

THEMATIC UNIT I

ENFORCEABILITY OF, AND ACCESS TO, JUDICIAL, QUASI-JUDICIAL AND ADMINISTRATIVE RECOURSE SYSTEMS

UNIT PURPOSE

This unit describes how different actors can ensure enforceability of and access to recourse systems.

After defining the concept of justiciability of the right to adequate food, the unit explains how to properly investigate complaints and claims of violations of this right, how to support individuals claiming, and monitor the functioning of recourse systems.

LESSON 11

Using national legislation to implement the right to adequate food

LESSON 12

Redress of complaints and violations of the right to adequate food

LESSON 13

Supporting individuals to claim the right to adequate food

LESSON 14

Monitoring the functioning of the judiciary and of human rights institutions

LESSON 11

USING NATIONAL LEGISLATION TO IMPLEMENT THE RIGHT TO ADEQUATE FOOD

LEARNING OBJECTIVES

At the end of the lesson, the learner will be able to:

- ◆ understand the concept of justiciability of the right to adequate food;
- ◆ analyse human-rights case-law;
- ◆ identify legal provisions relevant for the realization of the right to adequate food; and
- ◆ use national constitution and laws to enforce the right to adequate food.

GUIDELINES AND SUGGESTIONS FOR INSTRUCTORS AND TRAINERS

The greatest challenge with respect to the right to adequate food is finding the most effective means for implementing it, i.e. the means by which this right can be given concrete effect and public authorities be held accountable for their action or inaction. This lesson is designed to provide legal practitioners with practical information and knowledge about the possibilities of justiciability as one of the means for implementing and advancing the right to adequate food. Litigation about the right to adequate food, even if not successful, can contribute to changing public perceptions about rights related to food, and further a more general understanding that these rights have relevance as a matter of law and cannot be reduced into mere political or moral aspirations.

The lesson should explain the meaning of the concept of justiciability of the right to adequate food. The learners should be made aware of the relevance of the existence of a clear legal rule as the basis to claim the protection of the right to adequate food. There are at present few countries with express constitutional provisions of the right to adequate food. There is a lack of a consistent body of case-law on which to draw, in order to prepare a new case and apply law to a new set of facts. The lesson should enable the learners to look into a range of different sources of law in order to identify the legal basis for a right to adequate food claim (e.g. ICESCR or other international human rights treaties, constitutional provisions, laws and regulations, and case-law). The lesson should describe the experience of directly applying international human rights instruments and standards by domestic courts in different parts of the world. The learners should be given information about comparative legal experiences that indicate ways of protecting the right to adequate food indirectly, through broad interpretation of other human rights (e.g. right to life, right to housing) or through claiming violation of the right to adequate food as violation of another right (e.g. minimum wage, social assistance, fishing rights or land rights).

The lesson should also provide learners with the practical information and tools allowing them to search data about the right to adequate food, and relevant case-law of domestic courts as well as of regional and international human rights systems.

MAIN TARGET LEARNER GROUPS FOR THIS LESSON

Legal Practitioners.

LEARNING STEPS

Step 1: Make use of existing legal entitlements in support of right to adequate food claims

Scope notes: All recourse is easier when there are clear legal provisions on entitlements and obligations, in different sectoral laws, from land laws to social security legislation. A violation of the right to adequate food that is expressed as denial of a specific entitlement is relatively easy to deal with and should normally have a straightforward administrative recourse attached to it. The human right to adequate food in these cases supports the claim, but is not its sole basis. This makes it easier for administrative, quasi-judicial and judicial mechanisms to make a decision in the matter at hand.

Step 2: Recognizing justiciable dimensions of the right to adequate food

Scope notes: The explicit inclusion of the right to adequate food in the state constitution in the form of the fundamental human right provides individuals with a legal entitlement that they can enforce before the competent administrative and judicial authorities. Highlight that when there is constitutional protection, there is both recognition of the importance of this right in a country and clear democratic legitimacy of its judicial enforcement. Describe and discuss methods and ways to use relevant right to adequate food provisions that are found in international instruments, and to interpret the right to adequate food in accordance with the developed international standards (General Comment 12; Reports of the Special Rapporteur on the right to adequate food; Right to Food Guidelines). Describe and discuss how the protection of the right to adequate food can be claimed in relation to other human rights where the right to adequate food is not recognized in the constitution, in a statute or through the domestic applicability of international human rights treaties. Explain and make learners familiar with the interdependence and interrelatedness of all human rights.

Step 3: Using comparative, regional and international case-law decided on the right to adequate food and those on other human rights

Scope notes: The learners should be familiar with the methods and ways of conducting legal research in the field of human rights, and with the relevant practical tools. Describe the relevance of various case-law databases, and explain how to use them. While there are few cases where the basis of judgment was the legal provision on the right to adequate food, most comparative experiences regarding the right to adequate food were decided on the basis of a constitutional provision guaranteeing another human right (e.g. right to life, human dignity, social security, right to work, human dignity). Describe and analyse a number of cases, and discuss legal arguments used by both lawyers who have brought the cases before the courts, and by judges who have expansively interpreted other human rights as also including the right to adequate food. Highlight that these examples demonstrate how duties stemming from the right to adequate food overlap with duties stemming from other rights, and how this interdependence provides a stepping-stone for pursuing the implementation of the right to adequate food. Discuss the importance of public interest litigation, and of providing free legal services to the poor and vulnerable groups in order to improve their access to justice.

Step 4: Using national courts' decisions on other legal rights affecting the right to adequate food (e.g. minimum wage, pension, social assistance benefits, fishing rights, consumer rights)

Scope notes: In some cases, the protection of the right to adequate food has been claimed on the basis of laws establishing and protecting other legal rights. Describe a number of cases where the recognition and payment of an income

(a minimum wage, pension or social assistance allowance) was challenged for its adequacy in terms of covering food requirements. On the basis of these examples, examine and discuss different techniques of court decisions' analysis, and when and how to apply human rights and the right to adequate food in this kind of judicial proceedings. Examples of agrarian law and agrarian courts, common in a number of countries, are also a good example of proceedings where the judicial enforcement of measures oriented to ensure access and security of tenure of land can advance the implementation of the right to adequate food.

