



INTERNATIONAL
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Response to the Consultation on the Draft Guiding Principles on extreme poverty and human rights

Questionnaire

Report (HRC/15/41) of the Independent Expert on the question of human rights and extreme poverty on the draft guiding principles on extreme poverty and human rights

The International Commission of Jurists (ICJ) commends the Independent Expert on the question of human rights and extreme poverty, Ms. Magdalena Sepulveda Carmona, for her consistent efforts to pursue and strengthen the work on the issue of poverty and human rights that had been initiated by the Sub-Commission on the Promotion and Protection of Human Rights. In particular, the ICJ welcomes the progress report (HRC/15/41) prepared by the Independent Expert that entails substantial recommendations for the improvement of the Draft Guiding Principles (DGPs) on extreme poverty and human rights. The ICJ hopes that the consultation process including the present questionnaire, and the upcoming consultation meeting organised by the OHCHR on 22 and 23 June 2011, will give the opportunity to progress towards the finalisation of the DGPs and towards their eventual adoption in 2012. In this perspective, the ICJ urges States to constructively engage in the consultation and to acknowledge the unique opportunity to equip themselves and other interested actors with a comprehensive set of policy recommendations to combat poverty by upholding and developing human rights standards. The current international context of multiple crises makes the relevance and necessity of such a tool clear. The ICJ would therefore like to stress the need to adopt the Guiding Principles and thereby bring the process started by the Sub-Commission a decade ago to a successful conclusion. In order to contribute to the achievement of this goal, the ICJ would like to assure the Independent Expert of its support and great appreciation of her recommendations for improvement of the DGPs and would like to submit for her consideration the comments below.

Ad II: Rationale for the development of guiding principles on human rights and extreme poverty

- Based on the report of the independent expert (HRC/15/41), what would be the added value of guiding principles on human rights and extreme poverty?

In the view of the ICJ, the Guiding Principles will contribute to authoritatively establish the link between poverty alleviation and eradication and progress in the realisation of all human rights, for all. By systematically applying existing human rights norms and standards pertaining to civil,

cultural, economic, political and social rights to laws, policies and practices aiming at poverty eradication, the Guiding Principles strengthen the indivisibility and interdependence of all human rights. They show in a very practical manner that poverty is both a cause and a consequence of the lack of enjoyment as well as of violations not only of economic, social and cultural rights but also of civil and political rights.

Using the human rights framework to combat poverty, guided by the work of the Independent Expert, will help ensuring policy coherence towards finding sustainable solutions and responses to the persistence of extreme poverty over the world.

Finally, in the current context of crises, the Guiding Principles will, if used by States and relevant actors, contribute to avoiding that more poverty is generated. In this regard, the Guiding Principles reiterate one of the key principles of a human-rights based approach to poverty reduction, i.e. the priority that shall be given to the most disadvantaged groups, especially in times of limited resources. Last but not least, the Guiding Principles will remind States and the international community that poverty is not a mere economic or development problem but a matter of rights and (social) justice.

Ad III: Conceptual framework

- Considering that the majority of those living in extreme poverty are children, should the guiding principles have a dedicated section on this specific group or should this issue be cutting across the text? (paragraph 19 of the report); and what about other specific groups?

Concerning the specific questions related to children and extreme poverty, the ICJ recommends taking a double approach, i.e. having a specific section as well as dealing with the issue as a cross-cutting one all through the text. The very special vulnerability of children to poverty and the short, medium and long term effects of the latter on their rights, well being and personal development, as well as its impact on the whole society, require to spell out particular challenges and need for protection in a separate section. In parallel, where ever relevant, practical guidance for specific action to address these challenges and needs of children should be given all through the document.

In addition, the ICJ recommends that particular attention be given to rural communities and especially to indigenous people as groups who are disproportionately represented among the extreme poor. As the result of multiple forms of discrimination, indigenous people are not only victims of an history of deprivation of their rights and resources, but they are also still too often ignored or neglected by development efforts and poverty reduction strategies. On the contrary, current development strategies and projects, such as large dams or mines, continue depriving indigenous people from their lands and means of subsistence, thereby creating more poverty among them.

