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Mandate of the Special Rapporteur on the right to food

CONTRIBUTION TO THE 39TH SESSION OF THE COMMITTEE ON WORLD FOOD SECURITY

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The Special Rapporteur on the right to food welcomes the significant inter-sessional work carried out since the 37th session of the CFS in October 2011. On many items to be discussed at the forthcoming session, the CFS is presented with clear proposals for decision.

The Special Rapporteur has contributed to this inter-sessional work in his capacity as member of the CFS Advisory Group, including through a series of c

III. POLICY CONVERGENCE: POLICY ROUNDTABLES

a) Round Table on Social Protection for Food Security (Agenda Item: III,b)

The Special Rapporteur on the right to food congratulates the CFS on its decision to focus attention on social protection. The draft decisions on social protection for food security (contained in doc. CFS 2012/39/2), informed by a report of the High Level Panel of Experts (HLPE), include a series of important and useful recommendations, and the Special Rapporteur, would like to highlight the following points of particular importance to the realization of the right to food.²

1. Fulfilment of the right to social security is an essential part of any strategy for the realization of the right to adequate food. Draft decision (4) reminds States that “social protection programmes for food security and nutrition should be guided by human rights norms and standards” and spells out the basic human rights principles of “non-discrimination and equality (including gender), meaningful participation, transparency and accountability.” The Special Rapporteur would suggest that *decision (4) could usefully be moved up to become new decision (1)*, so that statements of general principles (current decisions (1) and (4)) would come before the more specific recommendations. Moreover, he notes that he draft *text could usefully refer to “the progressive realization of the right to food and the right to social security”* to underline that both the rights to food and to social security are human rights enshrined in international law, and to *avoid reference to “the progressive realization of ... gender equality”* as the principles of non-discrimination and gender equality are not subject to progressive realization in international human rights law.

2. Social protection should be grounded in an adequate legal and institutional framework. Draft

designed, implemented and monitored when grounded on the participation of the beneficiaries they seek to support. Moreover, individuals need to be able to recognize and understand eligibility criteria, the benefits to be received and the existence of complaints/redress mechanisms for social protection programmes to be successful. In this regard, the Special Rapporteur considers that the CFS decisions could usefully *include reference to “the provision of adequate information about social protection programmes, including eligibility criteria, and access to complaints mechanisms to address grievances and ensure accountability.”*

5. Defining a food security floor. The Special Rapporteur notes with interest the concept of a “food security floor” suggested in the HLPE report and referred to in draft decision (5). While he appreciates the commendable intentions behind this concept, he *cautions about the possible risk of equating any minimum set of interventions with the full realization of the right to adequate food.* In exploring the scope and contents of the food security floor concept, it would be important to ensure that the concept is understood and interpreted in a manner which is consistent with international human rights law.

The right to be free from hunger, as enshrined in the International Covenant on Economic, Social and Cultural Rights and other core international human rights treaties, obliges States to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger. However, the broader "right to adequate food" and the objective of achieving its full realization go beyond the obligation mitigate and alleviate hunger and require that we address the structural causes of hunger and malnutrition ; that we establish accountability mechanisms allowing the poor to challenge both action and inaction by governments ; that the principle of non-discrimination be taken into account ; and that the beneficiaries of policies aimed at combating hunger and malnutrition participate in the identification of needs, and in the design and evaluation of the policies that concern them.

If the CFS Bureau will be requested to further explore the concept of the food security floor, as draft decision (5) suggests, the Special Rapporteur would propose that the Office of the High Commissioner for Human Rights be included amongst the relevant organizations to be consulted.

b) Round Table on Food Security and Climate Change (Agenda Item: III,b)

The Special Rapporteur welcomes the policy discussion on food security and climate change, informed by a HLPE report. The CFS will have before it a set of draft decisions (contained in doc. CFS 2012/39/3), urging Member States and International Organizations to take action in 20 specific areas with a view to improving policy coherence and convergence. The Special Rapporteur would like to highlight the following points of particular importance to the realization of the right to food.

