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Mandate of the Special Rapporteur on the right to food

**Achieving the right to food:
from global governance to national implementation**

**Contribution to the 37th session of the
Committee on World Food Security (CFS) by**

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Amartya Sen once remarked in his characteristically economical prose, that "the law stands between food availability and food entitlement".¹ What he meant is that unless we take seriously our duties towards the most vulnerable, and the essential role of legal entitlements in ensuring that the poor have either the resources required to produce enough food for themselves or a purchasing power sufficient to procure food from the market, our efforts at increasing production shall change little to their situation. For they are hungry not because there is too little food: they are hungry because they are marginalized economically, and powerless politically. This was the key lesson from the 1996 World Food Summit. And this is what shaped the identity of the Committee on World Food Security.

Over the past few years, significant progress has been made in the implementation of the human right to adequate food,² the result of the co-construction of issues by civil society, social movements, and governments. Governments now understand that hunger is not simply a problem of supply and demand, but primarily a problem of a lack of access to productive resources such as land and water, of unscrupulous employers and traders, of an increasingly concentrated input providers sector, and of insufficient safety nets to support the poor. They understand that while attention has been focused on addressing the mismatch between supply and demand on the international markets -- as if global hunger were the result of physical scarcity at the aggregate level --, they should now pay greater attention both to the imbalances of power in the food systems and to the failure to support the ability of small-scale farmers to feed themselves, their families, and their communities. They understand the importance of more equity in the food chains, of empowerment, and of accountability: they understand that the right to food can constitute a tool to improve the effectiveness of policies that seek to combat hunger and malnutrition.

In June of this year, in close cooperation with the Right to Food Unit of the FAO, I invited around 50 experts from the Latin American and Caribbean region in Bogotá, Colombia, for an expert meeting on the implementation of the right to food in that region. In April of next year, I shall have a similar expert meeting to assess progress and exchange best practices in Eastern and Southern Africa. In closing this first review of global and regional developments on the implementation of the right to food presented to the CFS, I would like to illustrate the importance of the right to food in combating hunger and malnutrition by focusing on these regions.

I. Constitutional protection of the right to food

A growing number of States, 24 worldwide according to a recent survey, now explicitly protect the right to food in their constitutions.³ South Africa has led this movement, with the inclusion of the right to food in Article 27 of the post-apartheid Constitution. But other countries are now moving in this direction. The new Constitution of Kenya, approved by a popular referendum in 2010, states that "(1) Every person has the right ... (c) to be free from hunger, and to have adequate food of acceptable quality"; and like in South Africa, the Constitution imposes on the State a duty to respect, protect, promote and fulfil that right.

Also last year, Brazil incorporated the right to food into Article 6 of the Federal Constitution and in October 2011, the constitutional reform process was completed in Mexico, inserting the right to food

¹ Amartya K. Sen, *Poverty and Famines. An Essay on Entitlements and Deprivation*, Clarendon Press, Oxford, 1981, p. 166.

² The right to adequate food is recognized under Article 25 of the Universal Declaration of Human Rights (G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948)), and under Article 11 of the International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966, G.A. Res. 2200(XXII), U.N. GAOR, 21st sess., Supp. No. 16, U.S. Doc. A/6316 (1966), 993 UNTS 3), as interpreted by the Committee on Economic, Social and Cultural Rights (General Comment No. 12: The right to adequate food (1999), UN doc. E/C.12/1999/5). These prescriptions are complemented by the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* adopted by the Member States of the FAO General Council in November 2004, which are a set of recommendations addressed to States for the implementation of the human right to adequate food.

³ *Constitutional and Legal Protection of the Right to Food Around the World* (by Lidija Knuth and Margret Vidar), FAO Right to Food Unit, Rome, 2011, p. 13. Nine countries recognize the right to food as a self-standing right recognized to all. Ten other countries stipulate the right to food for a specific category of the population only, such as children or prisoners. Five countries have constitutional provisions that stipulate the right to food explicitly as being part of another human right.

in the Constitution by amending Articles 4 and 27. Other countries whose constitutions explicitly guarantee the right to food include Bolivia (art. 16), Ecuador (art. 13), Guatemala (art. 99), Guyana (art. 40), Haiti (art. 22) and Nicaragua (art. 63) in Latin America and the Caribbean, while in Asia, the Interim Constitution of Nepal recognizes an individual right to food sovereignty (art 18.3). A range of countries in all regions protect the right to food of specific categories of persons, such as children, or they ensure a protection of the right to food through other constitutional provisions, such as those related to the right to health or the right to life. In some countries such as Argentina and Costa Rica, the right to food is given constitutional rank by the International Covenant on Economic, Social and Cultural Rights being directly integrated in the domestic legal order, thus empowering courts to give effect to Article 11 of the Covenant.

