



10 Years of the Right to Adequate Food Guidelines

Progress, Obstacles and the Way Ahead

Civil Society Synthesis Paper for the 41st Session of the UN Committee on
World Food Security



This paper is a product of a broad civil society consultation process, facilitated by the Global Network for the Right to Food and Nutrition, with the political support of the member organizations of the Civil Society Mechanism to the Committee on World Food Security.

MEMBER ORGANIZATIONS OF THE GLOBAL NETWORK FOR THE RIGHT TO FOOD AND NUTRITION:

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- World Organization against Torture (OMCT)

OTHER CONTRIBUTORS AND CONSULTED ORGANIZATIONS:

- ActionAid*
- Alianza por la Soberanía y Seguridad Alimentaria Nutricional (ASASAN)*
- Arab Group for the Protection of Nature (APN)*
- Asian Rural Women Coalition (ARWC)*
- FIAN Belgium*
- FIAN Colombia*
- IBON International
- Movimiento Agroecológico Latinoamericano y del Caribe (MAELA)*
- Oxfam*
- People's Coalition on Food Sovereignty (PCFS)
- Réseau des organisations paysannes et de producteurs de l'Afrique de l'Ouest (ROPPA)*
- University of Western Cape*

The elaboration of the synthesis paper was facilitated by FIAN International as the secretariat of the Global Network for the Right to Food and Nutrition and led by Nadia Lambek, with the contributions of the authors of the 2014 Right to Food and Nutrition Watch, the authors of the thematic and regional papers prepared to mark the 10 year anniversary of the Right to Food Guidelines, and the participants of a global civil society consultation held in Rome on July 7-8, 2014.

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(*)These contributors and organizations participated in the July 7-8, 2014 consultation meeting in Rome.

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EXECUTIVE SUMMARY

Ten years ago, in November 2004, the Food and Agriculture Organization of the United Nations (FAO) adopted the *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security* (RtAF Guidelines). Initiated by civil society, negotiated in a collaborative process, and unanimously adopted by all FAO member states, the RtAF Guidelines represented hope for a greater consensus on what was needed to make the human right to adequate food and nutrition a reality for people on the ground. Indeed, by delineating clear steps on how states could implement the right to food, and further still how to take a holistic approach – one that recognizes the importance of legal entitlements, policy coherence, and participation of rights holders – the RtAF Guidelines were set to reshape food system governance.

But what happened in the last ten years? What trends and events have shaped the context in which the right to food must be implemented? What, if any, successes at implementation have been achieved at the national, regional, and global level? What obstacles and challenges have inhibited progress? And how do we move forward to ensure a world where every person and community can enjoy the right to adequate food and nutrition? To mark the 10th anniversary of the RtAF Guidelines, civil society and social movements contributing to the promotion and defense of the human right to adequate food and food sovereignty have embarked on a critical assessment of where we are now in the struggle for solidifying the human right to adequate food and nutrition and where we must go.

Over the last decade a number of events and trends have shaped the context in which the human right to adequate food and nutrition is implemented, violated, and advocated for. The recurrent food price crises since 2007/2008 have increased international attention on hunger and malnutrition in all its forms. They have also made clear the devastating consequences of a dearth of global governance of food systems and crystallized the need for long-term, equitable and sustainable approaches to food system governance. Similarly, resource grabbing, rising rates of non-communicable disease, precarious work, climate change, extreme weather, and unsustainable production and consumption patterns have increased the vulnerability and marginalization of communities across the globe. At the same time, a deep divide between the market-led agricultural trade liberalization model (claimed to be the solution for food insecurity in the world by hegemonic industrialized states) and the proposed human rights-based model (championed by civil society, social movements and some countries) continues to characterize most food policy spaces, whether at international, national, regional or local levels. Increased corporate control over these spaces, as well as consolidation in corporate control over resources from land to seeds, and up and down the supply chain, has further cemented and exasperated this policy divide.

In the midst of these challenging circumstances, civil society organizations (CSOs) and social movements, representing various constituencies of rights holders – peasants, fisherfolks, pastoralists, indigenous peoples, rural women, youth, food and agricultural workers, urban workers, consumers, and others – have mobilized in their territories, in

international fora, on the streets, and in their workplaces. They have engaged in food policy spaces at all levels, advocating as or together with other rights holders. The right to adequate food and its close relation to food sovereignty have served as a uniting ground – connecting seemingly disparate struggles and peoples in different parts of the world – and, in the process, turned what might otherwise be local struggles into a global fight for human rights and food sovereignty.

Over the past decade – most often as a direct result of civil society and social movement struggles – some progress has been achieved in the recognition and implementation of the right to food. Though often temperate, and plagued by shortcomings, this progress can be seen in particular in four areas. First, there has been progress in how the right to food is conceptualized. Through the work of civil society and social movements, as well as a number of academics and human rights experts, a paradigm shift is emerging. The shift has been to recognize the interconnectedness within food systems, and towards understanding the relationship between abuses of power, social exclusion, displacement, political powerlessness, hunger and malnutrition, and demanding that rights holders be placed at the center of policy and engage in decisions that impact their lives.

Second, spurred by the campaigns of social movements and civil society, progress has been achieved in the domestic implementation of the human right to adequate food. A growing number of states have guaranteed constitutional protection of the right to food (e.g. Brazil, Kenya), and others have adopted right to food framework laws (e.g. Colombia, Zanzibar) and policies (e.g. Uganda). While justiciability of the right to food remains a challenge, national courts have begun to recognize and enforce state obligations to respect, protect, and fulfill the right to food (e.g. Guatemala, India).

Third, progress in international governance has been achieved through the 2009 reform of the Committee on World Food Security (CFS). Civil society, and in particular food producers, played an active role in the elaboration of the reform. Since then, through their inclusion as full participants in the reformed CFS, civil society has continued to shape the CFS agenda and negotiations of outstanding processes such as on the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, endorsed in May 2012, the Global Strategic Framework for Food Security and Nutrition (GSF), endorsed in October 2012, or the Principles on Responsible Agricultural Investment, to be endorsed in October 2014. These processes attempt to bring coordination, coherence and accountability to decision making on food, nutrition and agricultural issues. A number of regional initiatives – such as the Latin American Parliament – have further contributed to increased global governance of food systems.

Fourth, progress has been made in supporting small-scale food producers and recognizing and connecting areas often seen as distinct from the right to food, into the right to food struggle. Now understood as those who feed the majority of the Global South while also enduring some of the highest prevalence rates of hunger and malnutrition, small-scale food producers have become the focus of some global and regional governance initiatives. A global consensus about the outstanding contributions of small-scale food producers for food security and nutrition was reached, and a recognition of their role as rights holders.

At the hands of a diverse civil society who has united around defending and promoting the right to food, policy connections have also been made at a variety of levels between the right to adequate food and women's rights, workers rights, land rights, gender equality, the nutrition and health nexus, social protection and water rights, within a food sovereignty framework. In recognizing the indivisibility of human rights, these efforts have promoted a holistic approach, necessary to tackle hunger and malnutrition.

However, despite the progress achieved, enormous challenges still remain to building sustainable and equitable food systems and to ensuring the right to food for millions across the globe. A first, and most fundamental, obstacle is that despite being enshrined in international law since 1948, there is still great resistance by many states and international organizations to fully and effectively recognize the right to food. For example, a number of organizations – the G7, G8, World Bank, World Trade Organization and International Monetary Fund – do not address the right to food in their work, while even the FAO has still a challenge to mainstream the right to food in its work. Non-recognition is compounded by a lack of political will (with governments failing to act on their right to food obligations, despite recognizing them), minimalistic approaches (resulting in programmes focused on the symptoms of hunger and malnutrition rather than the structural causes) and policy incoherence (resulting in the non-alignment of strategies and policies in those areas that impact the food system and food system governance).

The food system – on all levels – has also been plagued by a lack of participation and accountability, which makes addressing non-recognition, weak implementation and violations of the right to food nearly impossible. One of the greatest obstacles to achieving the right to food has been the widespread exclusion – at the local, national, regional, and international level – of rights holders, and in particular those constituencies most affected by hunger and malnutrition, from food policy spaces. Indeed, over the past decade and despite the shining example of the CFS, civil society and social movements have been systematically and widely excluded from negotiations on agenda setting and from the development, implementation and monitoring of laws and policies. Similarly, while new monitoring mechanisms have been developed and championed by civil society, the persistent lack of effective institutional monitoring mechanisms, accountability, and access to formal justice has characterized the majority of national and international contexts, leading to persistent impunity. Human rights defenders have paid some of the highest costs for weak accountability – in many cases being criminalized, losing their freedom and even their lives in the struggle to defend and promote the right to food.

Furthermore, while most states and international organizations still fail to fully recognize their obligations under international human rights law, particularly their extra-territorial obligations, or lack the political will to implement the right to food, the corporate private sector is clearly gaining greater influence in food systems and policy spaces worldwide. Over the past decade through ongoing land, water, seeds, and raw material grabs, corporations have seized control of productive resources, resulting in the displacement and dispossession of local populations and the conversion of land away from food production. At the same time, there has been increased corporate capture of international food and nutrition governance, with corporations (who work under profit motives and not necessarily in the public interest) influencing areas from trade agreements, to public

health, and nutrition programmes. In the current political climate – where governments and international organizations lack accountability and the private sector can act with impunity – there is great risk that the successes achieved and the efforts at reorienting food system governance towards a human rights-based framework will be reversed and that progress will not continue.

In this context, the celebration of the 10th anniversary of the Guidelines comes at an important time. The anniversary serves as a critical opportunity for governments, international organizations, and civil society to reaffirm commitments and identify tasks for the future. In this respect, civil society commits to building more inclusive movements and to continuing the struggle at the local, national, regional and global level, to guarantee that all people in the world have the right to adequate food and nutrition. Civil society also has a number of demands. Civil society demands that states and international organizations make continued and renewed efforts: to continue the emerging paradigm shift by increasing human rights learning and sharing of experiences; to further develop national and international frameworks for the adoption of the right to food in conjunction with food sovereignty; to institute policy coherence and a holistic approach to the right to adequate food and nutrition; to improve accountability, monitoring and access to justice; to democratize the food system and create space for real participation at all levels of civil society and social movements; and, to reaffirm the RtAF Guidelines in light of the new developments and circumstances that characterize food systems today.

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I) INTRODUCTION

Ten years ago, in November 2004, the Food and Agriculture Organization of the United Nations (FAO) adopted the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security (RtAF Guidelines). Initiated by civil society, negotiated in a collaborative process, and unanimously adopted by all FAO member states, the RtAF Guidelines represented hope for a greater consensus on the path ahead and what was needed to make the human right to adequate food and nutrition a reality for people on the ground. In the years since the RtAF Guidelines were adopted, while some progress has been achieved in implementing the right to adequate food and nutrition, it arguably remains the most consistently violated human right across the globe.

The progress in implementing the right to food and nutrition that has been achieved over the last decade can be directly accredited to civil society and social movement struggles. Civil society organizations (CSOs) and social movements, representing various constituencies of rights holders – peasants, fisherfolks, pastoralists, indigenous peoples, rural women, food and agricultural workers, urban workers, consumers and others – have mobilized in their territories, on the streets, and in their workplaces and engaged in food policy spaces at all levels, advocating as or together with other rights holders. Through their work, and the support of a number of academics and human rights experts, a paradigm shift is emerging. This emerging paradigm recognizes the interconnectedness of food systems, understands the relationship between abuses of power, social exclusion, displacement, political powerlessness, hunger and malnutrition, and demands that rights holders be placed at the center of policy and engaged in decisions that impact their lives. In this context, progress at implementation has also come at the hands of select governments, judiciaries and international institutions that have begun to recognize the human right to adequate food and nutrition, and to take some of the corresponding steps to respect, protect and fulfill this right.

However, while some progress has been made, enormous challenges still remain to building sustainable and equitable food systems and to ensuring the right to food for millions across the globe. Indeed, the anniversary of the RtAF Guidelines comes at a critical time. While most states and international organizations still fail to fully recognize their obligations under international human rights law or lack the political will to implement the right to food, the corporate private sector is clearly gaining greater influence in food systems and policy spaces worldwide. In this political climate – where governments and international organizations lack accountability and the private sector can act with impunity – there is great risk that the successes achieved and the efforts at reorienting food system governance towards a human rights based framework will be reversed and that progress will not continue.

The tenth anniversary of the adoption of the RtAF Guidelines provides an important opportunity to take stock of these achievements and shortcomings, as well as the many obstacles that remain to the full realization of the human right to adequate food, especially with respect to its inextricable relations to food sovereignty, women's rights and nutrition. More importantly, it provides an opportunity for governments, international organizations and civil society to reaffirm commitments and identify tasks for the future.

As a contribution to the anniversary, civil society and social movements contributing to the promotion and defense of the human right to adequate food and nutrition and food sovereignty have embarked on a critical assessment of where we are now in the right to adequate food struggle and where we must go. To this end, the 2014 Right to Food and Nutrition Watch was dedicated to analyzing gains, concerns and

struggles of the past decade; ten regional and thematic papers were elaborated assessing implementation of the RtAF Guidelines; and civil society met in two consultations, one online and one in Rome. This paper serves as a synthesis of these efforts and as an outline of civil society's key demands from states and international organizations in the struggle for the human right to adequate food and nutrition.

The paper begins in Section II by providing the global context from the last ten years, summarizing those events and processes that have shaped the governance of food systems, and the struggles of rights holders. In Section III the paper presents achievements of the past decade to which the RtAF Guidelines have contributed to changing the paradigm around the right to food, in increasing national implementation and in developing global governance of food systems. Section IV highlights the challenges and obstacles of the last decade in achieving the full realization of the right to food, from a lack of policy coherence, to minimalist approaches, persistent social exclusion and the growing influence of the corporate sector on public policy. Section V concludes by offering recommendations and requesting commitments from governments, regional bodies, international organizations, civil society, and social movements, on the path ahead. Finally, Section VI presents a vision statement for the future.

II) GLOBAL CONTEXT

In the ten years since the adoption of the RtAF Guidelines a number of events, processes and trends have shaped the context in which the human right to adequate food and nutrition is violated, as well as advocated for. Before a full analysis of the successes and shortcomings in the implementation of the right to food, we turn briefly to this context.

The last decade has been marked by a continued dispute between the market-led agricultural trade liberalization model – claimed to be the solution for food insecurity in the world by hegemonic industrialized states – and the proposed human rights-based regulation of global and national food and nutrition related policies espoused by civil society and some countries. In 2005, a number of Organization for Economic Co-operation and Development (OECD) countries, proposed a thorough review of the FAO, with the aim of transforming it into a technical agricultural support organization, without a mandate to deal with hunger, malnutrition and food security. The same group of countries led an attempt to close down the Committee on World Food Security (CFS), under a similar mantra that the “free market” and the World Trade Organization (WTO) would take care of hunger and malnutrition. The approval of the RtAF Guidelines was a move in the other direction, reaffirming the binding obligations of states and international organizations under international human rights law to respect, protect and fulfill (facilitate and provide) the human right to adequate food inside and outside of their territories.

Perhaps, the most historic events of the past decade in relation to global hunger and food system governance have been the recurrent food price crises since 2007/2008. The causes of the food price crises are many, but generally they are seen to be the result of changes in supply and demand of food, rising oil prices, the dismantling of national agricultural systems by the imposition of structural adjustment policies and trade liberalization, historical dependence by many countries on cheap imports, the rising demand for agrofuels, the increased financialization and speculation in agriculture, the deregulation of the financial sector, decades of underinvestment in rural areas, and, for many rural smallholders, the loss of access to productive resources.

The crises made clear the devastating consequence of a dearth of global governance of food systems, and crystallized the need for long-term, equitable and sustainable approaches to food system governance.¹ They also made evident the inefficiency of the “free” markets in presenting automatic solutions for food insecurity, hunger and malnutrition. Rather than assist, the hegemony of the free market played a heavy role in causing more violations of the right to adequate food.

