Mandate of the Special Rapporteur on the right to food

HLPE REPORT ON SOCIAL PROTECTION FOR FOOD SECURITY AND CFS DECISION BOX ON SOCIAL PROTECTION FOR FOOD SECURITY

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The Special Rapporteur on the right to food offers the following comments on and proposals for the HLPE report on social protection for food security and the CFS decision box on social protection for food security.

GENERAL OBSERVATIONS

1. Eradicating hunger continues to remain one of the pressing global challenges. Social protection plays an important role in improving food security, as noted in “Social Protection for Food Security,” the report by the High Level Panel of Experts on Food Security and Nutrition for the Committee on World Food Security (hereinafter “HLPE Report”). Poverty is often the root cause of food insecurity, and establishing comprehensive social protection systems is one policy response available to States to enable the poorest and most disadvantaged to realize their right to adequate food, among other rights. Since assuming the mandate in May 2008, the Special Rapporteur on the right to food has been examining the role of social protection in the realization of the right to food in his country visit reports.

2. The HLPE Report is a well-researched and comprehensive document, firmly underpinned by international human rights law, which provides an extensive overview of social protection schemes and their role in promoting food and nutrition security. The Special Rapporteur welcomes the HLPE Report and commends it for establishing clearly the links between social protection and the rights to food and social security, thereby providing the appropriate legal framework through which to assess social protection for food and security.

3. The ultimate aim of social protection systems must be to ensure the right to an adequate standard of living for everyone, including the right to food. The Special Rapporteur, however, notes that human rights norms and standards do not necessarily prescribe specific policy measures, and States have broad discretion to formulate policies most appropriate to their national context in discharging their international human rights obligations. In this regard, the HLPE Report fittingly raises unresolved issues in social protection thinking and practice (section 4, Cross-cutting implementation issues), and presents the arguments for and against various choices in designing/implementing social protection programmes.

4. The Special Rapporteur generally supports all the recommendations in the HLPE Report. He emphasizes in particular recommendation 12, which calls for the recommendations included in the HLPE Report to be incorporated into the Global Strategic Framework for Food Security and Nutrition.
PROPOSALS FOR THE CFS DECISION BOX ON SOCIAL PROTECTION FOR FOOD SECURITY

Proposal 1: All States should ensure a human rights based approach to social protection in order to progressively realize the right to food.

4. While international human rights law certainly does not provide answers to all the challenges faced by law and policy makers, it must guide State action. Under international human rights law, States bear primary responsibility for ensuring all human rights, including the rights to food and social security, to all people living in their territory and under their jurisdiction. Drawing from the UN common understanding on a human rights based approach (see para. 5), for social protection schemes to contribute to the realization of human rights, including the right to food, it is crucial that they do the following:

a. Be grounded in an adequate legal and institutional framework:

From a human rights perspective, social protection schemes should be placed in a framework of legally binding and enforceable rights and obligations in order to protect the rights of people to live in dignity. Legal and institutional frameworks clarify the various roles and responsibilities of all stakeholders (government, development agencies, civil society and beneficiaries), which are necessary for accountability purposes. Moreover, this provides legal certainty and reduces the risk of political changes jeopardizing existing social protection programmes. Similarly, national framework laws guaranteeing the right to food can establish the obligations of the State to respect, protect and fulfil the right to food, provide state policy directives on the progressive realization of the right to food and afford avenues of redress to those whose rights have been violated.¹

b. Be part of comprehensive, coherent and coordinated policies:

The interdependent and mutually reinforcing nature of human rights demands that States approach social protection holistically. It requires an inter-sectoral approach with cooperation across various ministries. Social protection must be considered as one element within a broader development strategy aimed at overcoming poverty and food insecurity. Accordingly, States should work towards the adoption of a national right to food strategy² to ensure food and nutrition security for all, based on human rights, and the formulation of policies and corresponding benchmarks. Improving human rights compliance in a country will improve its development outcomes.

c. Respect the human rights principles of equality and non-discrimination;³

States have a duty to protect people against risks and vulnerabilities in an equal and non-discriminatory manner. Human rights require that States eliminate discrimination in law, policy and practice and require States to take special measures to protect the most

¹ Both General Comment No. 12 of the Committee on Economic, Social and Cultural Rights on the right to food (para. 29) and the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (guideline 7) recommend States to adopt national framework laws that enshrine the right to food in the legal fabric of the country and provide for enforceable rights.