Ad IV: Overview of the main underlying and reinforcing deprivations faced by persons living in extreme poverty

- Would you identify other underlying and reinforcing deprivations and obstacles faced by persons in extreme poverty, in addition to the ones included in this section of the report?

The ICJ welcomes the extensive list of obstacles identified by the Independent Expert under the section dedicated to the main underlying and reinforcing deprivations faced by persons living in extreme poverty.

In general, the ICJ emphasises the need to recognise under this section that one of the greatest challenges to the full exercise of rights by persons living in poverty today is not only the

enforcement of laws without discrimination, but also the adoption of legislative and policy measures that ensure opportunities and substantive equality in the enjoyment of human rights for the poor.

Furthermore, based on its experience in the field of access to justice, the ICJ stresses the importance of adopting a broad interpretation of access to justice when addressing challenges faced by people living in extreme poverty. Formal or procedural justice and the access to judicial, quasi-judicial or alternative justice systems are not the only matters of concern for States and groups working with people in poverty. Perhaps more importantly, substantive justice and the outcome and remedies offered should be considered. These should be effective and acceptable to people living in poverty, which implies a need to take into account the material constraints, as well as the social and cultural conditions and aspirations, of people living in poverty while guaranteeing their right to an effective remedy, including reparation, restitution compensation, rehabilitation, satisfaction and guarantee of non-repetition (as detailed under section G of the DGPs).

Finally, the ICJ recalls that the right to an effective remedy requires that a judicial or quasi-judicial remedy (generally speaking a legal remedy) is available to victims. While political mechanisms and amicable settlement procedures can represent a flexible manner to find a solution to a conflict, the possibility of obtaining the review of each case and an enforceable decision by a judicial body should always be given to the alleged victims, at any stage of the settlement process.

Ad V: Proposal for improving the draft guiding principles on extreme poverty and human rights

- Are there any important aspects or issues missing in the annotated outline for guiding principles proposed in this section of the report?

Section 1: Overarching human rights principles

- Is the list of human rights principles in this section (headings A to G) sufficiently comprehensive or should any other principles be included in the guiding principles on extreme poverty and human rights?

With regard to section C on non-discrimination, the ICJ recommends that explicit reference be made to sexual orientation and gender identity as prohibited grounds of discrimination as required by international human rights law and recognised in UN jurisprudence and practice.¹ In addition, General Comment 20 of the UN Committee on Economic, Social and Cultural Rights (CESCR) offers a useful and extensive, but non-exhaustive, list of prohibited grounds of discrimination. The CESCR included the prohibition of discrimination based on “any other

¹ The International Commission of Jurists has compiled all instruments that prohibit discrimination on the basis of sexual orientation and gender identity, and that protect the rights of lesbian, gay, bisexual and transgender persons. A compilation of international human right law standards can be found in ICJ Practitioners guide No.4, accessible at

http://www.icj.org/default.asp?nodeID=349&sessID=&langage=1&myPage=Legal_Documentation&id=22929. In addition, the most recent relevant jurisprudence, general comments, concluding observations of treaty bodies and reports and communications by the Special Procedures of the UN Human Rights Council for the three year period 2007-2010 are set out in further detail within the ICJ’s publication Sexual Orientation and Gender Identity in Human Rights Law: References to Jurisprudence and Doctrine of the United Nations Human Rights System (4th ed. 2010), accessible at http://www.icj.org/default.asp?nodeID=349&sessID=&langage=1&myPage=Legal_Documentation&id=22610.

status”, which in the view of the ICJ is a crucial opportunity to address the various, complex and evolving situations that people living in poverty commonly are in when facing discriminatory practices in relation to their economic, social and cultural rights.