Further still, the crises made very apparent to the world the connection between the hegemonic economic model, vulnerability, marginalization, hunger and malnutrition: that political disempowerment, social exclusion, discrimination, inequality, land grabbing, displacement and dispossession are the root causes of hunger and malnutrition.² Without access to productive resources, and in labour markets characterized by increasing precariousness, the crises left millions – both in urban and rural areas – unable to meet their food needs, and resulted in widespread violations of the right to food. The crises also drew the world’s attention to new or forgotten faces of hunger, and to the methodological limitations of how figures on world hunger are being produced and presented. For example, by focusing on yearlong household averages, the majority of hunger statistics fail to capture the growing number of short-term undernourished, intra-household inequalities in food distribution³ and the inadequacy of diets.⁴

As the crises played out, it became evermore clear that the FAO and the CFS were needed. With a clear mandate to deal with food security-related global policies, and guided by the right to adequate food framework, the CFS could influence global governance of food and nutrition and support and guide national states on the promotion and protection of this right. In 2009, the CFS was reformed to better serve this purpose. The CFS reform document affirmed the RtAF Guidelines and protected the direct participation of CSOs and social movements, composed of those most affected by hunger and malnutrition, in the preparation of the agenda, discussion, elaboration, monitoring and accountability of food and nutrition-related policies.

Other connected trends have also emerged. Resource grabbing, has arguably intensified over the past decade, with agribusiness, extractive industries and financial investors increasingly taking control of natural resources, displacing smallholders, undermining the sovereignty of food producers, concentrating land and resources and converting agricultural land for large-scale mono-crop agriculture. Further still, multinational corporations – from food and beverage conglomerates to pharmaceuticals, agrofuel and agro-input corporations – are demanding, and achieving, increased decision-making influence from the international level, to the local level and even down to the consumer. At the same time, struggles over access to and control over natural resources and participation rights at food policy fora have become an increased focus of civil society and social movement solidarity.

In addition, growing rates of non-communicable diseases – such as diabetes and heart disease – have seen global attention focused on nutrition and diets, and to the increased availability and consumption of

¹ Flavio Luiz Schieck Valente & Ana María Suárez Franco, *Human Rights and the Struggle Against Hunger: Laws, Institutions, and Instruments in the Fight to Realize the Right to Adequate Food*, 13(2) YALE HUMAN RIGHTS AND DEVELOPMENT LAW JOURNAL (2010); Carmen G. Gonzalez, *International Economic Law and the Right to Food*, in RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW (Lambek et al., eds, 2014).

² Of course this has long been acknowledged by civil society and social movements, and indeed has been the focus of their work for many decades. However, the political upheavals, from riots to revolutions that accompanied the crises put these connections on the global center stage.

³ Olivier De Schutter, United Nations Special Rapporteur on the right to food, *Final Report: The Transformative Potential of the Right to Food*, A/HRC/25/57 (2014); F. M. Lappé et al., *How We Count Hunger Matters*, in ETHICS AND INTERNATIONAL AFFAIRS (2013).

⁴ The statistics also say nothing of the fact that measuring consumed calories says little about nutritional status, poor health or sanitation. De Schutter, *supra* note 3.

cheap ultra-processed products and fast food, linked to a limited number of mono-cultivated commodities. The impacts of climate change and extreme weather are becoming apparent, causing many to worry about the environmental consequences of consumption and agricultural patterns. And a number of protracted crises have left millions without proper access to food, and without the means to acquire food on their own.

In the face of many of these challenges, the last decade has also seen growing solidarity among civil society and social movements. As will be discussed in more detail below, the right to food has served to connect seemingly struggles and peoples across the globe.⁵ For example, in June 2013 the Global Network for the Right to Food and Nutrition was founded,⁶ as a space for dialogue, mobilization and solidarity. Most recently, the combined efforts of over 500 CSOs have led to the Human Rights Council's adoption of a resolution to move towards the elaboration of a binding treaty to prevent human rights violations by transnational corporations.⁷ These successes are evidence that social mobilization can impact powerful actors, and that while progress may be slow, it is not only necessary but also possible.

The following sections look at efforts to address hunger and malnutrition, challenges faced and the road ahead.

III) PROGRESS TOWARDS THE REALIZATION OF THE RIGHT TO ADEQUATE FOOD

Over the past decade a number of examples have emerged of progress towards the recognition and implementation of the right to food. While this progress has been temperate and plagued by shortcomings, there are many instances of movement in the right direction. In this section, we highlight achievements of the past decade in four areas: a paradigm shift in the recognition of the right to food, national implementation of the right to food, global governance of the food system, and addressing the wide scope of the right to food. We also examine the role of civil society and social movements in contributing to and fueling this progress.

⁵ Carolin Callenius, Stienke Oenema & Flavio Valente, *Preface*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

⁶ FIAN International, *Global Network for the Right to Food and Nutrition: A Call to Action* (2013), http://www.rtfn-watch.org/uploads/media/GNRtFN_-_Formatted_Network_Call_to_Action.pdf.

⁷ Over 500 CSOs formed an alliance to demand the adoption of this resolution. For more information, see www.treatymovement.com/blog/2014/7/1/stop-corporate-impunity-press-release.

1) AN EMERGING PARADIGM SHIFT FOR FOOD AND NUTRITION AND CIVIL SOCIETY'S CONTRIBUTION

THE EMERGING PARADIGM SHIFT

Over the past few decades, a paradigm shift in how the right to food is conceptualized has emerged. Through the advocacy efforts of civil society and social movements, this paradigm shift has seen some countries, international organizations, and regional bodies recognize the right to food as a human right: one that entitles individuals and communities to adequate, accessible and available food, moves away from charity-based models, and imposes obligations on states to respect, protect and fulfill the right to food.

The paradigm shift has also seen increased consciousness of the interconnectedness between food and the energy, financial, economic and ecological crises. Indeed, there is a growing awareness about the enormous effects of economic and financial policies – such as price volatility, food speculation, agro-fuels expansion, mega-development projects, bilateral trade and investment treaties, and drastic austerity measures – on food security and nutrition. From this, many governments and international institutions are beginning to recognize the importance of policy coherence between these areas and food and nutrition. Similar recognition has occurred with respect to the interconnectedness of the right food, in areas such as access to land, workers rights, nutrition, water rights, education, agricultural policies and so on, and the importance of policy coherence between these areas.

The paradigm shift has allowed for a better understanding of why people are hungry. Today there is increased recognition that gender-related discrimination is a main cause of hunger and malnutrition, related to structural violence, and the consensus in principle that women are key food producers, and that their involvement and leadership in decision-making and their equal access to natural and economic resources, including inheritance, is vital for food and nutrition security. Other forms of social exclusion – discrimination based on national origin, age, disability and sexual orientation – are now also seen as causes of hunger.

Finally, through the paradigm shift a new consensus on the food and nutrition nexus has developed, with many parties in the food system recognizing the links between different manifestations of malnutrition, such as undernourishment and obesity. The causes of this emerging paradigm shift, how the shift has evolved, how it has reshaped the food governance agenda, and the role of the RtAF Guidelines, as well as civil society and social movements in this shift, are discussed in more detail below.

THE CONTRIBUTION OF THE RTAF GUIDELINES TO THE EMERGING PARADIGM SHIFT

One of the major achievements of the RtAF Guidelines has been their contribution to the emerging paradigm shift. The idea for the RtAF Guidelines can be traced back to civil society, who began lobbying for the development of a code of conduct to outline state responsibility with

respect to the right to food in the 1990s.⁸ When the CFS decided to elaborate the RtAF Guidelines, civil society was well positioned to participate in the negotiations. Through the human rights working group of the International Planning Committee for Food Sovereignty (IPC), a network of organizations comprising farmers and fisherfolk organizations, non-governmental organizations (NGOs) and human rights organizations, civil society was able to make substantial contributions to the elaboration of the RtAF Guidelines.⁹

Following negotiations between civil society and governments, the RtAF Guidelines were adopted unanimously by all member states. The unanimous adoption of the Guidelines, as well as the fact that their language was negotiated directly by governments, has been key both to their legitimacy and as an important step in the paradigm shift.¹⁰ Through the Guidelines, governments seemingly expressed consensus on important elements of national implementation of the right to food, and recognized the importance of taking a coherent and holistic approach to the food system and addressing hunger and nutrition.¹¹

Over the years, the RtAF Guidelines have set the stage for a global discourse on economic, social and cultural rights (ESCR).¹² They have helped to increase the visibility and recognition of adequate food and nutrition as a human right. They have provided a road map to what the full realization of the right to food entails, and the obligations of states in this respect. And as a result of their participatory negotiations, they paved the way for more inclusive processes at the FAO and the CFS more broadly.

A GROWING GLOBAL MOVEMENT FOR THE RIGHT TO ADEQUATE FOOD AND FOOD SOVEREIGNTY

A driving force behind the paradigm shift has been right to food defenders across the globe. Indeed, one of the great successes of the last decade has been the emergence of civil society solidarity around the right to food. The right to food has served to connect seemingly disparate struggles and peoples in different parts of the world, turning what might otherwise be local issues with little international appeal, into an interconnected global fight for human rights.¹³

In the past decade, the right to food, as well as other related economic, social and cultural rights, have become cornerstones of social struggles. These rights are at the core of the political agenda of social movements and civil society organizations in their fights for land, territory, water, living wages, social protection, healthy nutrition, gender justice, social justice, participative democracy,

⁸ Abby Carrigan, *The "Rights" Time: Civil Society Reflections on the Right to Adequate Food*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

⁹ Priscilla Claeys & Nadia Lambek, *Creating an Environment for a Fully Realized Right to Food: Ten Years of the Voluntary Guidelines on the Right to Food (Guidelines 1-6)*, Unpublished 10th Anniversary of the RtAF Guidelines (2014).

¹⁰ As noted by Michael Windfuhr regarding the unanimous adoption: "now you have an interpretation that no state can claim to be unaware of, or not to adhere to. That makes it stronger than many other standards." Michael Windfuhr, German Institute of Human Rights, as quoted in Carrigan, *supra* note 8.

¹¹ See Olivier De Schutter, *The Right to Food Guidelines, Food Systems Democratization and Food Sovereignty: Reflections by Olivier De Schutter*, RIGHT TO FOOD AND NUTRITION WATCH (2014) ("the legitimacy of the Right to Food Guidelines is unique because they were negotiated with governments. ... Governments should not be allowed to ignore a text they themselves have negotiated, and approved by consensus within the FAO council.").

¹² Biraj Patnaik, Indian Right to Food Campaign, as quoted in Carrigan, *supra* note 8.

¹³ Lalji Desai, World Alliance of Mobile and Indigenous People & Jamin Adhikar Andolan Gujarat (Jaag), Interview with Abby Carrigan, May 1, 2014.

food sovereignty, agro-ecology and sustainable food systems. As many of the social movements consist of precisely those whose right to food and nutrition are most often violated, it is fundamental that they play the leading role in defending and promoting their human rights, with support from the other civil society groups. The Global Network for the Right to Food and Nutrition, launched in 2013, is an important place of solidarity between these different groups of actors. The Network aims to provide a space for them, through joint learning and action, to better synergize their work and to hold states and international institutions accountable to meeting their obligations to realize the right to adequate food and nutrition.¹⁴

At the same time, there have been increasing ties established between the right to adequate food and food sovereignty movements. Through joint campaigns and interactions with the right to food community, the language of human rights has become more prominent in the discourse of La Via Campesina, and the broader food sovereignty movement.¹⁵ Similarly, “the collaboration of social movements, right to food activists and academic experts – this strategic alliance – has enormously strengthened the right to food. This is one of the major achievements of the RtAF as compared to the developments of other ESCR.”¹⁶ Today the right to adequate food is seen as an essential part of local, national and global alternatives, like food sovereignty, and the many principles of food sovereignty inform global understanding of the right to food and the means to achieve it. Together, both concepts have been inspiring local, national and global struggles on many related issues.

2) PROGRESS IN NATIONAL IMPLEMENTATION OF THE RIGHT TO FOOD

One of the most significant transformations of the last decade is the growing number of states that have made efforts to institutionalize the right to food in the domestic context through the national implementation of the right to food. This national transformation has happened through legislatures and parliaments adopting right to food framework laws and national strategies; through constitutional reforms; and at the hands of the national judiciaries who have begun to recognize and enforce economic and social rights historically seen as non-justiciable. In some cases, the RtAF Guidelines have assisted these advancements, providing a blueprint for countries in this process. While there is concern in all contexts that what is in the books is not what is experienced on the ground, increased national implementation is still an important marker of progress and provides a base for future struggles.

POLICIES

The RtAF Guidelines 2 and 3 speak of the importance of adopting national food security and nutrition policy frameworks and strategies as a means to secure the right to food. While policies

¹⁴ The Network is an initiative that mobilizes civil society organizations and international social movements, including peasants, fisherfolk, pastoralists, indigenous peoples, and food and agricultural workers to hold states accountable for their obligation to realize the right to food and nutrition. The Network recognizes the invisible structural violence of states and corporations that impedes the realization of women and girls’ human rights. See Global Network for the Right to Food and Nutrition, A Call for Joint Action (2013), http://www.fian.org/fileadmin/media/publications/GNRtFN_-_Formatted_Network_Call_to_Action.pdf.

¹⁵ Sofia Monsalve, FIAN International, as quoted in Carrigan, *supra* note 8.

¹⁶ *Ibid.*

do not necessarily provide the protection of legal entitlements, they afford means for short and long term strategic coordination and benchmarking. A number of countries have adopted national strategies or policies to implement the right to food.¹⁷ For example Uganda adopted three national policy measures to ensure national food and nutrition security in 2003, 2005 and 2011. These policies, and in particular the 2003 policy, embed a rights-based approach and recognize Uganda's international obligations towards the right to food.¹⁸ While Canada has not adopted a national right to food policy, civil society through a participatory process has elaborated a detailed human rights-based Peoples Food Policy.¹⁹ Through their efforts, a national dialogue was initiated in Canada, and most political parties have responded by speaking about a national food policy in their campaign platforms, or engaging in some form of draft policy development.²⁰

An important step in ensuring policies (and laws) meet their objectives is establishing proper budgeting. Argentina for example, has a Special Food and Nutrition Fund for the implementation of the National Programme for Food and Nutrition Security, which ensures continuous funding of the Programme and legislative scheme.²¹ Mali and Nicaragua also have special funds designated for agriculture and food security respectively.²²

LEGAL FRAMEWORKS

The RtAF Guidelines, specifically Guideline 7, also speak of the importance of recognizing the RtAF in national legal frameworks. Legal protection of the right to food is so important, because it can institutionalize a move from food as a form of charity to food as an entitlement, enforceable upon the government. One way the right to food can be integrated in the domestic legal system is through constitutional protection. The last decade has seen a remarkable rise in the number of countries affording constitutional protection to the right to food.²³ To date over 20 countries have adopted constitutional provisions guaranteeing the right to food, including South Africa, Kenya, Switzerland,²⁴ Bolivia, Ecuador,²⁵ Mexico and Brazil.

¹⁷ Claeys & Lambek, *supra* note 9. The advantages of right to food strategies are highlighted by Olivier De Schutter as means for: 1) identifying the measures to be adopted, assigning responsibility across different departments and imposing deadlines, 2) allowing for a whole-of-government approach, in which various policies in areas like health care, education, employment, social protections, agriculture and rural development can be coordinated, and 3) building multi-year strategies that make it possible to combine short-term approaches and long-term concerns. Olivier De Schutter, United Nations Special Rapporteur on the right to food, *Right to Food*, A/68/288 (2013).

¹⁸ Sibonile Khoza, *Celebrating 10 Years of Voluntary Guidelines on the Right to Food: Progress, Shortcomings and Challenges in Africa*, Unpublished 10th Anniversary of the RtAF Guidelines (2014); Isabella Rae, *Implementing the Right to Food in Uganda: Advances, Challenges and the Way Forward*, in *RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW* (Lambek et al., eds, 2014).

¹⁹ People's Food Policy Project, *Resetting the Table: A People's Food Policy for Canada* (2012), <http://foodsecurecanada.org/sites/default/files/fsc-resetting2012-8half11-lowres-en.pdf>.

²⁰ Claeys & Lambek, *supra* note 9.