Step 5: Assessing procedural practices in order to identify obstacles for the justiciability of the right to adequate food

Scope notes: As for any other right, the right to adequate food must meet a number of pre-requisites in order to be fit for adjudication. Underline that besides the existence of a clear legal basis for claiming its protection, there must be adequate procedures and the regular functioning of an independent and impartial judiciary system in a country. Discuss the main problems and challenges regarding the justiciability of the right to adequate food, and how do Judicial Networks assess obstacles for economic, social and cultural rights fulfilment. Examine how could easily accessible databases with relevant information on administrative, judicial and quasi-judicial procedures and practices be made available to citizens. Highlight the crucial importance of disseminating information about relevant case-law among the stakeholders concerned and civil society.

REFERENCE MATERIALS

- ❖ CESCR, *General Comment 3, the nature of states parties obligations* (Art. 2, par.1). UN Doc. E/1991/23
Available at: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>
- ❖ CESCR, *General Comment 12, the right to adequate food* (20th session, 1999), UN Doc. E/C.12/1999/5 (1999)
Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument)
- ❖ International Commission of Jurists (ICJ), *Courts and the Legal Enforcement of Economic, Social and Cultural Rights. Comparative experiences on the justiciability*, Geneva, 2008.
Available at: http://www.humanrights.ch/home/upload/pdf/080819_justiziabilitt_esc.pdf
- ❖ Eide, W. B. & Kracht, U. (editors). 2005. *Food and Human Rights in Development*. Volume I – Legal and Institutional Dimensions and Selected Topics. See Chapter 8. Intersentia, Antwerp, Belgium.

- ❖ FAO. 2009. *Guide on Legislating on the Right to Food* (Parts One and Two). Rome. Available at: http://www.fao.org/righttofood/publi_en.htm
- ❖ FAO. 2005. *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.
Part 1 available at: <ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e01.pdf>
Parts 2 & 3 available at <ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e00.pdf>
- ❖ FAO. 2006. *The Right to Food Guidelines. Information papers and case studies*. See Chapters 4 & 6.
Available at: http://www.fao.org/docs/eims/upload/214344/RtFG_Eng_draft_03.pdf
- ❖ *International Covenant on Economic, Social and Cultural Rights* adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.
Available at: <http://www2.ohchr.org/english/law/pdf/cescr.pdf>
<http://www2.ohchr.org/english/law/pdf/ccpr.pdf>
- ❖ Reports of the Special Rapporteur on the right to food.
Available at: <http://www2.ohchr.org/english/issues/food/index.htm>
<http://www.srfood.org>

CASE LAW

- ❖ South Africa, *Government of South Africa v. Grootboom*, CCT38/00, *Judgment of 21 September 2000*
- ❖ India, *PUCL v Union of India Writ Petition (Civil) No. 196 of 2001*

REFERENCE INSTITUTIONS AND ORGANIZATIONS

- ❖ FAO, Right to Food
<http://www.fao.org/righttofood>
- ❖ Food First Information and Action Network (FIAN)
<http://www.fian.org>
- ❖ Human Rights Council
<http://www2.ohchr.org/english/bodies/hrcouncil>

- ❖ Right to Food Campaign, India
<http://www.righttofoodindia.org>
- ❖ Committee on Economic, Social and Cultural Rights (CESCR)
<http://www2.ohchr.org/english/bodies/cescr/index.htm>
- ❖ Human Rights Committee
<http://www2.ohchr.org/english/bodies/hrc/index.htm>
- ❖ African Commission on Human and Peoples' Rights
http://www.achpr.org/english/_info/news_en.html
- ❖ European Court on Human Rights
<http://www.echr.coe.int/echr>
- ❖ Inter-American Commission of Human Rights
<http://www.cidh.org>
- ❖ Inter-American Court of Human Rights
<http://www.corteidh.or.cr/index.cfm>
- ❖ Special Rapporteur on the right to food
<http://www2.ohchr.org/english/issues/food/index.htm>
<http://www.srfood.org>
- ❖ UN General Assembly
<http://www.un.org/ga>

LESSON 12

REDRESS OF COMPLAINTS AND VIOLATIONS OF THE RIGHT TO ADEQUATE FOOD

LEARNING OBJECTIVES

At the end of the lesson, the learner will be able to:

- ◆ properly investigate complaints and claims of violations of the right to adequate food;
- ◆ understand redress systems at national level;
- ◆ utilize right to adequate food claims mechanisms;
- ◆ monitor compliance with court orders related to the right to adequate food; and
- ◆ provide legal protection to those who bring complaints or claims of violations.

GUIDELINES AND SUGGESTIONS FOR INSTRUCTORS, TEACHERS AND TRAINERS

This lesson is meant to provide the learners with practical tools to investigate and provide effective redress of complaints and violations of the right to adequate food. They should be made aware of all the existing judicial, quasi-judicial and

administrative redress systems in the country. The learners should be able to contribute to strengthening existing redress systems, and, where needed, to develop and implement new redress systems. Learners should have tools to monitor if and how court orders are complied with, and in case of non-compliance, what their role should be to obtain compliance. They need to know how to document different types of retribution against rights claimants and what their respective roles are in protecting rights claimants from any type of retribution.

MAIN TARGET LEARNER GROUPS FOR THIS LESSON

Staff of human rights institutions, and court and legal officers.