Food security and climate change related actions must:

1. Fully respect human rights. Draft decision (a) underlines this point. However, its wording could be made clearer and more coherent with decisions and resolutions within the UNFCCC and UN Human Rights Council,⁴ by referring to *the need to ensure that climate change related activities fully respect human rights*, including the right to food and the rights of indigenous peoples. Moreover, it would be useful to indicate basic steps which should be taken to ensure coherence between climate change-action, food and nutrition security and human rights objectives, in particular *the importance of*

⁴ See Cancun Agreements (Decision 1/CP.16), stating that States “should, in all climate change related actions, fully respect human rights” and Human Rights Council resolution of September 2011 (A/HRC/RES/18/22) reiterating that “climate change poses an immediate and far-reaching threat to people and communities around the world and has adverse implications for the full enjoyment of human rights” and affirming that “human rights obligations, standards and principles have the potential to inform and strengthen international and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes.”

conducting “right to food impact assessments” of climate change related policies, programmes and projects, in line with the FAO Right to Food Guidelines.⁵

2. Be guided by basic human rights principles of participation, accountability, equality and non-discrimination, including gender equality, and give priority attention to vulnerable groups. In this regard, draft decision (a) usefully refers to the need to “increase resilience of vulnerable groups”, mentioning in this context the need to “making weather forecasting available to small-scale food producers and pastoralists” and to regularly assess risks and vulnerability, “including gender and nutrition-sensitive perspectives.” These references are extremely important. It would be useful to *more clearly state the overall concern that food security and climate change action integrate the principles of non-discrimination and gender equality and give priority attention to vulnerable and marginalized groups* (as international human rights norms and standards demand).

Equally, draft decision (e) usefully underlines the need to ensure that all stakeholders are able to meaningfully participate in decision-making processes to design, implement, monitor and evaluate policies and programmes. These points are of crucial importance. As the human rights/right to food framework underlines, participation and accountability are essential to ensuring effective targeting and implementation of policies and programmes.

Irrespective of how explicit these points will be made in the CFS decisions, the main challenge remains that of ensuring the actual integration of basic human rights principles into specific measures, policies and programmes, including actions proposed in National Adaptation Programmes of Actions. In this regard, the CFS is ideally placed to serve as a forum for collective learning and sharing of good practices.

3. Combine environmental sustainability and the right to food. Draft decision (a) usefully mentions “agro-ecological practices” in the context of measures to increase resilience of vulnerable groups and food systems to climate change, while draft decision (c) lists measures to “develop low-emission agricultural strategies that favour food security”. As the HLPE report on food security and climate change underlines, and as the Special Rapporteur has discussed in several reports,⁶ the agricultural sector must be fundamentally redirected towards modes of production that are more environmentally sustainable without compromising human rights. Business as usual is no longer an option. The right to food framework underlines this point as it incorporates the notion of sustainability and the need to ensure that adequate food is accessible for both present and future generations.

While draft decision (c) provides examples of types of measures to reduce GHG emissions from agriculture, it would be useful to *highlight the importance of finding low-emission solutions which serve to improve the livelihood and wellbeing of rural communities and vulnerable groups*.

It would also be relevant to *include reference to the assessment of the HLPE report* that “Government policies and mandates to increase the share of biofuels in energy consumption increase the challenges to our collective ability to achieve sustainable food security” and the specific recommendation to “*Assess the contribution of various types of biofuels to mitigation and food security.*”⁷

⁵ Guideline 17.2, FAO Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food insecurity (Right to Food Guidelines).

⁶ See in particular, Special Rapporteur on the right to food, report to the Human Rights Council (A/HRC/16/49) on agroecology and the right to food.

⁷ See High Level Panel of Experts on Food Security and Nutrition, Report on *Food security and climate change*, June 2012, p. 19 (Recommendation 3(g)) and p. 28.

V. POLICY CONVERGENCE AND COORDINATION

a) Food Security and Nutrition Terminology

The Special Rapporteur on the right to food welcomes the document “Coming to terms with terminology” (CFS 2012/39/4) presenting proposals to CFS on consistent use of terminology. Consistent with the opening paragraph of the 1996 Rome Declaration, the document highlights (Key Message (i), page 3) that the right to adequate food should guide efforts towards the eradication of food security, hunger and malnutrition.⁸ Likewise, tracing the development of the concept of food security and nutrition, the document highlights the adoption in 1966 of the International Covenant on Economic, Social and Cultural rights, enshrining the right to adequate food and the right to be free from hunger. As is pointed out (para. 9, page 4) “This laid the foundations for the broad concept of food security”, which was later spelled out at the 1996 World Food Summit and reflected in the definition proposed in the present CFS terminology document.

The Special Rapporteur considers that it would be useful to also *reflect the close relationship between the concept of food and nutrition security and that of the right to adequate food in the conclusions and recommendations section* and to *include a reference to “the right to food” in Annex I* explaining the key terms used in the document, also bearing in mind the vision of the CFS, set out in the CFS reform document (CFS:2009/2), to “strive for a world free from hunger where countries implement the voluntary guidelines for the progressive realization of the right to adequate food in the context of national food security.”

In particular, in explaining the current broad understanding of food security (para. 17, page 5), the close relationship with the right to food could usefully be mentioned, e.g. by noting, “This definition also mirrors what is today understood to be the key components of the right to adequate food: availability, accessibility, adequacy and sustainability.” In addition, in the recommendations made to the CFS (para. 33(i), para. 8), a reference could usefully be added: “Recognizes the long history of the evolution of the meaning and use of the terms food security and nutrition security, and their close relationship with the right to adequate food.”