²¹ De Schutter, *supra* note 17.

²² *Ibid.*

²³ See Christophe Golay, *The Right to Food and Access to Justice: Examples at the National, Regional and International Levels*, FAO (2011); De Schutter, *supra* note 17.

²⁴ In Switzerland the right to food is indirectly protected under the Constitution, which holds the right to the minimum conditions of life, including the right to food. Jennie Jonsén, *Europe and the Right to Adequate Food and Nutrition: Assessing a Decade of Progress, Shortcomings, and Challenges Ahead*, Unpublished 10th Anniversary of the RtAF Guidelines (2014). Judges in

National framework laws are also a means for national protection of the right to food, and for coordinating efforts and detailing steps government must take.²⁶ Since the adoption of the RtAF Guidelines, there has been considerable progress in the adoption of national framework laws in support of the realization of the right to food, with Latin America leading the way. In the last decade, food and nutrition laws grounded in the right to food have been adopted in Argentina (2003), Guatemala (2005), Ecuador (2006 and 2009), Brazil (2006), Venezuela (2008), Colombia (2009), Nicaragua (2009) and Honduras (2011), with other countries such as Bolivia, Costa Rica, the Dominican Republic, El Salvador, Haiti, Panama, Paraguay and Peru²⁷ currently considering framework laws.²⁸ The success in Latin America has been the result of combined efforts between civil society, social movements, parliamentarians and national human rights institutions.²⁹ The FAO, and in particular the Right to Food Team, as well as the Office of the High Commissioner for Human Rights (OHCHR), have also contributed to the progress.

Other areas of the world have seen the successful adoption of right to food framework laws as well or are in the process of adopting laws. India recently passed the National Food Security Act 2013, which legally entitles roughly two-thirds of the country to a fixed amount of rice, wheat and coarse cereals per month.³⁰ However, there has been significant criticism from civil society that the Act is at best a food entitlement law not in line with the more holistic approach of the right to food. More specifically, criticism has been raised that the law does not address production issues directly, has no relief for farmers, does not adequately address questions of nutrition and has left out provisions contained in earlier drafts for community kitchens for the urban poor and protocols for communities who face chronic hunger.³¹ While not on the national level, the right to food framework law of Zanzibar is also noteworthy, as it directly utilizes a rights-based perspective outlining government obligations, establishing a National Food Security and Nutrition Council to monitor the realization of the right to food, and attempting to integrate relevant sector ministries.³²

The Philippines currently has an exciting draft law before parliament. The National Food Coalition, composed of over 50 civil society organizations, drafted a right to food framework bill which adopts a rights-based approach. The draft Bill, which has been introduced before parliament, seeks to harmonize different sectoral laws, clarify the scope and content of the right to adequate food, and establish standards for compliance. It is founded on the principles of participation,

Switzerland have protected the right to the minimum conditions of life in several cases, and the right to food directly with respect to cases of undocumented people and rejected asylum seekers. *Ibid.*

²⁵ The Constitutions of Ecuador and Bolivia also recognize the duty to ensure food sovereignty. Juan Carlos Morales González, *First Decade of Voluntary Guidelines on the Right to Food in Latin America: An Approach to the Trends, Progress and Obstacles in its Implementation*, Unpublished 10th Anniversary of the RtAF Guidelines (2014).

²⁶ De Schutter, *supra* note 17. ("Such a legal framework may allow for the ring-fencing of resources, ensuring that the policies that are integrated within food security strategies will be well funded, without being taken hostage by changing political majorities.")

²⁷ In the case of Peru, in 2010 the MIMDES estimated that 13 million 800 thousands Peruvian men and women, almost half of the population, were exposed to food insecurity. The Law on Food and Nutritional Security was adopted on its first vote on December 19th, 2013. In June 2014, the law received Congressional approval, and it is now awaiting ratification by the executive authorities.

²⁸ Morales González, *supra* note 25; De Schutter, *supra* note 17.

²⁹ De Schutter, *supra* note 17.

³⁰ Biraj Patnaik, *Right to Adequate Food in Asia: Progress and Challenges*, Unpublished 10th Anniversary of the RtAF Guidelines (2014).

³¹ Biraj Patnaik, *India's National Food Security Bill: Hope or Hype?*, RIGHT TO FOOD AND NUTRITION WATCH (2013).

³² Maarten Immink, Mansura Kassim & Ali Haji Ramadhan, *Facilitating Right to Food Actions Through an Enabling Policy and Legislative Environment: The Zanzibar Experience*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

empowerment, non-discrimination and transparency.³³ The Bill is still working its way towards adoption, and it is not clear to date whether Congress will ultimately approve it, but it does have support from numerous Government representatives. If successfully implemented, the Bill could provide a model process for engagement with civil society and of a rights-based framework law.³⁴ In Europe, parliamentarians from the Belgian opposition party submitted a right to food framework law in January 2014. The Bill, which is based on the RtAF Guidelines, seeks to establish the “Belgian State’s legal obligation to implement the right to adequate food” by enshrining the right into law, defining the government’s responsibilities, introducing a holistic approach to the entire food chain, and creating increased participation through the creation of a National Food Policy Council.³⁵ If Belgium adopts such a framework law, it will represent a major step in the fight against hunger in Belgium, as well as the first adoption of a right to food framework law in Europe.³⁶ Other countries with pending national framework laws include Uganda, Mozambique and Malawi.³⁷

JUSTICIABILITY OF THE RIGHT TO FOOD

One of the products of increased national legal protection of the right to food, as well as emerging conceptions of economic and social rights, has been progress on the justiciability of the right to food in the last decade.³⁸ Whereas ten years ago only a small number of courts had found and remedied right to food violations, today a handful of cases exist across the globe. These cases were brought by civil society, rights holders and NGOs, who have combined strategic litigation with greater advocacy work, awareness campaigns, and trainings of local communities as well as judges,³⁹ to remedy and prevent right to food violations as well as to hold governments accountable.

In this respect, the *People’s Union for Civil Liberties v. Union of India and Others* case in India is to date “the most spectacular case of a court protecting the right to food.”⁴⁰ Initiated in 2001 by a domestic human rights organization, the case challenged the government’s failure to address hunger and starvation-related deaths.⁴¹ The case remains before the Supreme Court today, and in

³³ Aurea G. Micalat-Teves, *Laying the Ground for the Food Framework Law in the Philippines*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

³⁴ *Ibid.*

³⁵ Cf. Proposition de Loi-Cadre: *Instaurant L’obligation D’une Mise en Oeuvre Effective du Droit à L’alimentation par la Belgique*, Bill, explanatory memorandum, Doc 53-3317/001, p. 12-13. According to Manuel Eggen, “Sectoral approaches have proven insufficient to overcome these obstacles. It is therefore necessary to develop intersectoral and holistic policies based on human rights that can enable citizens to regain control of the food system.” The new draft bill seeks to provide a holistic approach. Manuel Eggen, *The Law on the Right to Adequate Food: A Necessary Step in the Fight against Food Insecurity and Malnutrition in Belgium*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

³⁶ *Ibid.*

³⁷ Khoza, *supra* 18.

³⁸ Christian Courtis, *The Right to Food as a Justiciable Right: Challenges and Strategies*, MAX PLANCK UNYB11 (2007); Nadia Lambek & Claire Debuquois, *National Courts and the Right to Food*, in *ENCYCLOPEDIA OF FOOD AND AGRICULTURAL ETHICS* (Paul Thompson et al., eds, 2014); Golay, *supra* note 23; De Schutter, *supra* note 17.

³⁹ In some countries – for example Honduras and Guatemala – civil society has conducted trainings on the right to food with judiciaries.

⁴⁰ De Schutter, *supra* note 17.

⁴¹ *People’s Union for Civil Liberties v. Union of India*, Writ Petition (Civil) No. 196 of 2001 (Supreme Court of India) (India); L. Birchfield & J. Corsi, *Between Starvation and Globalization: Realizing the Right to Food in India*, 31 *MICHIGAN JOURNAL OF*

the last decade, the Court has expanded its original reach, focusing on larger systemic issues of food insecurity, poverty and unemployment. The Supreme Court has issued a series of interim orders recognizing a constitutional right to food (as flowing from the right to life), identifying a number of schemes as legal entitlements, determining a basic nutritional floor, and providing directives on the creation, preservation and proper implementation of various programmes, like the national Mid-Day Meal Scheme (providing food in school) and the Public Distribution System (delivering grains to people in extreme poverty).⁴² The Supreme Court has also ordered the creation of new accountability mechanisms, like the Commission, created to monitor and report on compliance with the court orders.⁴³ From the beginning, the case has been supported by the Right to Food Campaign in India, an informal network of individuals and organizations committed to the full realization of the right to food. The Campaign, working alongside the case, has raised awareness about the right to food in India and pushed for national right to food legislation.

Other examples of Courts enforcing state obligations to respect, protect and fulfil the right to food can now be found across the globe. The Supreme Court of Nepal made a landmark decision in 2010, in response to a public interest petition with respect to enforcement of the state's right to food obligations. The Court held that Nepal was bound by international human rights law and that relevant treaties obliged the state to take positive steps to ensure the right to food of its population.⁴⁴ In Uganda, the High Court at Kampala found in March 2013 that the government had failed to respect and protect the right to food of 2,041 peasants primarily engaged in subsistence farming, when it did not prevent their brutal expulsion from their homes and farms, so the land could be leased to a foreign corporation.⁴⁵

In Europe, while many national courts have been extremely resistant to the justiciability of economic rights delineated in the International Covenant on Economic, Social and Cultural Rights (ICESCR), some progress has been made.⁴⁶ For example, in 2010 the Federal Constitutional Court in Germany established a fundamental right to a dignified minimum existence, which includes adequate food, to be guaranteed by the state providing sufficient social protection to everyone in need.⁴⁷

Courts in South America have also enforced the right to food. In 2009, civil society pursued litigation in Guatemala, claiming the State had violated its obligation to fulfill the right to food for five children suffering from chronic and acute malnutrition. This litigation formed part of a larger civil society campaign on the right to food. In its decision, grounded in Guatemala's 2005 Food and Nutrition Security Law, as well as Guatemala's obligations under the ICESCR, the Court declared the State responsible by "omission for the violation of the human right to adequate food,

INTERNATIONAL LAW 691 (2000); L. Birchfield & J. Corsi, *The Right to Life is the Right to Food: People's Union for Civil Liberties v. Union of India & Others*, 17(3) WASHINGTON COLLEGE OF LAW, HUMAN RIGHTS BRIEF 15 (2010).

⁴² Lambek & Debuqiois, *supra* note 38.

⁴³ Patnaik, *supra* note 30.

⁴⁴ *Ibid.*

⁴⁵ *Baleke Kayira Peter & four others vs. 1. Attorney General, 2. Kaweri Coffee Plantation Ltd.*, H.C.C.S. No. 179/2002 (Uganda); *Baleke and Others v. Attorney General of Uganda and Others, Civil Suit 179 of 2002* (March 28, 2013) (Uganda); De Schutter, *supra* note 17.

⁴⁶ For example, the highest political and judicial bodies in both the Netherlands and Switzerland have ruled for decades that the rights enshrined in the ICESCR are not justiciable domestically. Jonsén, *supra* note 24.

⁴⁷ *Ibid.*

life, health, education, housing and work.”⁴⁸ More specifically, the Court found that the state had violated these rights by not having considered or implemented programmes, policies, actions and effective measures to address and prevent health problems resulting from a lack of adequate food.⁴⁹ The Court proceeded to order 10 government institutions to adopt 26 specific measures including restitution and compensation in the form of food assistance, land distribution, water access and agricultural training.⁵⁰

Outside of the national context, there have also been advancements in the enforcement of the right to food in regional adjudicative bodies. For example, in 2013 the European Committee of Social Rights found that Netherlands had violated the right to food of irregular migrants when the government suspended their access to social assistance schemes.⁵¹ In another example, the African Commission on Human and Peoples’ Rights in 2011 found that the Nigerian government had violated its obligations to respect and protect the right to food of the Ogoni communities when it destroyed and permitted third parties to destroy Ogoni food sources.⁵² The next year, the Court of Justice of the Economic Community of West African States (ECOWAS) found that groups have protected rights to the resources they depend on, including food, for an adequate standard of living.⁵³ Finally, in a 2006 decision, the Inter-American Court of Human Rights (IACtHR) found that the state of Paraguay had violated the right to life when it removed the Sawhoyamaya community from its land, resulting in a loss of water, housing and good.⁵⁴

With the adoption (2008), ratification and entry into force (2013) of the Optional Protocol to the ICESCR, the opportunity for global enforcement of the right to food through an adjudicative process has become possible. For populations in those countries who have adopted the Optional Protocol,⁵⁵ the UN Committee on Economic, Social and Cultural Rights (CESCR) has now become an adjudicative body of last resort for holding their governments accountable to their right to food obligations.

⁴⁸ Ricardo Zepeda, *The Struggle for Right to Food Justiciability in Guatemala: A Follow Up on the Child Malnutrition Litigation Case in Camotán Municipality*, RIGHT TO FOOD AND NUTRITION WATCH (2014). See also Zacapa Department Court for Youth, Adolescence, and Adolescents in Conflict with Criminal Law, Judicial Cases No. 19003-2011-0637 Oficial 3° (Mayra Amador Raymundo); No. 19003-2011-00638 Oficial 1° (Dina Marilú y Mavelita Lucila Interiano Amador); No. 19003-2011-0639 Oficial 3° (Brayan René Espino Ramírez) y No. 19003-2011-0641 Oficial 3° (Leonel Amador García).

⁴⁹ Zepeda, *supra* note 48.

⁵⁰ FIAN International, *Judge Declares State of Guatemala Responsible for Right to Food Violations* (July 16, 2013); De Schutter, *supra* note 17.

⁵¹ Jonsén, *supra* note 24. See also C. Golay, T. Karimova and I. Truscan, *Economic, Social and Cultural Rights*, EUROPEAN JOURNAL OF HUMAN RIGHTS (2014).

⁵² *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria (SERAC et al. v. Nigeria)*, African Commission on Human and Peoples’ Rights, Comm. No. 155/96 (2001), thirtieth ordinary session, October 2001, ACDPR/COMM/A044/1 of May 27, 2002.

⁵³ *SERAP v. The Federal Republic of Nigeria, Court of Justice of the Economic Community of West African States*, N° ECW/CCJ/JUD/18/12 (Dec. 14, 2012).

⁵⁴ See discussion of *Comunidad Indígena Sawhoyamaya v. Paraguay* in Luisa Cruz, FAO Right to Food Team, *Responsible Governance of Land Tenure: An Essential Factor for the Realization of the Right to Food* (Land Tenure Working Paper 15, FAO) (2010).

⁵⁵ These countries are: Argentina, Belgium, Bolivia, Bosnia and Herzegovina, Cabo Verde, Ecuador, El Salvador, Finland, Gabon, Mongolia, Montenegro, Portugal, Slovakia, Spain, Uruguay. See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en.

MONITORING MECHANISMS

Finally, the RtAF Guidelines have provided the impetus for the development of new methodologies to monitor public policies and the state's compliance with obligations under the right to adequate food.⁵⁶ The following methodologies and indicators, developed over the last decade, all adopt a rights-based perspective and are relevant to the monitoring of laws and policies that concern food and nutrition:

- a) The Methods to Monitor the Human Right to Adequate Food of the FAO Right to Food Unit.⁵⁷ The Methods to Monitor the Human Right to Adequate Food are intended to examine the results and impacts of development processes, and of policies, programs and projects, assisting countries that are committed to the implementation of the human right to adequate food at national level.
- b) The Human Rights Indicators of the Office of the High Commission on Human Right (OHCHR).⁵⁸ The objective of this methodology is to identify context-sensitive indicators to promote and monitor the implementation of human rights broadly. It also seeks to provide elements for building the capacity of domestic human rights monitoring systems and facilitating the use of appropriate tools in policymaking. In addition, the OHCHR identifies specific indicators for the measurement of progress in the realization of the right to adequate food.
- c) The IBSA Methodology: The IBSA Methodology is a four-step Indicator-Benchmark-Scoping-Assessment procedure elaborated by the University of Mannheim, with the collaboration of FIAN International.⁵⁹ The main objective of the IBSA initiative is to provide stakeholders involved in a state reporting process with a more effective and easier reporting mechanism that optimizes national and international monitoring of ESCR by enhancing the reporting procedure before the Committee on Social, Economic and Cultural Rights.⁶⁰
- d) The Progress Indicators for a Human Rights Measurement of the "Protocol of San Salvador" in the Area of Economic, Social and Cultural Rights: These progress indicators, which include indicators for the right to adequate food, were developed and adopted by the member states of Organization of American States in 2014.