LEARNING STEPS

Step 1: Methods to investigate and document right to adequate food violations

Scope notes: When right to adequate food complaints and claims are lodged, these need to be investigated and documented. Each redress system will have its own procedures to document and present the complaint or claim. Court officers will be more concerned with judicial procedures and with legal research in comparative, regional and international case law, while staff of human rights institutions will be concerned with all three redress systems. The latter are also more likely to undertake legal research and studies of aspects of the right to adequate food, and must be able to use appropriate research tools. Investigative methods may include recording eye witness accounts and testimonies, and conducting public hearings.

Step 2: Utilize right to adequate food complaints and claims mechanisms

Scope notes: The important aspects of a complaint and claim mechanism: (i) admissibility criteria; (ii) procedures for receiving complaints or claims; (iii) procedures for processing complaints or claims; and (iv) monitoring the disposition of complaints or claims. The learners should become fully familiar with these aspects of existing systems, particularly as they relate to right to adequate food complaints or claims, and should become capable of establishing both admissibility criteria and procedures for reception, processing and monitoring of complaints or claims.

Step 3: Protecting right to adequate food claimants

Scope notes: Legal and other officers should inform those who lodge complaints or claims what they need to do to report any type of retribution. The learners should be able to identify different types of retribution and inform rights claimants accordingly, including about methods of documenting retribution. Learners must also be able to take effective action to stop any form of retribution. This may involve the provision of free legal services to right to adequate food claimants.

REFERENCE MATERIALS

- ❖ CESCR, *General Comment 12, the right to adequate food* (20th session, 1999), UN Doc. E/C.12/1999/5 (1999)
Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument)
- ❖ FAO. 2009. *Guide on Legislating for the Right to Food*, Part Four. Rome.
Available at: http://www.fao.org/righttofood/publi_en.htm
- ❖ FAO. 2005. *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. See Guideline No. 7.
Part 1 available at: <ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e01.pdf>
Parts 2 & 3 available at <ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e00.pdf>
- ❖ *International Covenant on Economic, Social and Cultural Rights* adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.
Available at: <http://www2.ohchr.org/english/law/pdf/cescr.pdf>
- ❖ *International Covenant on Civil and Political Rights* adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.
Available at: <http://www2.ohchr.org/english/law/pdf/ccpr.pdf>
- ❖ FIAN International. 2007. *Guía Práctica para Abogados. La Justiciabilidad del Derecho a la Alimentación a Nivel Nacional. Doc. G:56*. Heidelberg, Germany.
Available at: <http://www.fian.org/recursos/publicaciones/documentos/guia-practica-para-abogados>

- ❖ FIAN International. 2007. *Cómo Promover la Justiciabilidad del Derecho Humano a la Alimentación en Centro América. Doc. G-57*. Heidelberg, Germany.
Available at: <http://www.fian.org/recursos/publicaciones/documentos/como-promover-la-justiciabilidad-del-derecho-humano-a-la-alimentacion-en-centro-america>
- ❖ Kent, G. 2005. *Freedom from Want: The Human Right to Adequate Food*. See Chapter 7. Georgetown University Press, Washington, DC, USA. 278 pp.
Available at: <http://press.georgetown.edu/pdfs/9781589010550.pdf>
- ❖ UN. 2008. *UN General Assembly resolution A/RES/63/117*, adopted on 10 December 2008. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
Available at: http://www2.ohchr.org/english/law/docs/A.RES.63.117_en.pdf

REFERENCE INSTITUTIONS AND ORGANIZATIONS

- ❖ ABRANDH
<http://www.abrandh.org.br>
- ❖ FAO, Right to Food
<http://www.fao.org/righttofood>
- ❖ Food First Information and Action Network (FIAN)
<http://www.fian.org>
- ❖ Human Rights Council
<http://www2.ohchr.org/english/bodies/hrcouncil>
- ❖ Office of the High Commissioner for Human Rights (OHCHR)
<http://www.ohchr.org>
- ❖ Right to Food Campaign, India
<http://www.righttofoodindia.org>
- ❖ Committee on Economic, Social and Cultural Rights (CESCR)
<http://www2.ohchr.org/english/bodies/cescr/index.htm>
- ❖ African Commission on Human and Peoples' Rights
http://www.achpr.org/english/_info/news_en.html
- ❖ European Court on Human Rights
<http://www.echr.coe.int/echr>

- ❖ Inter-American Commission of Human Rights
<http://www.cidh.org>
- ❖ Inter-American Court of Human Rights
<http://www.corteidh.or.cr/index.cfm>
- ❖ UN General Assembly
<http://www.un.org/ga>
- ❖ Special Rapporteur on the right to food
<http://www2.ohchr.org/english/issues/food/index.htm>
<http://www.srfood.org>

LESSON 13

SUPPORTING INDIVIDUALS TO CLAIM THE RIGHT TO ADEQUATE FOOD

LEARNING OBJECTIVES

At the end of the lesson, the learner will be able to:

- ◆ identify cases of violations of the right to adequate food;
- ◆ make effective use of existing recourse mechanisms to present cases of violations of the right to adequate food and of other economic, social and cultural rights;
- ◆ make proposals to strengthen such mechanisms;
- ◆ develop legal, political and media strategies to create awareness about right to adequate food violations and how these should be redressed; and
- ◆ understand how to establish and maintain databases on violations of the right to adequate food, and on the outcomes and dispositions of right to adequate food cases.

GUIDELINES AND SUGGESTIONS FOR INSTRUCTORS AND TRAINERS

In order to identify right to adequate food violations, specific criteria need to be applied with reference to the core content of the right to adequate food. Learners should understand those criteria and be able to apply them in practice.

They must be able to apply methods to document violation cases, in format and content consistent with norms established by various recourse mechanisms. They should have a good grasp of how to present cases and on how to follow-up on the disposition of presented cases. By systematically keeping records of cases of right to adequate food violations and with what result these were disposed of, much can be learned, including how to mount legal and political strategies and awareness raising campaigns aimed at obtaining positive results in the future.