Finally, the Special Rapporteur would suggest including in Annex I a short explanation of the term “Right to food”: “The human right to adequate food is enshrined in the Universal Declaration of Human Rights (article 25), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (article 11), the Convention on the Rights of the Child (articles 24 and 26) amongst other international human rights treaties. As defined by the Committee on Economic, Social and Cultural Rights (CESCR), “[t]he right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.” The “adequacy” dimension of the right to food encompasses the nutritional aspects of food and nutrition security and implies having access to food “in a quantity and quality sufficient to satisfy the dietary needs of individuals” so that “the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation.” Moreover, “[t]he notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations” (CESCR, General Comment No. 12, 1999, paras. 6, 7 and 9).”

⁸ Declaration of the 1996 World Food Summit, opening paragraph: “We, the Heads of State and Government, I or our representatives, gathered at the World Food Summit at the invitation of the Food and Agriculture Organization of the United Nations, reaffirm the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.”

b) Adoption of the Global Strategic Framework for Food Security and Nutrition (GSF)

The Special Rapporteur welcomes the First Version of the Global Strategic Framework for Food Security and Nutrition (GSF). He commends all the delegations who were involved in shaping this document and Brazil for its commitment to create consensus and reach a conclusion.

With the Global Strategic Framework, the CFS endorses a more comprehensive vision of food and nutrition security than prevailing frameworks. This vision encompasses important issues that received too little attention in previous food security frameworks, including social protection, living wages, agricultural workers, or the need for accountability and monitoring mechanisms. This new vision is not perfect. States could not find a consensus on some proposals to reflect even better the causes of hunger and food insecurity and to clarify the directions we must take to tackle these causes. Building policy convergence on sensitive issues will take time, even though many poor people desperately wait for more rapid actions. The GSF acknowledges this, and it will be reviewed to include future consensus and decisions made at each CFS session.

The Special Rapporteur acknowledges the sensitive nature of some items listed under **Section VI “issues that may deserve further attention”**. However, he welcomes the fact that some CFS Member States and stakeholders want to list such contentious topics as “issues that may deserve further attention”, including food sovereignty. The Special Rapporteur considers that the CFS would have much to lose if it shuts its door to the debates surrounding these topics.

The Special Rapporteur expresses the firm *hope that the CFS will now endorse the First Version of the GSF*, and that it will be continuously built upon. There have been two years of consultation on this document, and five days of negotiations in the ad-hoc OEWG. *The next step for the CFS is to create a mechanism to follow-up on its own decisions and recommendations, as to be more efficient and more impactful on food and nutrition insecurity.*

d) Responsible agricultural investments: the way forward

The Special Rapporteur *welcomed the endorsement of the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (VGGT) by the Special Session of the Committee on World Food Security (CFS) on 11 May 2012, in which he participated. He notes with great interest that an inclusive consultation process will soon be initiated within the CFS for the development of principles for responsible agricultural investments which enhance food security and nutrition.

He *congratulates the work of the Open Ended Working Group on principles for responsible agricultural investments*, chaired by Mrs Christina Blank, Deputy Permanent Representative of Switzerland to FAO, IFAD and WFP, for having reached agreement on draft Terms of Reference (ToR) for an inclusive consultation process within CFS to develop and ensure broad ownership of principles for responsible agricultural investment (RAI). The Rapporteur commends all those who have joined efforts to allow the OEWG discussions to be held in a constructive spirit.

The Special Rapporteur welcomes the emphasis placed by the OEWG on the *important role of the planned consultations on the RAI, and encourages all stakeholders to participate actively in the process*. He also welcomes the proposal that the principles emanating from this consultative process be submitted for endorsement by the CFS at its 41st session in October 2014. This time frame should allow for a truly participatory consultation and negotiation process.

The Special Rapporteur is looking forward to seeing progress made at the CFS on this front as responsible agricultural investments that directly contribute to the realization of the right to food of local populations are of the utmost importance. The Special Rapporteur has consistently insisted on the need for agricultural systems to support, as a priority, the production of food to respond to local needs. Although the draft Terms of Reference could have been more explicit on the importance of supporting investments by and for

smallholder farmers, the Special Rapporteur is confident that consultations with social actors globally will lead to the realization that investments in countries facing significant poverty levels need to be directed at promoting farming systems that contribute to employment creation and rural development, with powerful poverty-reducing effects; and that such investments should encourage modes of agricultural production that respect the environment, and do not accelerate climate change, soil depletion, and the exhaustion of freshwater reserves.