² Such a national strategy should comprise the establishment of appropriate institutional mechanisms, particularly in order to: (i) identify, at the earliest stage possible, emerging threats to the right to food by adequate monitoring systems; (ii) improve coordination between the different relevant ministries and between the national and sub-national levels of government; (iii) strengthen accountability through the setting of targets, with measurable indicators, defining the timeframe within which particular objectives should be achieved; and (iv) ensure free, active and meaningful participation, particularly of the most food-insecure.

³ See articles 2(2) and 3 of the International Covenant on Economic, Social and Cultural Rights; articles 2(1), 3 and 26 of the International Covenant on Civil and Political Rights; article 2(1) of the International Convention on the Elimination of all forms of Racial Discrimination; article 2 of the International Convention on the Elimination of Discrimination against Women; article 2(1) of the Convention on the Rights of the Child; article 1(1) of the International Convention on the Rights of Migrant Workers; and article 4(1) of the Convention on the Rights of Persons with Disabilities.
marginalized and disadvantaged segments of society as a matter of priority, while taking measures to progressively ensure universal protection.

d. **Mainstream gender considerations:**

*The elimination of all forms of discrimination, including discrimination on the grounds of sex, must guide State conduct. Considering that gender inequality is a cause and a factor that perpetuates poverty and significantly reduce nutritional outcomes, effective development strategies must consider State obligations regarding the promotion of gender equality and the protection of women’s rights. Social protection systems should therefore integrate a gender perspective and seek to empower women.*

e. **Guarantee free, active and meaningful participation:**

*Free, active and meaningful participation is not only a right, but also it is necessary to create ownership, sustainability and, ultimately, effective outcomes. Human rights obligations pertain not only to the final outcome of social protection schemes, but also to the process through which such schemes are designed, implemented and monitored. The effectiveness of social protection programmes can be negatively affected by an insufficient understanding by policy makers and practitioners of the challenges faced by the poor and food insecure, as well as the efforts they make to overcome them. Consequently, it is critical to ensure participatory, inclusive and transparent processes that allow beneficiaries to be co-designers of social protection policies and programmes.*

Creating space for participation of the poorest in achieving food security is necessary for three reasons: 1) the poor and food insecure possess experience and knowledge that is crucial to the effectiveness of social protection programmes; 2) participation offers an opportunity to facilitate mutual understanding and dispel misconceptions – that may lead to opposing goals and initiatives – between policy makers, beneficiaries and other stakeholders; and 3) by bringing the voices of affected communities to the decision-making table, the poorest and most food insecure are empowered to contribute to the development effort. Too often participation is pro forma or reduced to mere consultation. Social protection programmes are better designed, implemented and monitored when grounded on the participation of the beneficiaries they seek to support.

f. **Ensure transparency and access to information; and**

*Social protection programmes need to be implemented in a manner that respects transparency and the right to information, which are essential to accountability. Individuals need to be able to recognize and understand eligibility criteria, the benefits to be received and the existence of complaint/redress mechanisms for social protection programmes to be successful. Moreover, increasing transparency and access to information will likely increase public support for investment in social protection policies and programmes.*

g. **Ensure access to complaint mechanisms and to effective remedies.**

*In international human rights law, everyone has a right to an effective remedy. A core element to a human rights based approach is to ensure accountability when someone’s rights have been violated. This means that beneficiaries must have access to complaint/redress mechanisms. Ensuring access to such mechanisms is also critical to combat corruption and abuse of power. Without such accountability mechanisms, social protection schemes remain instruments of charity rather than enforceable rights.*

5. **UN Common Understanding on a human rights based approach.** In the United Nations Programme for Reform that was launched in 1997, the Secretary-General called on all entities of the United Nations system to mainstream human rights into their various activities and programmes within the framework of their respective mandates. Since then, a common understanding has been developed among UN departments, agencies, funds and programmes as to what constitutes a human rights based
The common understanding serves to guide processes and outcomes with regard to human rights mainstreaming, and in particular highlights the following:

a. All programmes of development cooperation, policies and technical assistance (including social protection schemes) should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

b. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights, guide all development cooperation and programming in all sectors and in all phases of the programming process.

c. Development cooperation contributes to the development of the capacities of “duty-bearers” to meet their obligations and/or of “rights-holders” to claim their rights.