MAIN TARGET LEARNER GROUPS FOR THIS LESSON

Decision-makers and staff of NGOs engaged in human rights work, and of social movements, particularly those focused on right to adequate food issues, or other economic, social and cultural rights.

LEARNING STEPS

Step 1: Identification and documentation

Scope notes: Establishing criteria to identify violations of the right to adequate food. What can be learned from previous experiences? How to reconcile differences in the application of criteria by different actors? What are the documentation requirements of various recourse systems, and what methods can be applied to obtain the required information?

Step 2: Use of existing recourse mechanisms

Scope notes: Learners should be thoroughly familiar with existing administrative, quasi-judicial and judicial recourse mechanisms, and should know how to interact with each system, including how to present violation cases. They should understand the difference between right to adequate food violations that are also non-delivery of existing legal entitlements, and those violations that point to a gap in or inconsistency of legal measures. They should fully understand what are the rights of rights claimants on behalf of whom cases are brought.

Step 3: Awareness creating strategies

Scope notes: Methods to use actual violations cases to create greater awareness about the right to adequate food among rights holders, as well as political, social and legal actors.

Step 4: Learning from past right to adequate food cases

Scope notes: What are the minimum information and documentation requirements for each case to become a useful component in a database? How to synthesize and analyse the case data to draw useful conclusions about how to present cases and to follow up on their disposition, and the role of the media and advocates in obtaining positive results. By what means to keep track of right to adequate food violations cases for entry into the database.

REFERENCE MATERIALS

- ❖ CESCR, *General Comment 12, the right to adequate food* (20th session, 1999), UN Doc. E/C.12/1999/5 (1999)
Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument)
- ❖ Reports of the Special Rapporteur on the right to food.
Available at: <http://www2.ohchr.org/english/issues/food/index.htm>
<http://www.srfood.org/index.php/en/documents-issued>

REFERENCE INSTITUTIONS AND ORGANIZATIONS

- ❖ ABRANDH
<http://www.abrandh.org.br>
- ❖ Food First Information and Action Network (FIAN)
<http://www.fian.org>
- ❖ Right to Food Campaign, India
<http://www.righttofoodindia.org>
- ❖ FAO, Right to Food
<http://www.fao.org/righttofood>
- ❖ Office of the High Commissioner for Human Rights (OHCHR)
<http://www.ohchr.org>
- ❖ Special Rapporteur on the right to food
<http://www2.ohchr.org/english/issues/food/index.htm>
<http://www.srfood.org>

LESSON 14

MONITORING THE FUNCTIONING OF THE JUDICIARY AND OF HUMAN RIGHTS INSTITUTIONS

LEARNING OBJECTIVES

At the end of the lesson, the learner will be able to:

- ◆ understand the international and national frameworks of the roles of the judiciary and human rights institutions;
- ◆ assess the functioning of courts and human rights institutions against criteria of independence;
- ◆ identify and document cases that point to violations of the independence of courts and human rights institutions; and
- ◆ formulate legislative proposals to ensure the independence of the judiciary and human rights institutions.

GUIDELINES AND SUGGESTIONS FOR INSTRUCTORS AND TRAINERS

The question addressed in this lesson is a broad one, but is vital for access to recourse mechanisms, including right to adequate food complaints and violation cases. The learners should acquire sufficient capacity to identify and document violations against established frameworks of the roles of the judiciary and human rights institutions, and applying objective criteria of independence, including those

enshrined in the Paris Principles. Both learner groups should have the capacity to formulate legislative proposals based on the assessments to guarantee the independence of courts and human rights institutions. Practical exercises based on actual or hypothetical cases as part of this lesson should be helpful in providing the learners with actual skills.

MAIN TARGET LEARNER GROUP FOR THIS LESSON

Staff of NGOs engaged in right to adequate food work; legislators and their staff.

LEARNING STEPS

Step 1: Roles of the judiciary and human rights institutions

Scope notes: A thorough analysis of the roles of the judiciary and of human rights institutions as laid out in the constitution, national and international laws. What documentation to access as sources of information.

Step 2: Assessment methods

Scope notes: Methods to assess the functioning of courts and human rights institutions, examining their mandates and the ways that they actually operate. Compare the ways that they actually operate against specific independence criteria for the judiciary and for human rights institutions. How to examine the functioning of courts and human rights institutions to assess their independence.

Step 3: Documentation of violations

Scope notes: How to identify actual cases that show a violation of independence, and how to investigate and document such cases for public dissemination and advocacy purposes.

Step 4: Legislating for independence of the judiciary

Scope notes: How to formulate legislative proposals based on the assessment findings and conclusions, and documentation of actual cases that show violations of the independence of the courts and/or human rights institutions. Describe the principles of separation of powers (and its benefits) and checks and balances, and the legislative actions needed to support and promote the independence of the three branches of government.

REFERENCE MATERIALS

- ❖ FAO. 2009. *Guide on Legislating for the Right to Food*. Rome.
Available at: http://www.fao.org/righttofood/publi_en.htm
- ❖ IPU (Inter-Parliamentary Union)/OHCHR (Office of the United Nations High Commissioner for Human Rights). 2005. *Human Rights: A Handbook for Parliamentarians*. 185 pp.
Available at: <http://www.ohchr.org/Documents/Publications/training13en.pdf>
- ❖ *International Covenant on Economic, Social and Cultural Rights* adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.
Available at: <http://www2.ohchr.org/english/law/pdf/cescr.pdf>
- ❖ *International Covenant on Civil and Political Rights* adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.
Available at: <http://www2.ohchr.org/english/law/pdf/ccpr.pdf>
- ❖ *Basic Principles on the Independence of the Judiciary* adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.
Available at: <http://www2.ohchr.org/english/law/indjudiciary.htm>
- ❖ *Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights* (The Paris Principles) adopted by General Assembly resolution 48/134 of 20 December 1993.
Available at: <http://www2.ohchr.org/english/law/parisprinciples.htm>
- ❖ United Nations Department of Public Information, United Nations Background Note Independence of the Judiciary: A Human Rights Priority, DPI/1837/HR-- August 1996.
Available at: <http://www.un.org/rights/dpi1837e.htm>