As highlighted in the recommendations of the Independent Expert to improve the DGPs, people living in extreme poverty are commonly suffering from multiple forms of discrimination, on various and cumulative grounds, with women and children being particularly affected. As suggested by the Independent Expert, this acknowledgment should be accompanied by recommendations for States to recognise the need to ensure substantive equality by taking all necessary measures to end both formal and substantial inequality.

In addition, the ICJ emphasises the importance of integrating an equality analysis throughout the text. While highlighting issues pertaining particularly to children, women and other groups subject to discrimination in particular sections of the guiding principles is valuable, it is important to also ensure that this analysis systematically informs other more general principles and recommendations.

- Are there any important aspects or issues missing in the recommendations in bold proposed under each of the overarching human rights principles in this section of the report?

The ICJ welcomes the suggested recommendations aimed at ensuring effective participation and autonomy of people living in poverty. In particular, the ICJ highlights the importance of strengthening community-based organisations and social movements as fundamental vectors for achieving genuine consultation and participation of people living in extreme poverty. From this perspective, it will be particularly important to pay special attention to the expectations and needs of people living in rural areas since these still constitute the majority of persons living in extreme poverty around the world. According to the latest Rural Poverty Report, almost three-quarters of the very poor still live in rural areas and the demographic and urbanisation trends should not change this reality in the coming years.² This situation undoubtedly has implications as to the steps that will be necessary to effectively apply the principles of autonomy, information, consultation and participation.

Section 2: Overarching policy guidelines

- Is the list of ‘overarching policy guidelines’ in this section (headings H to K) sufficiently comprehensive or should any other overarching policy guidelines be included in the guiding principles?
- Are there any important aspects or issues missing in the recommendations on bold proposed under each of the overarching policy guidelines in this section of the report?

Concerning section K on the role and responsibilities of third parties, the ICJ would like to insist on three points in relation to business enterprises and, in particular, transnational corporations.

First, States have the obligation under international human rights law, and especially under the International Covenant on Economic, Social and Cultural Rights (ICESCR), to protect people against interference with the enjoyment of their rights by third parties, including private business actors. This obligation applies not only on the territory of the State in which the abuse takes place. The obligation to protect extends extraterritorially and States have the duty to protect people against abuses committed by the third parties including business and transnational

² Rural Poverty Report 2011, IFAD, p.16, accessible at <http://www.ifad.org/rpr2011/index.htm>

corporations that they are in a position to control, wherever abuses occur. From this perspective, while regulation of the activities of business actors is a crucial element, there is a pressing need to reiterate and strengthen the obligation imposed on States by international human rights law to protect victims against human rights abuses by third parties, through not only regulation but also through sanctioning and/or adjudicatory regimes, including for abuses that occur abroad.

Furthermore, it is important to recall that businesses should not only respect human rights but can also contribute to their realisation through responsible business practices for sustainable development.

Finally, business enterprises should avoid harming human rights and contributing to harm done by others, including in particular by their subsidiaries, suppliers and other business partners.

Section 3: Specific rights-based obligations

The ICJ draws attention to a point of terminology in paragraphs 75 and 76 of Section 3 that concerns the right to adequate food. In these paragraphs, the phrases “small agriculture producers” and “small farmers” are used. For the sake of respecting the way in which the concerned groups define themselves, as well as for the sake of harmonisation and coherence, the ICJ recommends the use of the phrase “smallholder farmers”. This is in line with the terminology and definition of the UN Millennium Project (Hunger Task Force), as well as UN specialised agencies including the Food and Agriculture Organization and the International Fund for Agricultural Development. This also follows the terms used by social movements and civil society organisations such as La Via Campesina.³

- Is the list of rights identified in this section sufficiently comprehensive (headings L to W) or any other human rights should be also reflected in the guiding principles?

Under the heading P, the ICJ suggests dedicating a section of the DGPs to the right to an adequate standard of living and a separate section to the right to adequate food. The ICJ is of the view that equal attention should be paid to the right to food, as it is the case for the right to water and sanitation or the right to housing in the subsequent headings of the recommendations made to improve the DGPs in the progress report.