II. Framework laws and national strategies for the realization of the right to food

But the constitutional protection of the right to food is only one component of a comprehensive approach towards guaranteeing the entitlements of individuals in order to ensure that they have access to adequate food, sufficient to meet their dietary needs. Therefore, three years after the 1996 WFS, and following its request to clarify the normative requirements of the right to food, the experts of the Committee on Economic, Social and Cultural Rights have insisted on the need for States to work towards ‘the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks’.⁴ Such a national strategy should comprise the establishment of appropriate institutional mechanisms, particularly in order to: (i) identify, at the earliest stage possible, emerging threats to the right to adequate food, by adequate monitoring systems; (ii) improve coordination between the different relevant ministries and between the national and sub-national levels of government; (iii) improve accountability, with a clear allocation of responsibilities, and the setting of precise timeframes for the realization of the dimensions of the right to food which require progressive implementation; and (iv) ensure the adequate participation, particularly, of the most food-insecure segments of the population. As part of such a national strategy, States should adopt a framework legislation ensuring that the right to food is justiciable before national courts or that other forms of redress are available, so that in situations such as the current one when the prices of food undergo a sudden increase, the other branches of government will not be allowed to remain passive.

1. Framework laws

In recent years, we have seen significant progress in this regard. Framework laws grounded in the right to food have been adopted in rapid succession in Argentina in 2003 (Law creating the National Nutrition and Food Program (17 January 2003)), in Guatemala in 2005 (National Nutrition and Food Security System Law (6 April 2005)), in Ecuador and in Brazil in 2006 (Nutrition and Food Security Law (27 April 2006), and Law creating the National Nutrition and Food Security System (15 September 2006), respectively), and in Venezuela in 2008 (Nutrition and Food Security Law (*Ley Orgánica de Seguridad y Soberanía Agroalimentaria*, 31 July 2008)). In ten other countries in the Latin American and Caribbean region, similar laws are currently proposed for adoption by the respective parliaments.⁵ This remarkable growth of framework laws on the right to food in this region has been favored by the dedication and commitment of parliamentarians, many of whom are connected through the *Frente Parlamentario contra el Hambre*, a network in which best practices are exchanged between national parliaments to encourage the drafting and adoption of legislation that improves the protection of the right to food.⁶

⁴ General Comment No. 12, para. 21.

⁵ The countries concerned are Costa Rica, Dominican Republic, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Bolivia.

⁶ See the national reports by the Sin Hambre Initiative on the right to food: <http://www.rlc.fao.org/iniciativa/infda.htm>.

These laws may set targets for the government to achieve, allocating responsibilities for taking action across different branches of government and coordinating their action.⁷ They typically allow for a permanent dialogue between government and civil society organisations, by establishing national food security councils, often linked to the highest level of government and whose members are ministers or their delegates and civil society representatives.⁸ The mechanisms through which participation of civil society is ensured vary across States. In Honduras for instance, civil society participates in local entities overseeing the Poverty Reduction (*Estrategia para la Reducción de la Pobreza, ERP*) and is involved in the elaboration of the draft food and nutrition security law. In Brazil, two thirds of the members of the National Council on Food and Nutrition Security (CONSEA) represent civil society organizations. In Peru, civil society is represented in the Inter-Ministerial Commission for Social Affairs (*Comisión Interministerial de Asuntos Sociales, CIAS*). In Venezuela, civil society can participate through the agrarian assemblies (*Asambleas Agrarias*) and Community Councils (*Consejos Comunales*). Civil society participate in the National Council for Food and Nutrition Security (*Consejo Nacional de Seguridad Alimentaria y Nutricional, CONASAN*) in Nicaragua, and in the National Council for Food and Nutrition Security (*Consejo Nacional de Seguridad Alimentaria y Nutricional*) and the Council for Urban Rural Development (*Consejos de Desarrollo Urbano Rural*) in Guatemala.

The status of these food security councils also may differ from jurisdiction to jurisdiction. In the Brazilian case, CONSEA has a consultative nature, addressing recommendations to the Inter-Ministry Chamber of Food and Nutrition Security, the cross-department taskforce in charge of implementing the national food security strategy.⁹ But in other countries such as Guatemala and Ecuador the body can make binding decisions. Some of these councils allow for the participation of the private sector. They may then favor a chain-wide learning process about the food system, from the farmer to the consumer, allowing the government to identify blockages and to improve the sustainability of the system as a whole. During my mission to South Africa earlier this year, I was encouraged by the intention expressed by the South African Human Rights Commission to deepen the work launched through the Southern African Food Security Change Lab, linking the various actors of the chain in the search of innovative solutions that can improve the sustainability of the food chains. A new framework law on the right to food in South Africa could institutionalize this dialogue, and improve its linkage to policy-making. The South African Human Rights Commission already contributes major reports on issues such as access to land and the situation of agricultural workers; by facilitating a dialogue about the inclusiveness and sustainability of the food system, it would be making another major contribution to the implementation of the right to food in South Africa.