REFERENCE INSTITUTIONS AND ORGANIZATIONS

- ❖ Food First Information and Action Network (FIAN)
<http://www.fian.org>
- ❖ Transparency International
<http://www.ti.org>

- ❖ Amnesty International
<http://www.amnesty.org>
- ❖ Human Rights Watch
<http://www.hrw.org>
- ❖ International Network for Economic, Social and Cultural Rights
<http://www.escr-net.org>
- ❖ Caritas Internationalis
<http://www.caritas.org>
- ❖ International Commission of Jurists
<http://www.icj.org>
- ❖ Office of the High Commissioner for Human Rights (OHCHR)
<http://www.ohchr.org>
- ❖ Committee on Economic, Social and Cultural Rights (CESCR)
<http://www2.ohchr.org/english/bodies/cescr/index.htm>
- ❖ Special Rapporteur on the Independence of Judges and Lawyers
<http://www2.ohchr.org/english/issues/judiciary/complaints.htm>
- ❖ Special Rapporteur on the right to food
<http://www2.ohchr.org/english/issues/food/index.htm>
<http://www.srfood.org>

THEMATIC UNIT J

POLICY ASSISTANCE AND ADVICE BY INTERNATIONAL AGENCIES

UNIT PURPOSE

This unit offers guidance to staff of international agencies and organizations that deal with human rights in providing technical and legal advice on the right to adequate food and applying the right to adequate food principles in their planning processes.

LESSON J1

Technical and legal advice to address violations of the right to adequate food

LESSON J2

The right to adequate food in planning processes of UN agencies

LESSON J3

Promoting and mainstreaming the right to adequate food in national policies and programmes

LESSON J1

TECHNICAL AND LEGAL ADVICE TO ADDRESS VIOLATIONS OF THE RIGHT TO ADEQUATE FOOD

LEARNING OBJECTIVES

At the end of the lesson, the learner will be able to:

- ◆ understand what constitute a violation of the right to adequate food;
- ◆ identify institutional roles with respect to right to adequate food violations;
- ◆ apply methods to identify right to adequate food violations and ways to seek redress; and
- ◆ apply methods to monitor right to adequate food violations and follow-up actions.

GUIDELINES AND SUGGESTIONS FOR INSTRUCTORS AND TRAINERS

This lesson is designed to provide international staff with the capacity needed to advise staff of national human rights institutions, of other government institutions and of NGOs with respect to violations of the right to adequate food and associated rights. To some extent, this is a lesson for trainers who will contribute to strengthening national capacities. This lesson provides some of the basic elements that are further expanded in Lesson F2 to provide assistance and support to establishing strong national human rights institutions. Though some learners may have considerable expertise in human rights or a specific economic, social

and cultural rights, the focus in this lesson is on right to adequate food violations. In each of the learning steps, the roles of and capacities needed among international agencies and organizations should be discussed as a cross-cutting issue. This lesson should draw on in-country experiences and present comparative analysis of these situations.

MAIN TARGET LEARNER GROUPS FOR THIS LESSON

Staff of international agencies and organizations that deal with human rights (civil and political rights, rights of indigenous peoples), or dealing specifically with one or more economic, social or cultural right (right to adequate food, right to education, right to health, right to work, etc.).

LEARNING STEPS

Step 1: What constitute a right to adequate food violation?

Scope notes: Learners should become thoroughly familiar with the normative content of the right to adequate food, and how this content has been interpreted in different countries. When is the right to adequate food justiciable in a particular country?

Step 2: Institutional roles and responsibilities

Scope notes: Learners should gain an understanding of the different redress mechanisms (judicial, quasi-judicial and administrative), and what types of institutions have or should have responsibility for each of these redress mechanisms. How to identify such institutions, and how to assess their capacity to assume responsibilities for the effective functioning of redress mechanisms?

Step 3: Methods

Scope notes: Learners should become fully familiar with methods to identify right to adequate food violations, including familiarity with criteria that define a violation. They should get to know what are the ways to access judicial, quasi-judicial and administrative redress mechanisms, and how their functioning has been assessed in a number of countries. What methods have been employed to monitor right to adequate food violations and of the ways that violations have been addressed? What can be learned from monitoring violations of other economic, social and cultural rights. How those lessons learned can contribute to the justiciability of the Right to food?

REFERENCE MATERIALS

- ❖ CESCR, *General Comment 12, the right to adequate food* (20th session, 1999), UN Doc. E/C.12/1999/5 (1999)
Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument)
- ❖ Eide, W. B. & Kracht, U. (editors). 2005. *Food and Human Rights in Development*. Chapters 7 & 9 in Volume I – Legal and Institutional Dimensions and Selected Topics. Intersentia, Antwerp, Belgium.
- ❖ Eide, W. B. & Kracht, U. (editors). 2005. *Food and Human Rights in Development*. Chapters 14, 17 & 18 in Volume II – Evolving Issues and Emerging Applications. Intersentia, Antwerp, Belgium.
- ❖ FAO. 2005. *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. See Part III.
Part 1 available at: <ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e01.pdf>
Parts 2 & 3 available at <ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e00.pdf>
- ❖ FAO. 2009. *Guide to Conducting a Right to Food Assessment*. Rome.
Available at: http://www.fao.org/righttofood/publi08/assessment_guide.pdf
- ❖ FAO. 2008. *Methods to Monitor the Human Right to Adequate Food*, Vol. 1 Making the Case for Rights-Focused and Rights-Based Monitoring and Vol. 2. An Overview of Approaches and Tools. Rome.
Available at: Vol 1. <http://www.fao.org/docrep/011/i0349e/i0349e00.htm>
Vol. 2 <http://www.fao.org/docrep/011/i0351e/i0351e00.htm>
- ❖ FIAN International. 2007. *Guía Práctica para Abogados. La Justiciabilidad del Derecho a la Alimentación a Nivel Nacional*. Doc. G:56. Heidelberg, Germany.
Available at: <http://www.fian.org/recursos/publicaciones/documentos/guia-practica-para-abogados>
- ❖ FIAN International. 2007. *Cómo Promover la Justiciabilidad del Derecho Humano a la Alimentación en Centro América*. Doc. G-57. Heidelberg, Germany.
Available at: <http://www.fian.org/recursos/publicaciones/documentos/como-promover-la-justiciabilidad-del-derecho-humano-a-la-alimentacion-en-centro-america>
- ❖ FIAN International, *D-53 Documenting Violations of the Right to Adequate Food*, Heidelberg.
Available at: <http://www.fian.org/resources/documents/others/documenting-violations-of-the-right-to-adequate-food/pdf>