⁵⁶ Guideline 17 of the RtAF Guidelines details what steps states should take with respect to monitoring, indicators and benchmarks.

⁵⁷ FAO, THE RIGHT TO FOOD UNIT, METHODS TO MONITOR THE HUMAN RIGHT TO ADEQUATE FOOD (Volume I-II, 2009), <ftp://ftp.fao.org/docrep/fao/011/i0349e/i0349e.pdf> and <ftp://ftp.fao.org/docrep/fao/011/i0351e/i0351e.pdf>.

⁵⁸ OFFICE OF THE HIGH COMMISSION ON HUMAN RIGHT (OHCHR): HUMAN RIGHTS INDICATORS: A GUIDE TO MEASUREMENT AND IMPLEMENTATION (2013), <http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>.

⁵⁹ UNIVERSITY OF MANNHEIM/FIAN INTERNATIONAL, IBSA HANDBOOK MONITORING THE REALIZATION OF THE ESCR: THE EXAMPLE OF THE RIGHT TO ADEQUATE FOOD (2009).

⁶⁰ Resolution 1988/4 of 24th May 1988 of ECOSOC prescribes a regular reporting period of two years after entry into force of the Covenant for the State party concerned, followed by reports every five years after. This is also reflected in the Committee's rule of procedure 58 adopted by the treaty body itself in 1990.

- e) The Manual “Screen State Action Against Hunger! How to Use the Voluntary Guidelines on the Right to Food to Monitor Public Policies?”:⁶¹ This Manual, elaborated by FIAN International and Welthungerhilfe, provides civil society but also civil servants with some key questions useful for monitoring the right to food. One of the specific objectives of this instrument is to provide civil society with a guide to report writing on the subject of the realization of the right to food in their country.

Governments, UN agencies and civil society have effectively used these methodologies particularly on the national level but also within the UN human rights system. In Colombia, for example, utilizing the “Screen State against Hunger” methodology, several CSOs have developed monitoring reports about the status of the right to food and the progress of the state in the matter. These reports have been important in the context of the international advocacy inside the United Nations.⁶² Similar civil society monitoring reports have been made in both Ecuador and Guatemala. In the later, the Social Collective on the Right to Food has produced annual reports since 2007 monitoring implementation of the right to food in Guatemala.⁶³

In some countries, national human rights institutions have played the role of a neutral monitoring and accountability agencies. For example, the South African Human Rights Commission has actively supported the Southern Africa Food Security Change Lab linking actors in the food chain, and the Ugandan Human Right Commission has been a strategic player in securing the Nutrition Action Plan 2011-2016.⁶⁴ In Colombia, the Defensoría del Pueblo (Ombudsman's Office) has developed and used a monitoring tool, based on international instruments and the RtAF Guidelines, in order to assess national implementation of public policies on food and nutrition.⁶⁵ In El Salvador, the Human Rights Ombudsman is responsible for monitoring the implementation of the right to food, through the elaboration of periodic reports, which include recommendations for public policies. However, national human rights commissions are limited by their statutory powers, and in many countries, such as Canada, commissions lack the ability to advocate for new legislation or are limited to civil and political rights and work in the area of anti-discrimination.⁶⁶

⁶¹ FIAN AND WELTHUNGERHILFE, SCREEN STATE ACTION AGAINST HUNGER - HOW TO USE THE VOLUNTARY GUIDELINES ON THE RIGHT TO FOOD TO MONITOR PUBLIC POLICIES? (2007), http://www.fian.org/en/library/publication/detail/screen_state_action_against_hunger-1/.

⁶² See PLATAFORMA COLOMBIANA DE DERECHOS HUMANOS DEMOCRACIA Y DESARROLLO ET AL., THE RIGHT TO FOOD IN COLOMBIA: STATUS, GAPS AND CONTEXTS, FIRST REPORT ON THE STATUS OF RIGHT TO FOOD IN COLOMBIA (2008); PLATAFORMA COLOMBIANA DE DERECHOS HUMANOS DEMOCRACIA Y DESARROLLO ET AL., HAMBRE Y VULNERACIÓN DEL DERECHO A LA ALIMENTACIÓN EN COLOMBIA, SEGUNDO INFORME SOBRE LA SITUACIÓN DEL DERECHO A LA ALIMENTACIÓN EN COLOMBIA (2010); FIAN COLOMBIA ET AL., COLOMBIA IS HUNGRY: INDOLENT STATE AND RESILIENT COMMUNITIES: 3RD REPORT ON THE SITUATION OF THE RIGHT TO FOOD IN COLOMBIA (2013). All documents cited here can be found at: <http://www.fiancolombia.org/category/biblioteca/derecho-a-la-alimentacion-en-colombia/>.

⁶³ FIAN ECUADOR, EL DERECHO A LA ALIMENTACIÓN EN EL ECUADOR: BALANCE DEL ESTADO ALIMENTARIO DE LA POBLACIÓN ECUATORIANA DESDE UNA PERSPECTIVA DE DERECHOS HUMANOS (2011), http://www.fianecuador.org.ec/index.php?option=com_joomdoc&view=docman&gid=35&task=cat_view&Itemid=65&limitstart=5: Colectivo Social de Monitoreo del Derecho a la Alimentación; *Informe alternativo del derecho a la alimentación en Guatemala. Monitoreo de las Directrices Voluntarias*. Años 2007, 2008, 2009, 2010, 2011, 2012 y 2013, Ciudad de Guatemala (2007-2013).

⁶⁴ Khoza, *supra* note 18.

⁶⁵ Defensoría del Pueblo, Colombia: *El derecho a la alimentación en la Constitución, la jurisprudencia y los instrumentos internacionales* (2006); *Las Políticas públicas alimentarias en Colombia. Un análisis desde los derechos humanos* (2012); *Primer informe del derecho humano a la alimentación* (2012); *La ayuda alimentaria en el contexto del Derecho a la Alimentación* (2013); Defensoría del Pueblo - Colombia: *Sistema de seguimiento y evaluación de la política pública alimentaria a la luz del derecho a la alimentación* (2007), <http://www.oda-alc.org/documentos/1341037429.pdf>.

⁶⁶ Olivier De Schutter, Special Rapporteur on the right to food, Mission to Canada, A/HRC/22/50/Add.1 (2012).

At the global and regional level a number of monitoring mechanisms also exist, including, for example, the UN CESCR, the special procedures of the UN Human Rights Council, the African Commission on Human and Peoples' Rights (ACHPR) and the Inter-American Commission on Human Rights (IACHR).

Monitoring and accountability was also defined as a pillar of the CFS reform. Indeed, it is within the mandate of the CFS to develop "an innovative mechanism, including the definition of common indicators, to monitor progress towards these agreed upon objectives and actions".⁶⁷ To date, the implementation of the CFS innovative monitoring mechanism is still pending.

While the CFS has not adopted its own monitoring mechanisms, it has recently addressed the question of monitoring from a more theoretical standpoint. The Global Strategic Framework for Food Security and Nutrition, as approved by the CFS in 2012, established five principles that should apply to monitoring and accountability systems. Under these principles, monitoring and accountability systems:

- a) should be human-rights based, with particular reference to the progressive realization of the right to adequate food;
- b) should make it possible for decision-makers to be accountable;
- c) should be participatory and include assessments that involve all stakeholders and beneficiaries, including the most vulnerable;
- d) should be simple, yet comprehensive, accurate, timely and understandable to all, with indicators disaggregated by sex, age, region, etc., and geared to capture impact, process and expected outcomes; and
- e) should not duplicate existing systems, but rather build upon and strengthen national statistical and analytical capacities.

3) ADVANCEMENT IN GLOBAL GOVERNANCE

REFORMED CFS

The RtAF Guidelines have been at the heart of the marked success in the last decade of improved global governance of food systems, increasingly with a right to food approach. First and foremost, the RtAF Guidelines have served as a vision for the CFS reform, which is perhaps the greatest achievement of the past decade in increasing international governance on the right to food.⁶⁸ Established as an intergovernmental body in 1974, following the first World Food Conference, the

⁶⁷ Committee on World Food Security (CFS), Reform of the Committee on World Food Security, U.N. Doc. CFS:2009/2/Rev.2, para. 6 (2009).

⁶⁸ Olivier De Schutter, *The Reform of the Committee on World Food Security: The Quest for Coherence in Global Governance, in RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW* (Lambek et al., eds., 2014).

CFS was reformed in 2009 with the aim of becoming “the foremost inclusive international and intergovernmental platform for a broad range of committed stakeholders to work together in a coordinated manner and in support of country-led processes towards the elimination of hunger and ensuring food security and nutrition for all human beings.”⁶⁹ Civil society played an active role in the elaboration of the reform. The participation of civil society ensured that their right to self-organize was officially recognized in the CFS reform document.⁷⁰

A key aspect of this reform was the inclusion of other stakeholders (including civil society, private sector, foundations and research institutions) as full participants within the intersessional and annual activities of the CFS.⁷¹ As a result, civil society has been able to participate in a meaningful way in the discussions and negotiations around food system governance. This participation has been coordinated through the autonomous Civil Society Mechanism (CSM), created following the reform, whose role is to facilitate participation and inputs into the CFS and provide a space for dialogue among civil society actors.⁷² The CSM has adopted a strong rights-based approach and played a crucial role in highlighting the importance of human rights in CFS discussions and in influencing the CFS towards a more rights-based approach.⁷³ For example, the CSM has been instrumental in shifting the terms of debate during the first policy discussion on “small-holder sensitive” investment in agriculture during the annual CFS plenary in October 2011.⁷⁴

The progressive realization of the right to food requires improving global governance, and since its reform, the CFS has made important contributions to the global food security agenda.⁷⁵ The most significant of these has been negotiating the Global Strategic Framework for Food Security and Nutrition (GSF), endorsed in October 2012.⁷⁶ The GFS attempts to bring coordination, coherence and accountability to decision making on food, nutrition and agricultural issues.⁷⁷ It is an important framework in promoting a new model of food governance as it reaffirms states obligations to implement the human right to adequate food through national, regional and global policies, and presents a cohesive and comprehensive approach to food system governance.⁷⁸ The GFS does however have weaknesses, one in particular being a lack of recognition and accounting

⁶⁹ CFS, *supra* note 67.

⁷⁰ Claeys & Lambek, *supra* note 9.

⁷¹ *Ibid.*

⁷² The CFS itself called on civil society to “autonomously establish a global mechanism for food security and nutrition which will function as a facilitating body for CSO/NGOs consultation and participation in the CFS”. CFS, *supra* note 67, at para. 16. The CSM recognizes 11 constituencies (smallholder family farmers, artisanal fisherfolk, herders/pastoralists, landless, urban poor, agricultural and food workers, women, youth, indigenous peoples, consumers and NGOs) and 16 sub-regions.

⁷³ Jonsén, *supra* note 24.

⁷⁴ Nora McKeon, *Agricultural Investments: Who Makes the Decisions? Why the Committee on World Food Security Makes a Difference for Social Movements*, RIGHT TO FOOD AND NUTRITION WATCH (2014)

⁷⁵ De Schutter, *supra* note 3.

⁷⁶ See FIAN INTERNATIONAL, THE RIGHT TO ADEQUATE FOOD IN THE GLOBAL STRATEGIC FRAMEWORK FOR FOOD SECURITY AND NUTRITION. A GLOBAL CONSENSUS (2013), <http://www.fao.org/righttofood/publications/publications-detail/en/c/209801/>; IUF, LA VIA CAMPESINA, CIDSE & FIAN, HOW TO USE THE GLOBAL STRATEGIC FRAMEWORK FOR FOOD SECURITY AND NUTRITION TO DEFEND THE RIGHT TO ADEQUATE FOOD: A MANUAL FOR SOCIAL MOVEMENTS AND CIVIL SOCIETY ORGANIZATIONS (2013), http://www.fian.org/library/publication/detail/using_the_global_strategic_framework_for_food_security_and_nutrition_to_promote_and_defend_the_peopl/.

⁷⁷ N. McKeon, *The New Alliance for Food Security and Nutrition: A Coup for Corporate Capital?* TERRA NUOVA, TRANSNATIONAL INSTITUTE (2014), available at http://www.tni.org/sites/www.tni.org/files/download/the_new_alliance.pdf; Jonsén, *supra* note 46. See also FIAN INTERNATIONAL, THE HUMAN RIGHT TO ADEQUATE FOOD IN THE GLOBAL STRATEGIC FRAMEWORK FOR FOOD SECURITY AND NUTRITION (2003), <http://www.fao.org/righttofood/publications/publications-detail/en/c/209801/>.

⁷⁸ Jonsén, *supra* note 46.

for the principles of food sovereignty. However, as a rolling document, opportunity remains to improve upon the GFS and to ensure it adapts and changes to new challenges that arise.

Other important steps taken at the CFS have included the negotiation and the adoption of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,⁷⁹ and the current negotiations of the Agenda for Action for Addressing Food and Nutrition Security in Protracted Crises⁸⁰ and the Principles for Responsible Agricultural Investment in Agriculture and Food Systems.⁸¹

REGIONAL INITIATIVES

Outside of the CFS, global governance has also improved at the regional level, with a number of regional organizations addressing food systems, often through a rights-based perspective. In Africa, for example, countries have adopted the Comprehensive Africa Agriculture Development Programme (CAADP), to improve livelihoods, food security, and environmental resilience.⁸² At the sub-regional level, the Southern African Development Community (SADC) adopted the Dar-Es-Salaam Declaration on Agriculture and Food Security, which recognizes the commitments of the governments in the region to promote agriculture as a vehicle to achieve sustainable growth and development.⁸³ The Latin American Parliament (PARLATINO), with a membership of 23 countries, adopted a model Framework Law on the Right to Food, Food Security and Food Sovereignty on December 1, 2012.⁸⁴ The Framework Law details state obligations with respect to the right to food, and guarantees mechanisms to make the right justiciable. Also in Latin America, through the Parliamentary Front Against Hunger, which serves as a network for sharing best practices, parliamentarians across the region are working together towards ensuring the right to food.

EXTRATERRITORIAL OBLIGATIONS

Finally, the last decade has seen improvements in global governance through efforts to account for and enforce the extraterritorial economic, social and cultural rights obligations of states. The RtAF Guidelines, and in particular Guideline 19, begins to address the extraterritorial or international obligations (ETO) of states with respect to the right to food. These obligations were defined, however, more precisely and fulsomely in the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, prepared by international human rights experts in 2011. While not codifying or elaborating new rights, the Maastricht Principles clarify the extraterritorial obligations of states on the basis of standing international law.⁸⁵ The ETO Consortium, a network of about 80 human rights related CSOs and academics, has

⁷⁹ For more information, see <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

⁸⁰ For more information, see <http://www.fao.org/cfs/cfs-home/cfs-fipc/en/>.

⁸¹ For more information, see <http://www.fao.org/cfs/cfs-home/resaginv/en/>.

⁸² Khoza, *supra* note 18.

⁸³ *Ibid.*

⁸⁴ De Schutter, *supra* note 17.

