to policy objectives and priorities.
- Government may keep certain expenditures outside of the normal budgeting process, such as social security programmes or revenues obtained from natural resources contracts, meaning that the normal budget may provide in some cases an incomplete picture about actual expenditures. Where those extra-budgetary programmes or revenues are large they should also be monitored and analysed, assuming that access to the necessary information can be obtained.

These constraints can be overcome<sup>28</sup>. Human rights institutions can adopt PBA as a monitoring tool and interpret the results from a human rights' perspective. This will probably require providing them with specific skills to undertake PBA. Efforts to establish closer partnerships between government and civil society in

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<sup>28</sup> Organisations that are starting to apply PBA as a rights-focused monitoring tool in relation to the right to adequate food (or to any ESCR), are encouraged to contact budget analysis groups in other countries for an exchange of experience. The address of a website through which such groups can be identified and contacted is provided among the reference sources of this chapter.



establishing policy priorities may result in better access to detailed budget data<sup>29</sup> and a greater willingness on the part of the government to educate and inform the general public about the public budget. See, for example, efforts by the Government in Uganda to inform the general public each year about the national budget in simplified forms (see chapter 6 in volume I).

### Monitoring the budgeting process

PBA can be used as a tool of rights-focused monitoring of the right to adequate food. The budgeting process itself should also be monitored, so that efforts can be made to make this process rights-based. Questions to be asked include whether the process is transparent, participatory and empowering. A role and capacity analysis may be a useful tool to monitor the budgeting process. The roles and responsibilities of different institutions during the various stages of the budget cycle need to be understood and monitored, as well as their respective capacities to undertake monitoring tasks for which they are responsible. Monitoring the budgeting process should lead to proposals for follow-up action to make the process more rights-compliant.

An interesting assessment of the budgeting process in Uganda was undertaken that applied roughly a role and capacity analysis (UDN, 2004). Fourteen institutions in Uganda were identified as having a role and responsibilities in the budgeting process.<sup>30</sup> Each of the four stages of the budget cycle were assessed with a six-point checklist (see box below). Similar assessments were carried out in nine other African countries. Such a checklist may be a handy tool for budget process monitoring from a human rights perspective.

#### Checklist to Assess the Budgeting Process from a Human Rights Perspective

- CLARITY OF ROLES AND RESPONSIBILITIES IN THE BUDGETING PROCESS
- PUBLIC AVAILABILITY OF BUDGET INFORMATION
- CAPACITY TO PREPARE AND IMPLEMENT A BUDGET AND TO DISCLOSE BUDGET INFORMATION
- ACCESS BY EXTERNAL STAKEHOLDERS TO BUDGET INFORMATION
- MANAGEMENT OF EXTRA-BUDGETARY ACTIVITIES
- PARTICIPATION IN THE BUDGETING PROCESS (ACCESS AND CAPACITY TO PARTICIPATE)

<sup>29</sup> International experience shows that in selected countries factors that are facilitating an increasing role for civil society in budget analysis work include: (i) democratisation processes, (ii) decentralisation bringing budgeting to local levels, (iii) new public expenditure management systems and outcome-based budgeting, and (iv) increasing consensus of the complementary roles of government and civil society.

<sup>30</sup> Parliament, Prime Minister's Office, Ministry of Finance, Planning and Economic Development, Ministry of Public Service, Ministry of Local Government, Bank of Uganda, the Auditor-General, Uganda Revenue Authority, Uganda Bureau of Statistics, Uganda Computer Services, local governments, development partners, and the general public.

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- ❖ Website that lists groups in a number of countries that undertake public budget analysis work, and how they can be contacted:  
<http://www.internationalbudget.org/groups/index.htm>