REFERENCE INSTITUTIONS AND ORGANIZATIONS

- ❖ FAO, Right to Food
<http://www.fao.org/righttofood>
- ❖ Food First Information and Action Network (FIAN)
<http://www.fian.org>
- ❖ Norwegian Human Rights Centre, University of Oslo
<http://www.humanrights.uio.no/english>
- ❖ Office of the High Commissioner for Human Rights (OHCHR)
<http://www.ohchr.org>
- ❖ UN System Standing Committee on Nutrition
<http://www.unscn.org>

LESSON J2

THE RIGHT TO ADEQUATE FOOD IN PLANNING PROCESSES OF UN AGENCIES

LEARNING OBJECTIVES

At the end of the lesson, the learner will be able to:

- ◆ understand the interdependence and interrelatedness of human rights, and apply these concepts in planning inter-agency strategies and joint work;
- ◆ apply good practices of inter-agency planning and coordination for the purpose of introducing and promoting the right to adequate food and other human rights in UN country-level work; and
- ◆ assess what agency capacities are needed for effective inter-agency planning for the right to adequate food and other economic, social and cultural rights.

GUIDELINES AND SUGGESTIONS FOR INSTRUCTORS, TEACHERS AND TRAINERS

The Right to Food Guidelines urge the international community, and specifically the UN System, to actively support national development efforts towards the

progressive realization of the right to adequate food. The UN Development Assistance Framework (UNDAF) and the One UN initiative are all attempts to promote sound inter-agency planning, particularly at country level. These planning frameworks are important to introduce the right to adequate food as a cross-cutting issue in UN development work, to stress the interdependence and interrelatedness of economic, social and cultural rights, and to ensure that human rights principles are fully reflected in the ways that UN agencies provide policy assistance and advice. The introduction of human rights into UN agency planning will require additional capacities, and agencies should be able to assess the additional capacity needed, and expertise required to deal strategically with capacity gaps. There is a body of evidence of country experiences with rights-based planning and mainstreaming human rights in UN country work. This body of evidence should be carefully analysed, perhaps by applying a Strengths, Weaknesses, Opportunities, Constraints (SWOC)⁶ approach, to see what types of factors facilitate or are obstacles, and how to overcome the latter.

MAIN TARGET LEARNER GROUPS FOR THIS LESSON

Staff in UN Agencies at Headquarter and Regional Levels, and UN Country Teams.

LEARNING STEPS

Step 1: A common language and platform for the right to adequate food, and other human rights

Scope notes: Create a common understanding of the right to adequate food, of its interrelatedness and interdependence with other human rights, and of how to implement human rights principles in UN development work. What does mainstreaming human rights principles mean in practice?

Step 2: Inter-agency planning and coordination to promote the right to adequate food and other economic, social and cultural rights

Scope notes: What are the specific roles that each agency can play. What are common intra-agency obstacles to participate in inter-agency planning processes, and what might be the strategies to overcome those obstacles.

⁶ Also frequently termed SWOT: Strengths, Weaknesses, Opportunities, Threats.

Step 3: Agency capacities to be a partner in inter-agency planning for the right to adequate food

Scope notes: Methods to ascertain current agency capacities to be a partner in inter-agency planning and coordination for the promotion of the right to adequate food and other economic, social and cultural rights. How is an agency standing with filling capacity gaps? Which sources can be relied upon to assist agencies in filling capacity gaps?

REFERENCE MATERIALS

- ❖ CESCR, *General Comment 12, the right to adequate food* (20th session, 1999), UN Doc. E/C.12/1999/5 (1999)
Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument)
- ❖ FAO. 2005. *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.
Part 1 available at: <ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e01.pdf>
Parts 2 & 3 available at <ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e00.pdf>
- ❖ Eide, W. B. & Kracht, U. (editors). 2005. *Food and Human Rights in Development*. Volume I – Legal and Institutional Dimensions and Selected Topics. See Chapter 10. Intersentia, Antwerp, Belgium.
- ❖ Eide, W. B. & Kracht, U. (editors). 2005. *Food and Human Rights in Development*. Volume II – Evolving Issues and Emerging Applications. See Chapter 18. Intersentia, Antwerp, Belgium.
- ❖ UNDP. 2004. *UN Country Teams Working Together on Human Rights*, New York.
Available at: http://www.undg.org/archive_docs/5351-UNCTs_working_together_on_Human_Rights.doc

REFERENCE INSTITUTIONS AND ORGANIZATIONS

- ❖ Office of the High Commissioner for Human Rights (OHCHR)
<http://www.ohchr.org>
- ❖ Huritalk
<http://www.undg.org/?P=487>

- ❖ United Nations Development Group
<http://www.undg.org>
- ❖ United Nations Development Programme
<http://www.undp.org>

LESSON J3

PROMOTING AND MAINSTREAMING THE RIGHT TO ADEQUATE FOOD IN NATIONAL POLICIES AND PROGRAMMES

LEARNING OBJECTIVES

At the end of the lesson, the learner will be able to:

- ◆ understand what it means to mainstream right to adequate food outcomes and human rights approaches in national policies and programmes;
- ◆ apply good practices in assisting governments with introducing and promoting the right to adequate food and other human rights in national policies and strategies; and
- ◆ assess what agency capacities are needed to assist governments with promoting and mainstreaming the right to adequate food in national policies and programmes.