⁸⁵ ETOS FOR HUMAN RIGHTS BEYOND BORDERS, MAASTRICHT PRINCIPLES ON EXTRATERRITORIAL OBLIGATIONS OF STATES IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (2012).

played a considerable role in disseminating information about ETOs in an effort to address gaps in human rights protection as a result of the neglect of ETOs.⁸⁶

While there are seemingly endless examples of extraterritorial human rights violations, a growing number of communities are relying on extraterritorial human rights to hold foreign governments accountable for their abuses abroad. In Nepal, for example, a number of communities have been working with human rights organizations to use extraterritorial human rights obligations to hold India accountable for human rights violations in Nepal.⁸⁷ Every year, devastating floods threaten the livelihoods of more than 3000 families in six communities in Nepal. While these floods are a natural phenomenon, they have been severely aggravated by the construction of the Lakshmanpur Dam, and more recently the Kalkwala Afflux Bund. Local communities report that the Bund in particular, built by the Indian Government along the Indo-Nepali border, has caused massive inundations and land erosion in Nepal, resulting in a number of deaths, the destruction of fertile agricultural land, and the loss of cattle as well as other assets, such as houses and harvested grains.⁸⁸ This situation, caused by the Government of India, has left thousands of families without proper housing, means for sustainable income or adequate food and water. The communities have sought remedies from both the government of India and Nepal.⁸⁹ Their struggle remains ongoing today.

4) RECOGNIZING SMALL-SCALE FOOD PRODUCERS AND THE INTERCONNECTEDNESS OF HUMAN RIGHTS

In this final section on progress, we highlight two additional examples of steps taken in the right direction, while also touching on the limitations and shortcomings of this progress. The first example is the recognition of the important role of small-scale food producers to food systems, and corresponding efforts made at multiple levels to support them. The second is the increased connections made between the right to food and other human rights, or areas of policy connected to the full realization of the right to food.

ATTENTION ON SMALL-SCALE FOOD PRODUCERS AS RIGHTS HOLDERS

As civil society has placed increased pressure on viewing food systems as a whole, there has been a move to look more systemically at who is hungry, why they are hungry, who is feeding the world and how. As a result, there has been a considerable shift in the last decade in many areas towards recognizing the essential nature of peasant farming – sometimes called smallholder agriculture or family farming – to feeding the world.⁹⁰ The CFS, and a number of countries, have recognized that small-scale food producers, such as smallholder farmers, agricultural and food workers, artisanal

⁸⁶ For more information on the ETO Consortium, see <http://www.etoconsortium.org/en/>.

⁸⁷ FIAN, Lakshmanpur, http://www.stop-impunity.org/?page_id=93.

⁸⁸ *Ibid.*

⁸⁹ On April 30, 2012, the United Nations Special Rapporteurs on the right to food, housing, health and water, wrote to both the Government of India and Nepal concerning these alleged violations. These letters can be found in the Communication Report of Special Procedures, U.N. Doc. A/HRC/20/49 (September 7, 2012).

⁹⁰ Rolf Künemann and Laura Michèle, *The Right to Adequate Food: International Measures, Actions and Commitments (Guideline 19)*, Unpublished 10th Anniversary RtAF Guidelines (2014).

fisherfolk, pastoralists, indigenous people, the landless, and women and youth, must be at the center of policies, both as the most relevant contributors to food security and nutrition, and as the majority of rights holders most affected by violations of their right to food and nutrition, together with the urban poor and migrants.

The efforts of social movements and NGOs have made possible the considerable advancements in the recognition of the importance of smallholder agriculture. These advancements have also been assisted by scientific evidence as well, and in particular the publication of the 2009 International Assessment of Agriculture, Science and Technology for Development (IAASTD), which was supported by several UN organizations and has been approved and signed by 58 governments.⁹¹ More recently, and in recognition that small-holder farmers manage over 80 per cent of the world's estimated 500 million small farms and provide over 80 per cent of the food consumed in a large part of the developing world,⁹² the FAO has declared 2014 the International Year of Family Farming (IYFF).⁹³

The recognition of peasant farming has not just been symbolic, but has resulted in changes to the international agenda. For example, the CFS has responded to the challenges facing smallholders. In the first session of the CFS, in October 2010, the assembly declined to "rubber stamp" the Principles for Responsible Agricultural Investment (PRAI), launched by the World Bank, the FAO, the International Fund for Agricultural Development (IFAD) and the UN Conference on Trade and Development (UNCTAD).⁹⁴ In this move, the CFS chose not to support a process that was seen by civil society as a "move to legitimize the long-term corporate (foreign and domestic) takeover of rural people's farmlands."⁹⁵ More recently, in May 2012, and in response to the growing number of large-scale land acquisitions and leases, and the subsequent dispossession of smallholders, the CFS adopted the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest in the Context of National Food Security after a participatory negotiating and drafting process, with CSOs and peasant movements.⁹⁶ The Global Strategic Framework, adopted by the CFS in 2012 and since then annually, recognized the central role of smallholder farms in agriculture and requested that all countries ensure domestic agricultural policies ensure participation and support of smallholders. Regionally, in just one example, the Network of Farmers' and Agricultural Producers' Organizations of West Africa (ROPPA) has been successful at ensuring family farming is at the heart of the Economic Community of West African States (ECOWAS).

Smallholder farmers have also been extremely active in resisting land and resource grabs, and in claiming their human rights. Examples exist all over the globe of rights holders struggling against

⁹¹ *Ibid.* The IAASTD "confirmed that biologically diverse, agroecological farming and grazing methods, especially those that are – or can be – practiced by peasants, particularly women, makes agriculture more capable of eliminating hunger and rural poverty. ... The IAASTD concluded that the agriculture policy of the past 50 years have uprooted larger parts of the peasantry, led to landlessness and rural joblessness and exacerbated the social problems in cities. Moreover the ecological impact has been disastrous ...". *Ibid.*

⁹² See e.g., KANAYO F. NWANZE (INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT), SMALL FARMERS CAN FEED THE WORLD (2011), www.ifad.org/pub/viewpoint/smallholder.pdf; UNITED NATIONS ENVIRONMENTAL PROGRAMME, SMALLHOLDERS, FOOD SECURITY AND THE ENVIRONMENT (2013), www.unep.org/pdf/SmallholderReport_WEB.pdf.

⁹³ FAO, 2014 International Year of Family Farming, <http://www.fao.org/family-farming-2014/en/>.

⁹⁴ McKeon, *supra* note 74.

⁹⁵ THE GLOBAL CAMPAIGN FOR AGRARIAN REFORM LAND RESEARCH ACTION NETWORK, WHY WE OPPOSE THE PRINCIPLES FOR RESPONSIBLE AGRICULTURAL INVESTMENT (RAI) (2010).

⁹⁶ The Guidelines have now received global recognition, including by the G8, G20 and at the Rio +20 meeting. Jonsén, *supra* note 24.

their governments and the corporations encroaching on their land. As previously mentioned, in Uganda, 2,041 peasants brutally expelled from their homes and farms at the hands of a foreign coffee corporation have spent the last decade fighting for the right to food and land in the Uganda courts. In March 2013, they received a landmark victory, when the Court held that the state agents were liable for violations and ordered they pay compensation to the peasants.⁹⁷ In Gujarat, India, over 20,000 people recently mobilized to protect rights to 50,000 hectares the government wanted to sell to an industrial group. Through a variety of tactics including a letter writing campaign and a 700 tractor march of 260km to the state capital, the new peoples' movement was successful in protecting their land and halting the government sale.⁹⁸

However, at the same time as international attention has been focused on small-scale producers, during the last half-century and even more so in the last decade, small-scale producers have been the object of extreme marginalization and vulnerability. Peasant farming has been under attack by an international system focused on large agribusiness and increasing international trade.⁹⁹ So while progress has been made at some levels, many challenges remain.

CONNECTING THE RIGHT TO FOOD TO OTHER AREAS ESSENTIAL TO ITS FULL REALIZATION

Stemming from the RtAF Guidelines and as a part of the paradigm shift, over the past decade, increased connections have been made at both the theoretical and practical level between the right to adequate food, and other areas not always seen as connected to the right to food. In the next few paragraphs, we discuss the connections made between the right to food and a number of other areas – civil and political rights, labour, land, seeds, water, nutrition/health and social protection – following the adoption of the RtAF Guidelines. What is notable is that the RtAF Guidelines already recognized many connections in these areas, particular in Guideline 8, Access to Resources and Assets, providing a base from which further progress has benefited. While the list below is not exhaustive, it details some of the key areas promoted by civil society and often recognized by governments and international institutions as connected with the right to food.

Globally there has been increased recognition of the indivisibility of human rights. When the Universal Declaration of Human Rights was first drafted, the drafters intended all rights to be indivisible,¹⁰⁰ but each human right has been treated for many years as analytical distinct. One of the great successes of the right to food movement has been to overcome these distinctions and reinforce the indivisibility of human rights. This includes reinforcing the indivisibility of economic and social rights from civil and political rights, and the necessity of protecting the rights to association, free speech and collective action, in particular for right to food defenders, for the protection of the right to food. It also includes connections between other economic, social and cultural rights, including the rights to life, housing, health, social protection, and water.

⁹⁷ *Baleke and Others v. Attorney General of Uganda and Others, Civil Suit 179 of 2002* (March 28, 2013) (Uganda).

⁹⁸ Lalji Desai, World Alliance of Mobile Indigenous People & Jamin Adhikar Andolan Gujarat (Jaag), Interview with Abby Carrigan, May 1, 2014.

⁹⁹ For a history of the impact of international policies on smallholder farmers, see Carmen G. Gonzalez, *International Economic Law and the Right to Food*, in *RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW* (Lambek et. al, 2014).

¹⁰⁰ HENRY J. STEINER, PHILIP ALSTON & RYAN GOODMAN, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT* 275 (2007). See also Nadia Lambek, *Respecting and Protecting the Right to Food: When States Must Get Out of the Kitchen*, in *RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW* (Lambek et. al. eds, 2014).

With increasing numbers of people accessing food in markets rather than through their own production, and seeking employment in the food system, workers rights and labour rights¹⁰¹ are today an important element of the right to food. The main international references for labour or workers rights are the International Labour Organization (ILO) conventions; however, trade unions of rural workers are increasingly using the right to food as part of their struggles. In Colombia, for example, SINALTRAINAL, a labour union representing workers in the food sector, recognizes in its platform the need to defend food sovereignty, food autonomy and the right to food.¹⁰² From a global perspective, a particular achievement of note in connecting workers rights to the right to food was the recognition of living wages as a condition for workers' right to adequate food in the Global Strategic Framework of the CFS.¹⁰³

Advancements have also been made in recognizing the right to land.¹⁰⁴ Over the last decade, the mobilization of civil society and social movements around smallholder agriculture, increasing land concentration, pervasive gender discrimination, land grabbing, and the end of redistributive programming have put questions of non-discriminatory access to land front and center in discussions concerning the right to food.¹⁰⁵ Positive developments have been achieved, including the adoption of gender equity clauses in several constitutions and laws,¹⁰⁶ recognition and strengthening of customary land rights in several constitutions and framework laws,¹⁰⁷ recognition of indigenous peoples' rights to land, including ancestral lands and territories,¹⁰⁸ and efforts at the CFS including the adoption of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

Access to water, and water rights¹⁰⁹ have also become a central part of the right to food discussion since the adoption of the RtAF Guidelines.¹¹⁰ The right to water is essential for

¹⁰¹ Labour rights are discussed in Guideline 8A of the RtAF Guidelines.

¹⁰² See SINALTRAINAL, *Por la vida, contra el hambre, por soberanía alimentaria, el agua un derecho de todos* (2013), <http://www.sinaltrainal.org/index.php/campanas/agua/3047-por-la-vida-contra-el-hambre-por-soberania-alimentaria-el-agua-un-derecho-de-todos>.

¹⁰³ COMMITTEE ON WORLD FOOD SECURITY (CFS), *GLOBAL STRATEGIC FRAMEWORK FOR FOOD SECURITY & NUTRITION* (v. 2, 2013), http://www.fao.org/fileadmin/templates/cfs/Docs1213/gsf/GSF_Version_2_EN.pdf.

¹⁰⁴ Access to land is discussed in Guideline 8B of the RtAF Guidelines.

¹⁰⁵ Daniel Gómez & Sofía Monsalve Suárez, *Thematic Paper on the Right to Food and Access to Resources and Assets*, Unpublished 10th Anniversary RtAF Guidelines (2014); Olivier De Schutter, United Nations Special Rapporteur on the Right to Food, *Access to Land and the Right to Food*, UN Doc. A/65/281 (2010); Committee on World Food Security, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (2012), <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

¹⁰⁶ An example can be found in Colombia through Law 73-2002 or the "Rural Women Act". Article 25 of this law provides: "*Similarly preferential access to land will be guaranteed for women heads of household and those who are in a state of social and economic vulnerability because of violence, abandonment or widowhood.*" República de Colombia. Ley 731 de 2002, <http://www.equidadmujer.gov.co/Normativa/LeyesFavorables/Nacionales/ley731-14ene2002.pdf>. Other examples of legal frameworks that promote equal land rights for women and men include the Family Law in Mozambique, which enables women to inherit property and recognizes traditional marriages. Legislation has also been amended in countries such as Bolivia, Peru, Honduras and Venezuela to recognize women as "heads of household".

¹⁰⁷ For example, the 2006 *Forest Rights Act* in India allows for various kinds of individual and collective rights including individual rights to reside, and to use land and forest products, collective rights on other resources, and community forest resource rights for management and developmental of forestlands. The Constitution of Kenya (2010) provides a detailed classification of land, including public land, community land, private land and landholding by non-citizens.

¹⁰⁸ Bolivia's new constitution (2008) is probably one the most advanced in recognizing the rights of indigenous peoples. See also United Nations Declaration on the Rights of Indigenous Peoples, UN Doc. A/RES/61/295 (2007); CFS, *supra* note 105.

¹⁰⁹ Access to water is discussed in Guideline 8C of the RtAF Guidelines.

agriculture, fisheries and for human consumption. The connection between the right to water and the right to food has been brought to the forefront through water grabbing, increased demands over fresh water, the practices of extractive industries, high rates of water pollution, external input heavy agriculture, the privatization of water systems, changing sources of energy, and new patterns of consumption.¹¹¹

Progress has also been made since the adoption of the RtAF Guidelines in further recognizing the connection between access to seeds¹¹² and the right to food. The adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture, which recognizes farmers' rights, has had a role in this, as have a number of local and national laws protecting peasants' seed systems and farmers' rights.¹¹³ At the same time, the increasing privatization and consolidation of rights over seeds and control over seeds, has made farmers around the globe more vulnerable,¹¹⁴ has led to a loss of biodiversity through uniformity of plant varieties available, and has left the food system in a more precarious situation in the face of rising climate shocks.

Following the food price crisis of 2007/2008, there has been increased attention to the question of nutrition.¹¹⁵ This attention led the World Bank, Canada, Japan and the United States to initiate the Scaling Up Nutrition (SUN) Initiative. While the SUN initiative seeks to tackle malnutrition sustainably, it fails to adequately account for the basic causes of malnutrition, such as imbalances in economic power, it employs a top down approach and it was developed without meaningful participation of affected communities.¹¹⁶ However, other initiatives such as the Global Strategic Framework have focused on the adequacy of diets and their nutritional value as integral to the right to food. These alternative approaches, which are challenging the mainstream corporate-dominated nutrition policies on the global and national level, take into account the social determinants of health and tackle the root causes of malnutrition. Many civil society organizations and social movements, in recognition of the right to food and nutrition nexus, have called for a change in terminology, to refer to the right to food as "the right to adequate food and nutrition".

¹¹⁰ In the last decade, the right to water has gained international attention and recognition through the UN General Assembly's recognition of the human right to water, the United Nations Declaration on the Rights of Indigenous Peoples, which includes protection for indigenous people's rights to territory, and the negotiation and adoption of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. See in particular Resolution adopted by the General Assembly on July 28, 2010, The Human Right to Water and Sanitation, A/Res/64/292 (2010).

¹¹¹ Access to water has also been part of right to food struggles. For example, in Bangladesh, resistance to the construction of the Phulbari Coal Mine has partly related to the impacts its construction will have on the height of the water table, as well as pollution of rivers and streams. There is fear that the construction of the mine will make agriculture, fishing and finding water for human consumption more challenging, as a result impacting on the right to food for local populations. See Joint Allegation Letter, Communication to the Government of Bangladesh, in U.N. Human Rights Council, Communication Report of Special Procedures, U.N. Doc. A/HRC/20/30 (June 15, 2012).