Separating the two sets of rights would help ensure that the right to adequate food is given equal attention and that States and other actors benefit from guidance for a greater enjoyment of this right by people living in extreme poverty. The splitting into two parts with a first heading concerning the right to an adequate standard of living would also allow more general attention to be paid to problems of competing needs, and the challenges concerning dignity that people living in extreme poverty are commonly faced with. Considering the growing number of people losing their livelihoods and being driven into more and more precarious situations due to crises, it is fundamental to consider the issue of an adequate standard of living per se. In compliance with the interpretation given by the CESCR,⁴ this implies that States should define a set of goods and

³ La Via Campesina is an international movement that represents around 200 millions of women and men peasants, agricultural workers, indigenous people and landless, in 70 countries over the world.

⁴ See UN CESCR, General Comment 12, paragraph 13 that stipulates: “Accessibility encompasses both economic and physical accessibility: Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised. Economic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through

services that should be accessible culturally, economically, physically and socially. This access should be in compliance with principles of human dignity and the core content of all human rights, including the right to education, to personal integrity, etc. In general, under the right to an adequate standard of living, extreme poverty leads to a competition between the satisfaction of different basic needs, which is contrary to the core obligations of States under the ICESCR (ensuring at least the minimum essential levels of each right, as an immediate – minimum core - obligation, that is not subject to progressive realisation).⁵

In very practical terms, no individual should, for instance, be forced to choose between feeding herself or himself adequately and paying the rent for decent housing. Unfortunately, these kind of choices have to be made daily by individuals, families and communities. In this regard, it is worth recalling that, especially in urban settings where there are more unavoidable and fixed expenses, people living in poverty will often use food as a point of flexibility in cases of lack of income and competing needs. This, in turn, becomes a global health problem as poor food diets and hygiene are at the core of the growing burden of chronic diseases such as cancer, diabetes and cardiovascular diseases.

From this perspective, the ICJ stresses the intimate relationship between poverty and noncommunicable diseases under the heading S concerning the right to health. It is now widely evidenced that poverty implies an increased exposure to risk factors and weaker access to underlying determinants of health including nutrition.⁶ In the context of growing attention paid by health experts at the domestic and international levels to the increased prevalence of non-communicable diseases, the particular vulnerability of people living in poverty to chronic diseases should be reflected in the Guiding Principles.

- Are there any important aspects or issues missing in the recommendations on bold proposed under each of the specific rights-based obligations in this section of the report?

The comments made above under heading P and S lead the ICJ to suggest the formulation of following recommendations:

- *Under heading P, recommendations could include the reiteration of State obligations, under the right to an adequate standard of living, to ensure the economic accessibility of food, housing, water and the guarantee that the satisfaction of one basic need will not be at the detriment of other needs.⁷*
- *Under heading S, the ICJ suggests revision of recommendations 1 and 3 with the addition of crucial elements as underlined in the text below:*
 - *Recall State obligations to ensure the enjoyment, without discrimination on any of the prohibited grounds, of a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health.*

special programmes.”

⁵ See UN CESCR, General Comment 3, paragraph 10 that states: “... a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant”.

⁶ According to the World Health Organisation, the four main noncommunicable diseases, namely cardiovascular diseases, cancers, chronic respiratory diseases and diabetes, are “the world’s biggest killers, causing an estimated 35 million deaths each year - 60% of all deaths globally - with 80% in low- and middle-income countries”. WHO, 2008-2013 Action Plan for the Global Strategy for the Prevention and Control of Noncommunicable Diseases, p.5.

⁷ See UN CESCR, General Comment 12, paragraph 13, note 4 above.

- *Call on States to take positive measures, tailor-made for groups whose access to health care, facilities, goods and services may raise particular challenges, such as women, older persons, children, indigenous peoples, minorities, slum-dwellers, labour migrants and those living in remote rural communities.*