GUIDELINES AND SUGGESTIONS FOR INSTRUCTORS, TEACHERS AND TRAINERS

The Right to Food Guidelines emphasize that the concern by the international community over the persistence of hunger in the world should translate into active support to governments in their efforts to combat hunger and malnutrition.

Policies and programmes are means by which governments can combat food insecurity and malnutrition, and work towards the realization of the right to adequate food. Food security and nutrition, and indeed right to adequate food issues, may in the first instance correspond to an agency agenda, but not necessarily to a national policy agenda. This may thus involve delicate promotional activities initially. To ensure that the policy assistance is relevant and effective, it should address real constraints in national policies to mainstreaming food security, nutrition, the right to adequate food and human rights. To be effective, it is important that the external policy assistance team has credibility, which is earned by high quality technical work and a long-term commitment to policy formulation and implementation in constant partnership with national counterparts. Coordination among agencies in providing rights-oriented policy assistance is important. Capacity strengthening is becoming a core technical assistance activity in policy assistance work. In planning policy assistance to countries it is therefore necessary to allocate adequate resources to specific capacity strengthening activities. All these considerations may require additional installed human resources and financial support capacities in agencies offering policy assistance. This lesson links up with Lesson J2 and agency approaches to rights-based planning.

MAIN TARGET LEARNER GROUPS FOR THIS LESSON

Staff providing policy assistance in UN agencies at headquarter and regional levels, UN country teams and UN human rights bodies.

LEARNING STEPS

Step 1: Understanding the right to adequate food mainstreaming process

Scope notes: Create a common understanding of what is implied by mainstreaming the right to adequate food in policies and programmes. What criteria apply to assess the extent to which the right to adequate food is mainstreamed in the formulation and implementation of policies and programmes.

Step 2: Understanding the opportunities and constraints at country level in mainstreaming the right to adequate food in national policies and programmes

Scope notes: How to recognize and capitalize on opportunities to assist governments with mainstreaming the right to adequate food in policies and programmes. How to assess constraints to right to adequate food mainstreaming, and what might be done to help governments overcome those constraints.

Step 3: Best practices

Scope notes: A review of practical experiences with policy assistance provided by international agencies to national governments. Specific case studies of mainstreaming in policies and programmes issues such as gender, food security and nutrition, and other cross-cutting ones, to extract lessons learned about the mainstreaming process and how to promote policy priorities.

Step 4: Agency capacities to provide policy assistance for the right to adequate food

Scope notes: Methods to ascertain current agency capacities, and strategies to fill capacity gaps. The importance of inter-agency coordination in providing policy assistance.

REFERENCE MATERIALS

- ❖ Balié, J. and Maetz, M. 2007. *Analysis of Lessons Learned in Policy Assistance*, FAO/FNPP.
http://www.fao.org/tc/TCA/pdf/draft_synthesis_report.pdf
- ❖ Benson, T. 2008. *Improving nutrition as a development priority. Addressing undernutrition in national policy processes in Sub-Saharan Africa*. IFPRI Research Report 156. International Food Policy Research Institute (IFPRI), Washington, D.C., USA. Available at: <http://www.ifpri.org/pubs/abstract/156/rr156.pdf>
- ❖ Eide, W. B. & Kracht, U. (editors). 2005. *Food and Human Rights in Development*. Volume I – Legal and Institutional Dimensions and Selected Topics. See Chapter 9. Intersentia, Antwerp, Belgium.
- ❖ Eide, W. B. & Kracht, U. (editors). 2005. *Food and Human Rights in Development*. Volume II – Evolving Issues and Emerging Applications. See Chapter 15. Intersentia, Antwerp, Belgium.
- ❖ FAO. 2005. *Improving Nutrition Programmes – An Assessment Tool for Action*, Rome.
- ❖ FAO. 2005. *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.
Part 1 available at: <ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e01.pdf>
Parts 2 & 3 available at <ftp://ftp.fao.org/docrep/fao/meeting/009/y9825e/y9825e00.pdf>

- ❖ UNDP. 2004. *UN Country Teams Working Together on Human Rights*, New York.
See: http://www.undg.org/archive_docs/5351-UNCTs_working_together_on_Human_Rights.doc

REFERENCE INSTITUTIONS AND ORGANIZATIONS

- ❖ Office of the High Commissioner for Human Rights (OHCHR)
<http://www.ohchr.org>
- ❖ International Food Policy Research Institute (IFPRI)
<http://www.ifpri.org>
- ❖ UN System Standing Committee on Nutrition
<http://www.unscn.org>
- ❖ Special Rapporteur on The Right to Food
<http://www2.ohchr.org/english/issues/food/index.htm>
<http://www.srfood.org>
- ❖ FAO, Right to Food
<http://www.fao.org/righttofood>
- ❖ Committee on Economic, Social and Cultural Rights (CESCR)
<http://www2.ohchr.org/english/bodies/cescr/index.htm>

THEMATIC UNIT K

RESPECT FOR AND PROTECTION OF HUMAN RIGHTS ADVOCATES, ACTIVISTS AND WORKERS

UNIT PURPOSE

This unit indicates ways to promote respect and ensure protection for human rights advocates, activists and workers.