¹¹² Access to genetic resources is discussed in Guideline 8D of the RtAF Guidelines.

¹¹³ For more information, see Hans Morten Haugen, *The Right to Food, Farmers' Rights and Intellectual Property Rights: Can Competing Law be Reconciled*, in *RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW* (Lambek et al., eds, 2014); Philippe Catinaud & Guy Kastler, *Is There Still a Future for the New European Seed Regulation?*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

¹¹⁴ With increased dependence on commercial seeds, farmers have also become more dependent on costly inputs, leading to rising farmer debt as a global problem.

¹¹⁵ The connection between nutrition and the right to food is discussed in Guideline 10 of the RtAF Guidelines.

¹¹⁶ Stineke Oenema, *From ICN1 to ICN2: The Need for Strong Partnerships with Civil Society*, RIGHT TO FOOD AND NUTRITION WATCH (2014); see generally RIGHT TO FOOD AND NUTRITION WATCH (2013).

Finally, the last decade has seen considerable international attention focused on the right to social protection¹¹⁷ and its connection with the right to food.¹¹⁸ One of the main drives behind this advancement has been international consensus reached in the ILO Assembly on the Social Protection Floor Recommendation. Social protection floors are “nationally defined sets of basic social security guarantees that should ensure, as a minimum that, over the life cycle, all in need have access to essential health care and to basic income security which together secure effective access to goods and services defined as necessary at the national level.”¹¹⁹

Progress in the implementation of social protection as a human right, with programmes that go beyond the minimalist safety net approach, has advanced slowly, but steadily. Rates of access to social security are still very low, with 75 to 80 per cent of the world population lacking access to social security and protection against the impacts of unemployment, illness, disability, crop failure or soaring food costs.¹²⁰ However, there are examples of successful social protection schemes geared at the connection between the right to food and the right to social protection. For example, Bolsa Família in Brazil, which reaches 11.1 million families, provides basic unconditional cash transfers to extremely poor families and cash transfers that vary on the basis of the number of children in a family, which are conditional on human capital investments, such as school attendance or pre-natal checkups.¹²¹ Other social protection schemes with human rights elements, include the Programa Puente-Chile Solidario in Chile and the Oportunidades/Progresá in Mexico, which provides conditional cash transfers aimed at assisting families meet their food needs;¹²² the Indian Mahatma Gandhi National Rural Employment Guarantee Act which guarantees 100 days of paid employment for every rural household in India; and the Social Assistance Programme in South Africa, which provides cash-transfers and other forms of assistance to over 11 million people.¹²³

¹¹⁷ Social safety nets are discussed in Guideline 14 of the RtAF Guidelines.

¹¹⁸ Universal Declaration of Human Rights, arts. 22 & 25, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948); International Covenant on Economic, Social and Cultural Rights art. 9, G.A. Res. 2200A, U.N. Doc. A/RES/21/2200A (Dec. 16, 1966); Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; Committee on Economic, Social and Cultural Rights, General Comment 19: The Right to Social Security, para. 4(a), U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008). According to the ILO, social protection measures can include cash transfer schemes, public work programmes, school stipends, unemployment or disability benefits, social pensions, food vouchers and food transfers, and user fee exemptions for health care or education subsidized services. UNITED NATIONS INT'L LABOUR ORG. (ILO), WORLD SOCIAL SECURITY REPORT 2010/2011: PROVIDING COVERAGE IN TIME OF CRISES AND BEYOND 13-15 (2010).

¹¹⁹ *Ibid.*

¹²⁰ De Schutter, *supra* note 3; International Labour Organization, *Social Protection Floor for a Fair and Inclusive Globalization: Report on the Social Protection Floor Advisory Group* (2011).

¹²¹ Decreto No. 5.209, de 17 setembro de 2004, Regulamenta a L-010.836-2004, Programa Bolsa Família (Brazil), *available at* <http://www.dji.com.br/decretos/2004-005209/2004-005209.htm>. For more information on how the Bolsa Família programme has helped to relieve hunger, see Olivier De Schutter, Special Rapporteur on the Right to Food, Mission to Brazil, A/HRC/13/33/Add.6 (Feb. 19, 2009), *available at* <http://www.sfood.org/en/country-mission>; see also Tatiana Britto, *Brazil's Bolsa Família: Understanding its Origins and Challenges* (2008).

¹²² Rafael Guerreiro Osório, Fabio Veras Soares, Marcelo Medeiros and Eduardo Zepeda, *Conditional Cash Transfers in Brazil, Chile and Mexico: Impacts Upon Inequality* (Working Paper no. 35, IPC); Biraj Patnaik, *Nutrition, Food Aid, Safety Nets and Social Protection: Progress, Shortcomings and Challenges*, Unpublished 10th Anniversary RtAF Guidelines (2014).

¹²³ The National Rural Employment Guarantee Act, No. 42 of 2005, India Code (2005), *available at* <http://www.nrega.nic.in/netnrega/home.aspx>; South Africa, Child Support Grant, Social Assistance Act (2004); STEPHEN DEVEREUX, BUILDING SOCIAL PROTECTION SYSTEMS IN SOUTHERN AFRICA (2010). For examples on successful rights-based social protection scheme systems, that have been successful in reducing poverty and improving living standards, see the many examples cited throughout MAGDALENA SEPÚLVEDA & CARLY NYST, THE HUMAN RIGHTS APPROACH TO SOCIAL PROTECTION (2012), <http://www.ohchr.org/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf>.

While the theoretical developments and the work done by the ILO and Special Rapporteurs on the right to food and extreme poverty at expanding the concept of social protection and generating ideas on implementation are promising,¹²⁴ many challenges still remain with the implementation of social protection schemes. For example, new waves of austerity measures are undermining progress internationally towards building social protection.¹²⁵ Similarly the increasing precariousness of work, impending impacts of climate change, high rates of displacement as a result of resource grabbing and protracted conflicts, and the rise of non-communicable diseases have left more people more vulnerable. Expanding social protection in the upcoming years, while challenging will be even more essential to ensuring the full realization of the right to an adequate standard of living including the right to food.

IV) OBSTACLES AND CHALLENGES

While the progress and achievements of the last decade or so have seen the emergence of a new paradigm for food system governance, and some steps forward in the right direction, the challenges to achieving the full realization of the right to food around the globe remain immense. In this fourth section, the most pressing obstacles and challenges to the full realization of the human right to adequate food and nutrition are identified and elaborated. These obstacles and challenges concern how the right to food is implemented, or not implemented at the national and international level, in particular stemming from a lack of political will, non-recognition of the right, minimalist approaches to enforcement, and a lack of policy coherence. They also concern building inclusive governance models, regulating third parties and developing accountability mechanisms. Finally, they include changing consumption patterns, risks of climate change, and the persistence of the dominant agro-industrial model. In many respects, these challenges and obstacles account for the shortcomings in the progress already described, and make apparent how much more progress is needed.

1) LACK OF RECOGNITION, LACK OF POLITICAL WILL AND DISCONNECT BETWEEN POLICIES AND EXPERIENCE

While there has been increasing support for the right to food over the last decade, turning that support into action and results has been a much greater challenge. One of the greatest obstacles in this respect has been the lack of effective recognition of the right to food at the international, regional and national levels.¹²⁶ The right to food has been enshrined in international law since 1948 with the enactment of the Universal Declaration of Human Rights,¹²⁷ and then further delineated in the 1967

¹²⁴ OLIVIER DE SCHUTTER AND MAGDALENA SEPÚLVEDA, UNDERWRITING THE POOR: A GLOBAL FUND FOR SOCIAL PROTECTION (2012).

¹²⁵ Künnemann & Michèle, *supra* note 90; Jonsén, *supra* note 24 (“Refugee, asylum-seekers, unemployed, single parents, women and young people are other groups especially vulnerable to breaches of ESCR in the context of the dismantling of their European social protection system in countries such as Greece, Spain, Germany and Switzerland.”).

¹²⁶ Jonsén, *supra* note 24 (“The lack of recognition of the RtAFN, both on the international, regional and national level, constitutes a great obstacle for the realization of this right.”).

¹²⁷ Universal Declaration of Human Rights, *supra* note 118.

International Covenant on Economic, Social and Cultural Rights (ICESCR).¹²⁸ However, there is still great resistance by many states and international organizations to fully and effectively recognize access to adequate food and the productive resources necessary to produce or acquire food as a human right, and to take the subsequent steps to enforce it. For example, while the number is growing, there are still very few countries that have recognized the right to food on the national level, through constitutional protection or framework laws, or introduced policies and strategies towards realizing the right to adequate food. For example, most European states do not recognize the ICESCR as directly applicable to them, and the right to adequate food is not enshrined in the European Social Charter or directly in any of the constitutions of Europe.¹²⁹ Further still, only 15 states are currently parties to the ICESCR Optional Protocol, in comparison to 115 parties to the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).¹³⁰

Many international institutions and organizations have also failed to recognize the human right to food, or its application to their work. For example, the FAO still faces a huge challenge in mainstreaming the right to food in its work and to align policies and programmes with human rights standards.¹³¹ Similarly, the policies of G7 and G8 are not rights-based, nor are those of the World Bank and the International Monetary Fund (IMF), with the later two claiming they have minimal human rights obligations.

The international trade regime has also failed to recognize the right to food. While there is no question that trade policies have an enormous impact on the right to food in most countries around the globe, and that global trade policy falls under the exclusive domain of the WTO, the discussions on food at the 2013 WTO ministerial conference failed to even address the right to food.¹³² The Bali package, adopted at the 9th WTO ministerial conference in Bali in December 2013, “illustrates the discrepancy between States’ rhetoric commitments towards realizing the right to adequate food and nutrition, and recognition of its links with international trade, and their actions when entering international trade negotiations.”¹³³ Trade agreements between countries or regions, often negotiated behind closed doors, and without participation of affected communities, present further threats to the domestic realization of the right to food by not integrating right to food concerns into binding trade policy.¹³⁴ At the same time as the established trade regime has failed to address the right to food, the United States and other governments have fought to keep trade out of food security and nutrition debates at the CFS, where a coherent approach could be discussed and developed.

Even where countries do recognize the right to food, a lack of political will – or a direct opposition to implementation – often results in no action being taken. In Eastern Africa alone, parliaments in Uganda, Mozambique and Malawi are currently sitting on right to food framework laws drafted over the past decade, with the assistance of the FAO Right to Food Team and modeled after the RtAF

¹²⁸ International Covenant on Economic, Social and Cultural Rights, *supra* note 118.

¹²⁹ Jonsén, *supra* note 24. It is worth noting that civil society in Sweden has been successful in convincing the government to recognize the economic, social and cultural rights alongside civil and political rights. Anita Klum, FIAN IEC, Interview with Abby Carrigan, April 4, 2014.

¹³⁰ As of June 2014, the Optional Protocol had 45 signatories and 15 state parties. In contrast, the ICCPR has 35 signatories and 115 parties.

¹³¹ Olivier De Schutter, United Nations Special Rapporteur on the right to food, Mission to the FAO, UN Doc. A/HRC/22/50/Add.3 (2013).

¹³² De Schutter, *supra* note 3.

¹³³ Künnemann & Michéle, *supra* note 90.

¹³⁴ See for example discussion on the Transatlantic Trade and Investment Partnership (TTIP) and the Transpacific Partnership Agreement (TTP) in Künnemann & Michéle, *supra* note 90.

Guidelines. However, a lack of political will, and top down approaches that have failed to garner the civil society support needed to pressure government, have resulted in their stagnation.¹³⁵

Finally, even where political will does exist, results are often not felt on the ground. Many of the reasons why results have not materialized – from a lack of civil society participation in the elaboration of laws and policies, to policy coherence, to minimalist approaches, to weak implementation of policies, to the absence of recourse and accountability mechanisms – are discussed in greater detail below.

2) MINIMALIST APPROACHES

While the RtAF Guidelines present a comprehensive approach to implementing the right to food, one of the challenges to the full realization of the right to food occurs where countries take a minimalist approach to addressing hunger, malnutrition and food system governance. This minimalist approach usually results in countries failing to address the structural or roots causes of hunger, malnutrition and inadequate diets and instead focusing on addressing only symptoms of hunger or broken food systems. The structural or root causes of hunger will be different in different places, but can include discrimination (particularly gender discrimination), land grabbing, low wages, unemployment, child marriage, social exclusion, dispossession, displacement and years of neglect in infrastructure and lack of support to small-scale producers. With respect specifically to gender discrimination, “structural violence and discrimination against women are often invisible or ignored, magnifying the violations of women’s rights and hindering their capacity to participate actively in the realization of the right to adequate food and nutrition.”¹³⁶ Today, there is growing international agreement that without tackling women’s rights, it will not be possible to address hunger and malnutrition.¹³⁷

There are many examples of countries addressing symptoms of hunger and malnutrition while failing to address structural causes and taking only minimalistic approaches. In Guatemala for instance, “State interventions tend to refrain from going beyond the existing paternalistic, welfare-oriented food aid approach, which has failed to reach the structural roots of the perennial cycle of hunger.”¹³⁸ Similarly, in Colombia the National Policy on Food and Nutrition Security (2008) and the corresponding National Plan for Food and Nutrition Security (2012) have been heavily criticized by civil society for their minimalistic approach to tackling hunger and malnutrition. Both documents are seen as failing to take a human rights approach to food and nutrition that enhances the ability to feed oneself and is drafted with the participation of affected communities.¹³⁹

In another example, the new *National Food Security Bill* in India, passed in July 2013, fails to tackle the root causes of hunger.¹⁴⁰ With approximately 70 per cent of India’s population living in rural areas,

¹³⁵ OLIVIER DE SCHUTTER, UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD, FROM CHARITY TO ENTITLEMENTS: IMPLEMENTING THE RIGHT TO FOOD IN SOUTHERN AND EASTERN AFRICA (2012).

¹³⁶ Global Network for the Right to Food and Nutrition Charter, at art. 5 (2013), http://www.fian.org/fileadmin/media/publications/GNRtFN_-_Formatted_Charter.pdf.

¹³⁷ Olivier De Schutter, Special Rapporteur on the right to food, Gender and the Right to Food, UN Doc. A/HRC/22/50 (2012).

¹³⁸ Ricardo Zepeda, *The Struggle to Enforce Guatemala’s Legal Obligations to the Right to Adequate Food and Nutrition: Litigating Against Child Malnutrition in the Municipality of Camotán*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

¹³⁹ Juan Carlos Morales González, *A Hungry Colombia: A Negligent State and Communities in Resistance*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

¹⁴⁰ Marie Bohner, *The Right to Land in India: The Key to Food Security*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

and nearly half of rural households being absolutely or nearly landless, addressing hunger in India requires addressing access to land. However, the new law does not address secure access to land and natural resources for the rural poor. The National Food Security Bill, and other government schemes distributing food but not rights to resources are leading to marginalized populations becoming largely dependent on the state. In all these examples, without addressing the root causes of hunger and through the implementation of minimalistic approaches, it will not be possible for states to have lasting improvements, or to honour the earth, environment, and inherent dignity of people.

While the RtAF Guidelines and General Comment 12 understand that states may progressively realize the right to food, this does not excuse minimalistic or discriminatory approaches to addressing the right to food. States must devote their maximum available resources towards the realization of the right to food and other economic, social and cultural rights, and must ensure their efforts at least provide relief for the most marginalized populations in their countries.

3) POLICY INCOHERENCE

The RtAF Guidelines shone a light on the importance of policy coherence for the realization of the right to food. In the years since its adoption, a lack of policy coherence at the global, regional and national level, and between all the levels, has been recognized as one of the most serious impediments to the successful realization of the right to food. Policy coherence concerns the aligning of strategies and policies in those areas that impact the food system and food system governance. For example, policy coherence requires aligning policies in the area of health, workers' rights, urban poverty, agriculture, fisheries, social protection, extractive industries, education, immigration/migrant workers, women rights, rural infrastructure, trade, and importantly finance and budget allocation.