Finally, the Special Rapporteur notes that the OEWG has not reached agreement on whether, and how, the RAI principles should take into account the WTO rules and agreements. As a result, a bracketed paragraph currently appears in the draft Terms of Reference that reads: “the principles should: [not address trade issues that fall under the remit of the WTO.]” ***The Special Rapporteur calls on Member States to acknowledge that the CFS can only function effectively if it is not precluded from addressing trade issues that have an impact on food security and the right to food.*** Policy convergence, one major objective explaining the establishment of the CFS in the first place, can only be achieved if we move beyond the current fragmentation of global governance in the area of food security, which in the past has

begun to encourage some limited experiments, related to emergency stocks. The most advanced experiment to date is being conducted in the West African region, across 11 countries, on a range of strategic crops. It is important to broaden the strategy to think about the role stocks can play in strengthening producers' market power, stabilizing national food supplies and providing some insulation against price shocks in international markets. Much of the existing debate relies on analysis of 1980s programs that do not take account of the very big changes in both domestic and international markets since then. There are new technologies for communication, transportation and storage that should be explored in relation to stocks.

The Special Rapporteur takes note that the **World Bank, in collaboration with FAO, WFP and other partners are addressing these issues simultaneously**, namely assessing buffer stocks and food reserves, and preparing a code of conduct for emergency humanitarian food reserves, and that they plan to keep the CFS Bureau and Advisory Group informed of the outcome of these efforts.

The Special Rapporteur considers that the ***CFS should formally put food price volatility issues, including reserves, on the agenda of its 40th session***, in October 2013. CFS 40 should follow-up on the recommendations of CFS37 and (a) review the assessment of the constraints and effectiveness of local, national and regional food reserves made by international organizations, and (b) debate a draft code of conduct for emergency humanitarian food reserves. In order to enable the CFS to fulfil these tasks, ***an ad-hoc OEWG should be created to ensure that the CFS works on this topic in accordance with the transparent and participatory approach that is now part of its culture***. This OEWG would have an important role in building the basis for a consensus on the topic ahead of CFS40. The CFS must remain consistent in its work on food price volatility, which was treated in Plenary in 2011 on the basis of a report from the High-Level Panel of Experts. Postponing this question or not addressing it at the highest level would not only undermine the efforts of certain States, it would undermine the credibility of the CFS.

Mandate of the OEWG on monitoring

The Special Rapporteur endorses the proposals made in the document "Information note on monitoring CFS decisions and recommendations" (CFS 2012/39/9), that **future CFS recommendations be "actionable and targeted at specific stakeholders"**, and that the Open Ended Working Group on Monitoring continue its work in 2013 and report back to CFS at its 40th Session. However, apart from reporting back to the CFS Plenary, ***the OEWG should be mandated to make concrete proposals as to how the CFS can respond to the CFS reform document's call for an "innovative" mechanism monitoring achievements***. The CFS should equip itself with a mechanism that is administratively light, but politically strong.

To prepare the ground for a decision by the CFS Plenary in 2013, ***the OEWG should review the relevance of various proposals of mechanisms previously made*** in inter-sessional working sessions, including mechanisms that involve peer reviews or periodic independent evaluations.¹⁴ The Special Rapporteur welcomes the proposal that a workshop be organized with that purpose, and looks forward to contributing to that important process.

The Special rapporteur makes a **complementary proposal** to increase consistence across various streams of work of the CFS. There is currently no link between the recommendations of the CFS on how it follows up on its own decisions and recommendations (the proposals of the OEWG on Monitoring); the principles for monitoring and accountability systems stated in the Global Strategic Framework (GSF Para. 93); the principles for reporting on the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of

¹⁴ For more information on the proposals of the Special Rapporteur, see De Schutter, O., Submission to the consultation on the First Draft of the Global Strategic Framework for Food Security and Nutrition of the Committee on World Food Security, Special Rapporteur on the right to food, 8 M o od,apd,o pd,e

National Food Security (“VGGT”, Para. 26.4); and international reporting on the implementation of the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (“VGRtF”, Section III, Para. 16)¹⁵. In order to avoid duplicating work and increase consistency across the CFS follow-up activities, the Special Rapporteur suggests that ***the mandate given by the CFS39 Plenary to the OEWG on Monitoring includes a principle of coherence between the monitoring of decisions and recommendations of the CFS Plenary (as currently suggested in document CFS 2012/39/9) and the monitoring of standards set by the CFS, in particular the VGGT; and that the OEWG uses the five principles for monitoring and accountability systems of the GFS as its starting point when making proposals to CFS40.***

The monitoring process should be seen as an iterative process, allowing the CFS to gradually improve its orientations in the light of successes and fail