6. A human rights based approach to social protection can contribute to improving the lives of the most food insecure and those living in poverty by improving service delivery and outcomes and thereby raising standards of living. Additionally, social protection schemes are tools that can assist States in fulfilling their international human rights obligations. In particular, they have the potential to contribute to the realization of human rights, such as the right to an adequate standard of living, including food and housing, and the right to social security. Social protection schemes also may facilitate the realization of other rights, such as the rights to education and health. As such, social protection programmes should increase the enjoyment of human rights and avoid any infringements of rights. Thus, States must ensure that human rights norms and standards are considered when designing, implementing monitoring and evaluating social protection programmes.

7. Those most food insecure and in need of social protection are more likely to be reached by a human rights-based social protection programme, and the assistance they receive is more likely to be appropriate and effective in addressing their needs. Poverty and food insecurity reduction is then more effective and sustainable, as participatory and accountability mechanisms ensure that the voices of social protection beneficiaries are considered and programmes are designed to respond to their needs accordingly.

Proposal 2: All States should engage in international assistance and cooperation in order to support the efforts of each State to guarantee the right to social security and the right to food, among other rights.

8. The Charter of the United Nations articulates a universally shared commitment “to achieve international cooperation in solving international problems of an economic, social and cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (Article 1.3). Furthermore, Articles 55 and 56 of the Charter and various human rights treaties and declarations reflect clear expectations that States shall cooperate with and assist each other in order to achieve certain goals, including ensuring development and eliminating obstacles to development, finding solutions to international economic, social and related problems, and promoting universal respect for, and observance of, human rights and fundamental freedoms.

9. The Committee on Economic, Social and Cultural Rights in its General Comment No. 12 notes that “In the spirit of Article 56 of the Charter of the United Nations, the specific provisions contained in articles 11 [on right to food], 2.1 [on international assistance and cooperation], and 23 [on international action] of the Covenant [on economic, social and cultural rights] and the Rome Declaration of the [1996] World Food Summit, States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food. In implementing this commitment, States

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4 See the UN Practitioner’s Portal on Human Rights Based Approaches to Programming: [www.hrbaportal.org/the-un-and-hrba](http://www.hrbaportal.org/the-un-and-hrba).
parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required” (para. 36).

10. In this connection, for the full enjoyment of human rights, including the rights to food and social security, States must allocate adequate resources towards these ends. Under the International Covenant on Economic, Social and Cultural Rights, States have a duty to dedicate the maximum amount of available resources to progressively achieve the full realization of economic, social and cultural rights, including the rights to food and social security, and to prioritize the needs of the most marginalized members of society. The concept of progressive realization stipulated in article 2(1) of the Covenant recognizes the obstacles faced by countries and, thus, also calls for international assistance and cooperation. This also tracks with the Maastricht Principles on the extraterritorial obligations of States in the area of economic, social and cultural rights, which indicate that “As part of the broader obligation of international cooperation, States, acting separately and jointly, that are in a position to do so, must provide international assistance to contribute to the fulfilment of economic, social and cultural rights in other States” (principle 33).

11. The duty of international assistance and cooperation also enjoins States to ensure that their activities (and those of their agents, residents and corporations) do not violate the human rights of people abroad and that States, individually or through membership of international institutions, do not adopt or engage in policies that undermine the enjoyment of human rights.

Proposal 3: States should consider providing a minimum non-contributory social protection floor, in addition to contributory social security systems.

12. Social protection schemes are the policy tools often utilized to tackle poverty, food insecurity and inequality-related issues within a country. Such schemes often aim: (a) to reduce poverty among groups that are not expected to fully participate in the labour market and thus are vulnerable to low income (older persons, children, persons with disabilities, etc); and (b) to increase investment in health, education and nutrition. Even in countries with fairly robust social protection schemes, such as in South Africa, Mexico and Brazil, which serve as a point of reference for many other countries, protection gaps remain. Often individuals between the ages of 18 to 59, expected to participate in the labour market, are ineligible for existing social protection programmes.

13. The 101st International Labour Conference adopted Recommendation R.202 on national floors for social protection. This is the first autonomous Recommendation in social security in 68 years and a major contribution to international standard setting in social protection. According to the Recommendation, in addition to contributory social security systems, States should provide a minimum non-contributory social protection floor, including universal access to essential health care and basic income security for children, older persons and those in active age who are unable to earn sufficient income.

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Olivier De Schutter was appointed the Special Rapporteur on the right to food in March 2008 by the United Nations Human Rights Council. He is independent from any government or organization, and he reports to the Human Rights Council and to the General Assembly.

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