A lack of policy coherence threatens the success of otherwise excellent policies and legal frameworks by undermining their implementation and effects. For example in Colombia, some efforts have been made to adopt national plans and policies to address hunger and malnutrition; however in parallel, rural populations are losing autonomous control and governance over their territories at an accelerated rate through state policies that favour extractive industries and push rural labour into agro-export production chains.¹⁴¹ By facilitating a dominant economic model that minimizes the role of the state, leaving it a minor role in the regulation of domestic food markets, and implementing a rural agricultural policy aimed at strengthening large-scale, and export-oriented production, food sovereignty and the right to food cannot be achieved.¹⁴² Similarly in Mali, progressive food sovereignty legislation has been passed, but continued land grabbing threatens its positive impacts. Land security in Mali for family farms is of fundamental importance to achieving the right to food – as is recognized in the Framework and Guidelines on Land Policy in Africa, as well as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security – yet a lack of policy coherence is limiting the possible success of the food sovereignty legislation.¹⁴³

¹⁴¹ Morales González, *supra* note 139.

¹⁴² *Ibid.* In El Salvador one of the sectors that have expressed opposition to the Law of Sovereignty and Food and Nutrition Security is the American Chamber. They have pointed out that several related articles of food sovereignty are incompatible with WTO regulations and trade agreements like the Central America-United States Free Trade Agreement (CAFTA).

¹⁴³ Chantal Jacovetti & Philip Seufert, *Land Grabbing and Popular Resistance in Mali*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

A lack of policy coherence also threatens successful global governance of food systems. While there is an emerging paradigm shift in understanding what constitutes the right to food and the steps needed to achieve it, there remains complete incoherence in various international and regional agendas. For example, there is great tension between the multilateral approach of the United Nations and the economic power approach. This is visible through the vastly different agendas and policy decisions of the CFS and the G-7, G-8 and G-20. It is also visible in the differences between on the one hand the Global Strategic Framework and the various voluntary guidelines emerging from the CFS and on the other the New Alliance for Food Security in Africa. These are incompatible approaches, and the incoherence between them threatens the right to food of millions around the globe.

While policy coherence is extremely important, the nature or guiding principles behind the coherence are equally important. To enable the full realization of the right to adequate food and nutrition, policy coherence must be rights-based. It must serve the public interests and not private or industry interests. At a time when the corporate sector is entering into almost all spheres of public policy related to the areas of human rights, health, food, nutrition and agriculture, the question of policy coherence is whose interest is highly pertinent. The right to adequate food is put at genuine risk and human rights coherence and accountability are likely to be further weakened by actors who aggressively impose their economic and financial interests, and increasingly capture public spaces in search of new markets and to solve their public acceptance problems by seeking to gain legitimacy through the UN.

4) MONITORING, ACCOUNTABILITY AND ACCESS TO JUSTICE

A fourth, and major obstacle to the realization of the right to food, is the persistent lack of effective monitoring mechanisms, accountability, and access to justice that characterizes the majority of national and international contexts. As a result, actors from states to international organizations to corporate entities can commit right to food violations with impunity – and policies, programmes and laws can be implemented with no follow-up and little regard to their impact on beneficiaries.

While earlier sections of this paper highlighted successful legal adoption of the right to food at the national level, as well as examples of courts finding violations of the right to food and ordering remedies to victims, these examples remain few and far between. In the majority of countries the possibility of turning to courts to remedy right to food violations is still not available as the right to food remains non-justiciable, and no legal mechanism exists to enforce what if any statutes are enacted. Even when individuals can turn to courts, access to lawyers, astronomical costs, jurisdictional challenges and slow-moving court systems, make the courts a challenging source of justice to utilize. Access to accountability mechanisms is yet more intricate in cases of occupation and in territories that are not formally recognized as states, such as the Occupied Palestinian Territories.

Similarly, while some states, specifically India, have introduced innovative means for monitoring the implementation of the right to food, the majority of countries and international organizations lack adequate monitoring and accountability mechanisms. Most countries and international organizations, including the CFS and UN more broadly, have been reluctant to establish human rights-based monitoring and accountability mechanisms that adequately monitor progress, set benchmarks and targets, review their own progress, seek external reviews, or provide means for local populations, particularly vulnerable groups, to review progress. Even methods such as human rights impact

assessments, environmental impact assessments and gender-based analyses, which have gained popularity in the last decade, are still applied very rarely and in an inconsistent manner. Impact assessments and gender-based analyses are key monitoring mechanisms and should be adopted and utilized in a participatory fashion before, during and after implementation of legislation, adoption of trade or investment agreements, or initiation of development projects.

Finally, access to justice is often unavailable for right to food defenders around the globe. The criminalization of right to food and food sovereignty activists, is not only a violation of civil and political rights, but it also undermines the ability of social movements and NGO/CSO members to lobby and advocate on behalf of their populations. Access to justice is also almost always unavailable to victims of human rights abuses at the hands of foreign governments and corporations, as a result of weak enforcement of extraterritorial human rights obligations. There are very few means for individuals and communities to challenge the extraterritorial impacts of foreign national policies, production and consumptions modes that can impact rights holders in other countries. For example many policies of the EU and the United States have adverse effects in the Global South, yet no complaint, accountability or redress mechanisms exist to address these violations.

5) REGULATING THIRD PARTIES AND INCREASING CORPORATE CONTROL OF FOOD GOVERNANCE

A fifth challenge to the full realization of the right to food is the pattern of increasing corporate control over food systems and food system governance, at the same time as countries and the international system have remained lax in their regulation of corporations. As corporations often have great wealth and power, but work under profit motives and for shareholders' interest, their ability to influence state and international governance and policy, and their ability to commit human rights violations¹⁴⁴ with impunity, is highly detrimental to the achievement of the right to food. Indeed in many cases, corporations' interest stand in direct contrast to the interests of rights holders. Increased corporate control of food governance also threatens what steps forward have been made, such as national redistributive programmes (agrarian reform and efforts to support smallholder agriculture) or the development of international standards (e.g. on farmer's rights and tenure of land, fisheries and forest).

Two examples in the past decade stand as particularly emblematic of increasing corporate control over the food system, with little government oversight and regulation. The first example is the ongoing land, water, seeds and raw material grab, which has been particularly problematic for many decades, but came to the forefront following the 2007/2008 food price crises. In the last decade, the food and economic crises have increased commercial pressures on land, which have led to these forms of grabbing. This practice, "illustrated by agrofuel production, large-scale infrastructure projects,

¹⁴⁴ Over the last decade, progress has been made towards accepting that non-state actors, such as corporations, can commit human rights violations. The United Nations Human Rights Council's adoption of the resolution to move towards the elaboration of a binding treaty to prevent human rights violations by transnational corporations is one example of the progress made in this respect. For more information, see www.treatymovement.com/blog/2014/7/1/stop-corporate-impunity-press-release.

carbon-credit mechanisms and speculation, threaten food security and the [right to adequate food and nutrition] for hundreds of millions of people by putting small-scale producers at risk.”¹⁴⁵

While it has often been corporations at the heart of the grabs, governments have also played key roles as facilitators of grabs, by not regulating the activities of the corporations, by permitting grabs in their territories, and in some cases by engaging in land grabbing themselves. States have also indirectly encouraged land grabbing through public policies, like the subsidization of agrofuels. Grabbing frequently results in the alienation of people from land they depend on for livelihood and subsistence. For instance in Mali, evictions and expropriations from land grabs “are the root causes of the human rights violations against these populations, including their right to adequate food and nutrition.”¹⁴⁶ Grabbing has also been a global phenomenon, with Africa and Asia bearing the brunt, but examples extending across the globe to countries like Sweden.¹⁴⁷ Land grabs have resulted in the increased commoditization of land and food, consolidation of land, homogenization of agriculture, and conversion of agriculture land away from food production. In many cases, these changes have led to less sustainable production models.

As result of industrialization and land grabbing, land itself is becoming an increasingly scarce commodity. China, for example, has lost 8.2 million hectares of arable land since 2007 linked to state-led policies on urbanization and industrialization that have displaced 50 million farmers.¹⁴⁸ As noted by Biraj Patnaik, “justice to small farmers, in this context is highly problematic”¹⁴⁹ and at the current rate will only get worse. Similar patterns are occurring across the globe. Since 1980, Belgium has lost 63% of its farms.¹⁵⁰ These figures reflect the concentration of land ownership in the hands of large agricultural holdings and the disappearance of smallholder farmers.

While land grabs for agrofuel and foodstuffs production are more common, grabbing also come at the hands of the extractive industry. For example in the United States, indigenous peoples, local populations and environmental groups in Alaska have been challenging a number of extractive industry initiatives in order to protect precious ecosystems, which have provided food security, social and economic existence and a source of cultural and spiritual identities for generations.¹⁵¹ In January 2014, success was achieved when the courts ruled that the State had violated the law when it sold offshore oil and gas leases in the Chukchi Sea off the coast of Alaska. While the decision did not ban the lease indefinitely, the Court did hold that before any lease could be afforded a thorough and complete environmental impact assessment had to be conducted.¹⁵² This will require assessing the

¹⁴⁵ Jonsén, *supra* note 24; Olivier De Schutter, United Nations Special Rapporteur on the Right to Food, *Guidelines to Prevent “Land Grabbing” Crucial for Food Security, UN Expert Warns*, UN NEW CENTRE (2011).

¹⁴⁶ Jacovetti & Seufert, *supra* note 143.

¹⁴⁷ Gustaf Jilker, Eva Jonsson, Leif Gustavsson & Torgny Östling, *Not Just as Global South Issue: Land Grabbing and Mining in Sweden*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

¹⁴⁸ Olivier De Schutter, United Nations Special Rapporteur on the right to food, Mission to China, UN Doc. A/HRC/19/59/Add.1 (2012).

¹⁴⁹ Biraj Patnaik, *supra* note 30.

¹⁵⁰ Directorate General of Statistics and Economic Information, Chiffres clés de l’agriculture 2012: L’ agriculture en Belgique en chiffres (2nd edition, 2012), statbel.fgov.be/fr/binaries/FR_A5_WEB_Landbouw_2012_tcm326-192178.pdf.

¹⁵¹ Faith Gemmill, *Defense of Arctic Ocean Critical to Indigenous Livelihood in Alaska*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

¹⁵² *Native Village of Point Hope, Inupiat Community of the Arctic Slope v. Sally Jewell, Secretary of the Interior, Bureau of Ocean Energy Management*, D.C. No. 1:08-cv-00004-RRB. No. 12-35287, U.S Court of Appeals (9th circuit) (2014), earthjustice.org/sites/default/files/files/Chukchi.Decision44Opinion.pdf.

potential impact of any future project on Inupiat subsistence resources, such as polar bears, walrus, beluga whales, bowhead whales and seals before the project can be approved.¹⁵³

The second emblematic example of corporate control in the past decade has been the increasing corporate capture of international food and nutrition governance. Today, “the growing influence of powerful transnational corporations in global food and nutrition governance, inter alia through public private partnerships and multi-stakeholder initiatives, such as the Scaling-up-Nutrition (SUN) initiative and the G8 New Alliance for Food Security and Nutrition, gives major reason for concern.”¹⁵⁴ More specifically, the G8 New Alliance presents a major challenge to food and nutrition security, with key partners made up of large agribusiness, such as Monsanto, Syngenta, and Kraft, that do not have the public interest as their objectives. At the same time, small-scale producers and other groups particularly affected by hunger and malnutrition – the very same groups the New Alliance seeks to assist – have been effectively excluded from participating in the negotiations.¹⁵⁵ In another example, the SUN initiative “encourages participating countries from the Global South to engage private corporations in the development of national nutrition policies and interventions. This creates bias towards product-based, market-led/profitable solutions over holistic approaches that address the root causes of malnutrition.”¹⁵⁶

It should be noted that governments are not passive actors in the corporate takeover either, and are not guilty simply of omissions or neglect in regulating corporations. Governments have actively sought industry inputs and detrimental private public partnerships, allowing private interests to dictate policy. Indeed conflicts of interests have plagued government agencies, particularly in the European Union and United States with respect to their relationship to biotech companies and agribusiness.¹⁵⁷ Similarly, conflicts of interest have been a growing concern in maternal, infant and young children’s health and nutrition, through the encouragement of multi-stakeholder initiatives and sometimes of public-private partnerships, which see resource-strapped public sector actors, bodies and institutions forming collaborations with private sector and industrial giants.¹⁵⁸

¹⁵³ Gemmill, *supra* note 151.

¹⁵⁴ Künnemann & Michèle, *supra* note 90.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ Catinaud & Kastler, *supra* note 113 (“Conflicts of interest, which plague the European and U.S. agencies responsible for food safety (the European Food Safety Authority, EFSA, and the Food and Drug Administration, FDA) in their management of GMO and pesticide authorization, coupled with patented seeds’ total domination of the markets for major U.S. crops (corn, soybeans, cotton, rapeseed, etc.), reveal the real purpose of such “standards based on science,” namely to promote patent ownership over the food chain.”); Marcos Arana Cedeño, *Responses to Climate Change Challenges on Food Production: Strengthening Resilience or Increasing Dependence*, RIGHT TO FOOD AND NUTRITION WATCH (2014) (“Revolving doors between governments and biotech companies have been profusely denounced. Some energy companies have been lobbying for the adoption of emission controls, as they already position themselves to compete in a carbon-constrained environment. The frequent occurrence of conflicts of interest inhibits the adoption of more sustainable solutions for agriculture.”).

¹⁵⁸ Lida Lhotska, Anne C. Bellows & Veronika Scherbaum, *Conflicts of Interest and Human Rights-Based Policy Making: The Case of Maternal, Infant, and Young Children’s Health and Nutrition*, RIGHT TO FOOD AND NUTRITION WATCH (2012).

6) CLIMATE CHANGE, ENVIRONMENTAL DEGRADATION AND UNSUSTAINABLE PRODUCTION AND CONSUMPTION PATTERNS

The dominant consumption and agro-industrial production patterns are no longer sustainable and pose serious environmental threats as well as threats to the full realization of the right to food today and for further generations. It is well known that current consumption patterns, such as the growing demand for meat, are environmentally unsustainable and are causing increases in non-communicable diseases at an alarming rate. Similarly, the dominant agriculture industrial model is severely damaging the earth and water systems necessary for food production. Increased homogenization in production and consumption are also causing further damage to the earth and to human health.

These threats are compounded by climate change and a growing pattern of extreme weather events. Today “[c]limate change presents a major threat to food and nutrition security and may irreversibly damage the natural resource base on which agriculture and connected livelihoods of small-scale food producers depend.”¹⁵⁹ Indeed, climate change threatens global food security, and the resilience and sovereignty of small-scale producers around the globe.¹⁶⁰ The adverse impacts of global warming and climate shocks will be felt especially by poor countries and marginalized farmers in these countries, as well as by those who tend to live in areas most prone to natural disasters and with few safeguards.¹⁶¹ The RtAF Guidelines are currently silent on the issue of global warming, providing no guidance to states on the policy reforms to address the intersection of the right to food and climate change.¹⁶²

7) INCLUSIVE GOVERNANCE AND PARTICIPATION OF AFFECTED COMMUNITIES AND RIGHTS HOLDERS

Finally, and perhaps the most significant obstacle to achieving the right to food, has been the widespread exclusion – at the local, to the national, regional and international level – of rights holders, and in particular those constituencies most affected by hunger and malnutrition, from food policy spaces. Indeed, over the past decade, civil society and social movements have been systematically excluded from negotiations on agenda setting and from the development, implementation and monitoring of laws and policies.

Just recently, for example, rights holders were effectively blocked from participating in the preparatory process surrounding the Second International Conference on Nutrition (ICN2). Up to the moment only governments can effectively participate in the preparation of Conference documents.¹⁶³ In practice

¹⁵⁹ Künnemann & Michèle, *supra* note 90.

¹⁶⁰ Marcos Arana Cedeño, *Responses to Climate Change Challenges on Food Production: Strengthening Resilience or Increasing Dependence*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

¹⁶¹ Künnemann & Michèle, *supra* note 90.