LESSON K1

Ways to provide legal protection for human rights activists, advocates and workers

LESSON K1

WAYS TO PROVIDE LEGAL PROTECTION FOR HUMAN RIGHTS ADVOCATES, ACTIVISTS AND WORKERS

LEARNING OBJECTIVES FOR LEGISLATORS AND STAFF

At the end of the lesson, the learner will be able to:

- ◆ understand how existing laws may have an impact on the work of human rights workers who advocate the right to adequate food; and
- ◆ determine what legislation is needed to enable the judiciary and human rights institutions to promote respect for the rights of human rights workers and provide them with effective legal protection.

LEARNING OBJECTIVES FOR COURT AND LEGAL OFFICERS

At the end of the lesson, the learner will be able to:

- ◆ establish court rules that allow public interest litigation;
- ◆ provide legal assistance and advice to human rights workers whose rights have been violated; and
- ◆ take appropriate actions under national law when violations of the rights of human rights workers are attributable to acts or omissions of the state.

LEARNING OBJECTIVES FOR STAFF OF HUMAN RIGHTS INSTITUTIONS

At the end of the lesson, the learner will be able to:

- ◆ understand the role of human rights institutions and what they should assume as their responsibility to ensure the lawful work by human rights professionals and activists; and
- ◆ apply methods to monitor how the rights of human rights workers are respected and protected.

LEARNING OBJECTIVES FOR ALL THREE GROUPS

At the end of the lesson, the learner will be able to:

- ◆ understand what are the respective roles of each group in coordinated efforts to protect human rights workers; and
- ◆ develop information and education materials for human rights advocates, activists and workers, that explain their rights and responsibilities to undertake their work and to report violations of their rights.

GUIDELINES AND SUGGESTIONS FOR INSTRUCTORS AND TRAINERS

This lesson has different learning objectives for each of the three learner groups to whom this lesson is addressed. This is because each group has a different role to play in protecting human rights workers. Yet, these roles are inter-dependent, and thus a coalition and commitment among these groups need to be fostered. So, instead of developing three separate lessons, one for each learner group, this lesson should have a separate module for each learner group, and a common module for all three groups as part of the same lesson.

MAIN TARGET LEARNER GROUPS FOR THIS LESSON

Staff of human rights institutions; court and legal officers; and legislators and their staff.

LEARNING STEPS

Step 1: Who are human rights activists, advocates and workers? (Module for all)

Scope notes: The vulnerability of those who fight for their own or the of others human rights has long been recognized. Right holders who stand up for their

right to adequate food, in the context of their access to land, natural resources, employment or social assistance, for instance, can be seen as human rights activists. Landless peasants are one example of a group that has fought for its rights and often been met with violence. Other individuals and groups who take it upon themselves to help others to claim their rights are also part of this group. These people may be referred to as human rights activists, advocates or workers, whereas those fighting for their own rights are normally not referred to as human rights advocates or human rights workers. It is important to recognize that human rights activists do not always use human rights language, yet should be afforded protection.

Step 2A: Role in protecting human rights workers (Module for legislators and staff)

Scope notes: Adequate legislation needs to be in place to enable the judiciary and human rights institutions to act in case of violations. In order to formulate new legislation, or amend existing legislation, legislators need to understand what those violations consist of, and how the judiciary and human rights institutions can or should act. A first step is to analyse relevant existing legislation to determine if human rights workers are indeed adequately protected under the law.

Step 2B: Role in protecting human rights workers (Module for court and other legal officers)

Scope notes: The learners should know what court rules need to be in place for public interest litigation and broader locus standing. They need to know how to establish rules and procedures that guarantee no repercussions for human rights workers who report and document for the courts, violations of the human rights of third parties, and how to provide legal assistance and protection to human rights workers.

Step 2C: Role in protecting human rights workers (Module for staff of human rights institutions)

Scope notes: The roles of human rights institutions requires adequate capacity to: (i) raise complaints about official acts and behaviour of state officials that impedes human rights work; (ii) provide legal assistance to human rights workers; (iii) ensure access to public hearings and trials and free association with any lawful organization; and (iv) ensure uncensored access to human rights information. Human rights institutions should establish criteria to determine when violations take place of the right of human rights workers to be respected and protected, and have the capacity to monitor the disposition of cases where violations of the rights of human rights workers have taken place.

Step 3: Working together (Module for all three learner groups)

Scope notes: This module should help the three learner groups understand how to work together, whereby legislators ensure that enabling legislation that clearly articulates how human rights workers need to be protected is in place, and that allows human rights institutions and the courts to assume their roles. The court system and human rights institutions also need to work together. Human rights institutions need to know how to bring cases of violations to the attention of the courts, and how to refer human rights workers for legal assistance. All three groups should have the capacity to formulate clear messages for information and educational materials for human rights workers, which explains: (i) their rights and responsibilities under applicable law; (ii) what constitutes violation of their rights; (iii) what to do when they feel their rights have been violated; and (iv) how to document any violations.

REFERENCE MATERIALS

- ❖ Asia Pacific Human Rights Network. 2004. *Human Rights Defenders*. Background paper.
Available at: http://www.asiapacificforum.net/about/annual-meetings/8th-nepal-2004/downloads/ngo-statements/ngo_hrdefenders.pdf
- ❖ Front Line Protection Human Rights Defenders, No date. *Protection Manual for Human Rights Defenders*,
Available at: <http://www.frontlinedefenders.org/manuals/protection>
- ❖ *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (Declaration on Human Rights Defenders), UN General Assembly resolution 53/144, 8 March 1999:
<http://daccessdds.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>

REFERENCE INSTITUTIONS AND ORGANIZATIONS

- ❖ Office of the High Commissioner for Human Rights (OHCHR)
<http://www.ohchr.org>
- ❖ Front Line Protection Human Rights Defenders
<http://www.frontlinedefenders.org>
- ❖ Human Rights Committee
<http://www2.ohchr.org/english/bodies/hrc/index.htm>