¹⁶² *Ibid.*

¹⁶³ Further still, without a clear strategy on how the implementation and monitoring of its outcome documents will be carried out, including of the proposed Decade of Nutrition, with no link to the CFS, civil society fears that this Conference will be seen as an opportunity to legitimize G8, G20 and UN food security and nutrition initiatives and public, private partnerships, such as: *Scaling Up Nutrition “movement”* (SUN), *G8 New Alliance for Africa; Nutrition for Growth (UK)*, among others. These are put in place without being human rights-based, and without ever being thoroughly discussed in an all-inclusive intergovernmental forum like

this means that the private sector will be represented in certain governmental delegations while civil society is factually excluded. Without proper participation of rights holders, there will be no countervailing voice opposed to the private sector lobby, and the outcome of the ICN2 is likely to follow other initiatives such as the SUN, and the G8 New Alliance for Africa, which basically serve private sector interests and go against peasant based, local food systems and the realization of food sovereignty.

There are of course instances of inclusive processes. The CFS provides one example of attempts at inclusive governance at the international level, the Food and Nutrition Council in the Comunidade dos Países de Língua Portuguesa (CPLP) provides an example at the regional level, the Conselho Nacional de Segurança Alimentar e Nutricional (CONSEA) in Brazil at the national level, and the Toronto Food Policy Council, at the local level. But these examples are far and few between.

The human rights approach and successful schemes to reduce hunger and malnutrition require the participation of affected communities. Indeed, participation is not only a tenant of the human rights approach, but it is ultimately the only way to end hunger and malnutrition and to ensure sustainable, resilient and healthy food systems today and into the future.

V) CONCLUSIONS – THE PATH AHEAD AND CIVIL SOCIETY’S DEMANDS AND RECOMMENDATIONS

In reflecting on the successes of the past decade as well as the challenges, the CSOs, social movements and NGOs that collaborated on the preparation of this synthesis paper make a number of key commitments and demands for the future.

1) CIVIL SOCIETY COMMITMENTS

We, CSOs and social movements, commit to continue the struggles at the local, national, regional and global level, to guarantee that all people in the world have the right to adequate food and nutrition. We further commit to building more inclusive movements that reflect the growing number of voices, groups and peoples working towards building more equitable, sustainable and just food systems, grounded in the human right to adequate food and nutrition. This will require engaging regional populations, like West Asia, who have not historically been actively engaged in the right to food movement. It will also require better engaging pastoralists and fisherfolk, as well as those working on urban poverty, access to housing, environmental sustainability and a variety of other fields. Finally, the

commitment will require concerted efforts towards battling gender discrimination and including a gender-based perspective in all work.

2) CONTINUE THE PARADIGM SHIFT BY INCREASING HUMAN RIGHTS LEARNING AND SHARING OF EXPERIENCES

All players in the governance of food system must learn about the right to food and the obligations it places on states and international organizations. Governments in particular have a duty to and must train civil servants on human rights, including the right to food, and on human right-based approaches. Governments have also a duty to inform right holders of their specific rights and how they can claim them.

However, learning about the right to adequate food and nutrition does not mean simply learning the legal requirements. All parties in the food system must engage with and learn from those experiencing hunger and food insecurity about how their rights are violated and about the changes that could be made to support the realization of their right to food. Commitments must be made by civil society, NGOs, governments and international institutions to share knowledge and experience, and to increase learning about the right to food and its approach for transforming food systems.

3) FURTHER DEVELOP NATIONAL AND INTERNATIONAL FRAMEWORKS FOR THE ADOPTION OF THE RIGHT TO FOOD AS WELL AS FOOD SOVEREIGNTY

At the national level, through the direct participation of and engagement with rights holders, all states, including those in the Global North, must adopt the right to food and food sovereignty into legal, institutional and policy frameworks, as well as ensure compliance with extraterritorial human right obligations.

These frameworks must reflect not only the obligation to fulfill the right to food, but also the obligations to respect and protect the right to food. States must ensure that laws and policies, as well as government actions, do not hinder the ability of people to feed themselves. In this respect, states must also ensure that third parties are properly regulated to comply with human rights principles. This means states must end the corporate capture of global and national food and nutrition policy spaces, hold corporations liable for right to food and nutrition violations at home and abroad, and ensure proper monitoring and accountability mechanisms are in place.

More specifically, with respect to national implementation, states must:

- Implement robust legal frameworks and guarantee justiciability of the right to food
- Develop national strategies and programmes to ensure a comprehensive and holistic approach to food system governance
- Allocate proper funds and resources to laws, policies, programmes and strategies to ensure their full implementation, in line with the obligation to devote maximum available resources

- Strengthen existing human rights based monitoring mechanisms on the national, regional and global level
- Put equality at the core of all policies with aims to close the social, economic and political gaps in society
- Ratify the ICESCR and the Optional Protocol to the ICESCR
- Ensure the full participation of rights holders throughout all these processes

In these demands for progress, the RtAF Guidelines are extremely useful in outlining steps to be taken.

At the international and regional level, states and international bodies should:

- Ensure that human rights treaties and commitments are at the core of mandatory regulation at the international level¹⁶⁴
- Establish mechanisms for public interest civil society participation at all international decision-making bodies, with priority to those most affected by hunger and malnutrition
- Establish a global human rights-based innovative monitoring mechanism at the CFS
- Develop new instruments to promote and protect the rights of the most affected by hunger and malnutrition
- Support the initiative for a binding human rights treaty for the regulation of trans-national corporations
- Promote regional justiciability mechanisms of the right to food

In all initiatives states and international institutions must bring together civil society organizations and social movements from both rural and urban sectors to co-develop, implement and monitor the elements of these transitions. It is very difficult to advance implementation without considering power relations and the prevalence of inequality, social exclusion and discrimination of the most affected on all levels. Therefore, reforms towards inclusive governance are fundamental for the implementation process.

4) INSTITUTE POLICY COHERENCE AND A HOLISTIC APPROACH

Efforts must be made at all levels – from the local to the global – and across these levels to ensure full human rights policy coherence of all policies and laws that directly or indirectly affect the enjoyment of the right to adequate food. Adopting policy coherence requires auditing all laws and policies to ensure compliance with the respective international standards and human rights principles, including gender justice and indigenous peoples' rights. All efforts towards developing and maintaining policy coherence must be human rights-based, which means that all policies with negative impacts on human rights must be made consistent with human rights requirements.

¹⁶⁴ For more information see: Sofia Monsalve Suárez & Fabienne Aubry, *Rethinking the Voluntary vs. Binding Divide: A Reflection after 10 Years of the Voluntary Guidelines on the Right to Food*, RIGHT TO FOOD AND NUTRITION WATCH (2014).

At the national level, achieving policy coherence will involve developing a holistic approach to food and nutrition system governance, by adopting and/or ensuring coherence in sectoral or cross-sectoral policies in a variety of areas, including (but not limited to):

- land and territories
- water
- fisheries
- forests
- seeds
- women's rights
- agriculture
- environmental protection
- labour and employment (including living wages, equal pay, health and safety regulations and parental leave)
- social protection
- housing
- nutrition
- civil and political rights (to ensure the protection of human rights defenders)
- trade and investment
- climate change
- energy
- raw material and extractive sector
- rural development
- immigration
- finance
- poverty alleviation at the global and national level
- military, security and defense
- conflict resolution, transitional justice and post-crises recovery
- development cooperation
- humanitarian aid

Similar policy coherence should be sought in all international organizations and institutions that develop policy in any of these areas, and between international organizations and states.

5) POLICY IMPLEMENTATION, ACCOUNTABILITY, MONITORING AND ACCESS TO JUSTICE

States must ensure that rights holders are able to claim their rights and seek redress when their rights are threatened or violated.

To achieve this, states should strengthen monitoring and recourse mechanisms that exist, as well as create new independent and innovative monitoring and recourse mechanisms. They must also set short, immediate and long-term goals in line with the obligation to progressively realize the right to food. They must also develop indicators, targets and benchmarks from which to monitor progress. States should provide proper budgetary allocations as part of the accountability objective, to ensure that laws, strategies and policies achieve their intended results.

States must inform the public officials and subcontracted third parties of their respective human rights obligations. They must continuously build their capacity and provide the resources, which enable them to meet their duties.

In addition, states should:

- Ensure that economic rights are justiciable, and consider constitutional amendments or the implementation of right to food legislation that will allow individuals and communities to seek the enforcement of their right to food when it is threatened or violated
- Adopt the Optional Protocol to the ICESCR, to ensure an additional monitoring and accountability mechanism for local populations
- Recognize regional human rights bodies and allow their jurisdiction over economic, social and cultural rights.

In all monitoring and accountability measures, states must guarantee the participation of rights holders.

In the past decade, leaders of social movements and human rights defenders in many countries have lived in fear that their advocacy efforts on behalf of themselves, their communities, and the communities they represent may lead to violations of their right to life, liberty and security. Countries must make new commitments to ensure that human rights defenders do not face criminal sanctions for their advocacy efforts, and more broadly to protect freedom of speech, assembly and association.

6) DEMOCRATIZE THE FOOD SYSTEM AND CREATE SPACE FOR REAL PARTICIPATION OF CIVIL SOCIETY AND SOCIAL MOVEMENTS AT ALL LEVELS

Consistent with the human rights approach, countries, international institutions and civil society must ensure greater participation at all levels of decision-making. However, participation must be more than inclusion in discussions – decisions made at all levels should reflect the active participation of affected communities, and new policies, laws and strategies must be developed in tandem with civil society.

In building inclusive bodies, states and international institutions should take the following steps:

- Create inclusive processes and institutions that ensure and encourage participation and put in institutionalized dialogue mechanisms between governments and civil society organizations, social movements and local communities
- Support local food systems, including local food governance schemes
- Ensure the participation of peasant farmers, pastoralists, fisherfolks, agricultural workers, women, youth, and indigenous peoples in all decision-making processes that directly or indirectly affect their lives and food resources
- Respect the principle of free, prior and informed consent in the case of indigenous peoples and traditional populations
- Promote inclusive, CFS-like governance bodies on the national and regional levels
- Promote accountability of state institutions with obligations under the right to food, with full participation of rights holders
- Strengthen the voice of social movements and civil society in the CFS
- Establish CFS-like governance schemes within the whole UN System

However, creating space for the true participation of rights holders does not mean that all stakeholders have a right to participate. Private sector entities cannot be afforded the same participation rights as rights holders. Private corporate interests must be kept out of food and nutrition and related policy spaces. Multi-stakeholder platforms, which see agri-business and multinational corporations on equal footings to CSOs and social movements, must not become the global norm for the governance of food systems internationally, regionally or nationally.

7) REAFFIRMING THE RTAF GUIDELINES IN LIGHT OF NEW DEVELOPMENTS

After ten years, the RtAF Guidelines remain relevant to the domestic implementation of the right to food through national laws and policies. However, in reaffirming the guidelines and recommitting to their tenants, states should also reread the guidelines into the present-day context, in particular with respect to the growing understanding of human rights and the new challenges impacting the full realization of the human right to adequate food.

Extraterritorial Obligations: States must reaffirm commitments to enforcing extraterritorial human rights with respect to the right to food. This will involve assessing the impact of their laws and policies on the full realization of the right to food in other countries, and adequately regulating the conduct of domestic and multinational corporations in the endeavors aboard. It will also involve creating accountability, monitoring and complaint mechanisms for victims in others countries to claim enforce their rights.

Protracted Crises: States and other stakeholders should endeavor to interpret and address the right to food in situations of protracted crises, including war, conflict, occupation and natural disasters. This

can be partially facilitated through the implementation of the CFS Agenda for Action for Addressing Food and Nutrition Security in Protracted Crises, which is expected to be endorsed by the CFS in its 42nd Session in 2015.

Gender and Economic Equality: The RtAF Guidelines must be read in the context of growing economic and gender inequality, as well as the concentration of power and wealth in a small elite. This inequality is undermining the ability of people to access food. States and international organizations must address inequality as part of their overall effort to address the right to food.

Climate Change and Environmental Sustainability: Countries should affirm the importance of addressing climate change as part of the strategy to addressing healthy food systems. States must facilitate transitions towards more sustainable consumption and production patterns, through for example the promotion of agroecology, rethinking agrofuel policies and changing what crops and practices are subsidized. States should also take steps to prepare for future climate shocks and their impact on livelihoods and access to food. The CFS should also consider ways to further promote as part of the RtAF Guidelines the connection between climate change and the right to adequate food and nutrition.

Nutrition and Food Nexus: States and international organizations should adopt an understanding of the right to food that fully incorporates a nutritional dimension, and they should denominate this right, “the right to food and adequate nutrition”.¹⁶⁵ In this respect, states and international organizations should understand food as more than simply a commodity or collection of kilocalories, but rather as embedded in the social processes of eating, nourishment, and wellbeing.¹⁶⁶ In line with efforts at integrating hunger and nutrition, it is fundamental that ICN2 harmonizes its outcome documents with similar documents produced by the CFS.

International Law and Policy: Finally, in reaffirming the RtAF Guidelines, states should think beyond the steps required within their national borders, but also to the importance of ensuring all international policies and laws developed by country representatives at international institutions be human rights based, and developed through participatory human rights approaches geared at enforcing the right to food, as outlined in the RtAF Guidelines. While the RtAF Guidelines speak exclusively about the national implementation, it is now clear that international systems must reflect similar principles, and as part of their obligations under the RtAF Guidelines, states should support the transition towards human rights-based approaches in global governance.

¹⁶⁵ Such an understanding would be in line with the text of the International Right to Food Code of Conduct, endorsed by more than 1000 CSOs and social movements. FIAN International, WANHR, Istituto Internazionale Jacques Maritain et al., International Draft Code of Conduct on the Right to Adequate Food. Heidelberg, art. 4, para. 2 (1997), http://www.iatp.org/files/International_Code_of_Conduct_on_the_Human_Rig.htm.

¹⁶⁶ In this respect, states and international organizations should adopt the concept “El Buen Vivir” of many indigenous peoples into the right to food and adequate nutrition. This concept sees nutritional well being as a prerequisite to all aspects of life from birth, to the ability to work, bear children, be healthy and thrive. For more information of El Buen Vivir, see <http://www.territorioindigenaygobernanza.com/elbuenvivir.html>.

VI) FINAL REMARKS – A VISION STATEMENT¹⁶⁷

“We envision a world where those who produce, distribute and need food are at the heart of food, agricultural, livestock, forestry and fisheries systems and policies: a world where food production is rooted in environmentally sustainable production, under local control and honoring traditional knowledge, whilst guaranteeing the possibility of a diversified and healthy diet and nutritional well-being; a world where trade policies and practices will serve the rights of peoples to safe, healthy and ecologically sustainable production and consumption; a world where the interests of the next generation will be included, and a world where new social relations are free from oppression and from the inequalities of class, ethnicity, caste, gender, religion.

We envision a world where the role of the State is reaffirmed and where States uphold their responsibility to protect and promote democracy, as well as respect and strengthen food and peoples’ sovereignty. Land, oceans, rivers, forests and all of nature are much more than a means of production; they are the very basis of life, culture and identity, and fulfill crucial social, cultural, spiritual and environmental functions. We envision genuine agrarian, fisheries, pastoralist and forest reforms that guarantee access to, and the sharing of, productive territories and other resources free from the threat of large scale land and other natural resources privatisation, loss and eviction. The right of self-determination of Indigenous Peoples must be upheld.

Our vision is deeply rooted in the human rights framework and seeks to seamlessly integrate the concepts of food sovereignty, the right to food and food and nutrition security. The indivisibility of rights is a core principle that is fundamental to the human rights approach. Accountability is another core principle that must be respected and protected by all actors (State and non-State); impunity of violations against these rights must be overcome.

We recognize the need to re-emphasize the centrality of nutrition, including its upstream social determinants such as universal access to potable drinking water, sanitation, maternal and child care and quality primary health care and education.”

¹⁶⁷ CSO Working Document on the GSF (December, 2011).

Ten years ago, in November 2004, the FAO Council adopted the *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*. This anniversary has been seized by the Global Network for the Right to Food and Nutrition and other civil society organizations and social movements as an opportunity for stocktaking and, more importantly to call for renewed commitment by governments, UN agencies, civil society and other stakeholders, for the full realization of the right to adequate food and nutrition.