2. National strategies for the realization of the right to food

In a number of regions, States are designing national strategies for the realization of the right to food. These strategies are usually developed through a dialogue with civil society, including but not limited to farmers' organisations, and they set targets to be achieved within specific timeframes based on a shared diagnosis of which priority actions should be taken.

On this front, progress in Latin America has been particularly remarkable. Several national strategies and action plans have been developed in the region in recent years, including the *Plan Nacional de Seguridad Alimentaria 2009-2015* of Paraguay, the *Política Nacional de Seguridad Alimentaria y Nutricional* of Nicaragua, the *Política de Seguridad Alimentaria y Nutricional 2005-2015* of

⁷ Coordination may be improved by other means than by the adoption of a framework law. In Panama for instance, a coordination body was established by Executive Decree of 18 October 2004, creating the National Secretariat for the Coordination of the National Plan on Food Security (*Secretaría Nacional de Coordinación y Seguimiento del Plan Alimentario Nacional*) (SENAPAN).

⁸ While not fully ensured yet, the participation of civil society organizations is being considered with coordinating bodies of Bolivia (*Consejo Nacional de la Alimentación y Nutrición*), Argentina (*la Comisión Nacional de Nutrición y Alimentación*), and Colombia (*Comité Nacional de Prevención y Control de Micronutrientes, CODEMI*).

⁹ See Report of the Special Rapporteur on the right to food, Olivier De Schutter, to the Human Rights Council, Addendum: Mission to Brazil (12-18 October 2009), A/HRC/13/33/Add.6, at para. 14.

Honduras, the *Política Nacional de Seguridad Alimentaria y Nutricional 2008* in Colombia, the *Programa para la Erradicación de la Desnutrición Crónica 2007-2012* in Guatemala, and the *Política Nacional de Seguridad Alimentaria y Nutricional* in El Salvador. Brazil just adopted a rights-based Food and nutritional Security Plan, involving seventeen ministries within the Interministerial Food and Nutritional Security chamber for the 2012-2015 period. A series of national social programmes also explicitly aim at combating hunger and food and nutrition insecurity, such as the “Fome Zero” in Brazil, the programme “Vivir mejor” in Mexico, the programme “Bogotá sin Hambre” in Colombia, the programme “Desnutrición Cero” in Bolivia, or the national plan “Hambre más urgente” in Argentina.

But advances have been spectacular also in Africa. Just two months ago, on 18 August 2011, the Kenyan Cabinet, meeting under the Chairmanship of President Mwai Kibaki, approved a National Food Security and Nutrition Policy that has been developed through a dialogue with civil society since 2007. Targets are set in the four areas covered by the new strategy: (1) food availability and access; (2) improved nutrition and basic health; (3) stability of food and access through enough relief and safety nets; and (4) improved food and nutrition information. Progress in moving towards these targets should be monitored with an active role for civil society. Togo passed the *Programme National d'Investissement Agricole et de Sécurité Alimentaire* (PNIASA) 2008-2015, which promotes rights to food and to be free from hunger. In December 2008, Togo also adopted the *Programme National de Sécurité Alimentaire* (PNSA), making the the right to food a central pillar in the government’s strategy for achieving food security.

Already in 2002, South Africa adopted the Integrated Food Security Strategy (2002). A Zero Hunger Strategy was further adopted in 2009, and the Government has also defined 12 Outcomes that address the priority areas for the implementation of their Medium Term Strategic Framework 2009–2014. Among these Outcomes is Outcome 7, defined as “vibrant, equitable and sustainable rural communities and food security for all.” The Outcome 7 Delivery Agreement frames food security policy by addressing food availability, accessibility, utilization and affordability. It sets out the key work to be completed before 2014 as well as long-term targets for improving food security by identifying the specific activities particular departments must undertake to reach the outlined goals. Although the Outcomes are not legally binding, the Government has committed to ensuring the achievement of the Outcomes through the establishment of the Department for Performance Monitoring and Evaluation (DPME) within the Presidency.

However, national strategies are worth nothing if they are not solidly grounded in the human right to adequate food. This means that the setting of targets and the identification of the concrete measures to be adopted should be the result of meaningful public participation; that the authorities responsible for implementation should be held accountable for results; that the indicators allowing the measure progress should be based on the normative components of the right to food, including non-discrimination. Most importantly, to ensure accountability, independent monitoring is required of the policy documents adopted by the Government, a task which could be entrusted to national human rights institutions, to public prosecutors, or to ombudspersons. Additionally, ring fencing of resources is required to ensure sustainable funding of these plans. Until these different conditions are met, the various strategies adopted by the Government may remain ineffective, since there will be no sanction associated with a failure to deliver.

III. The role of monitoring mechanisms -- judicial and non-judicial

The recognition of the right to food in domestic legal orders is not only of symbolic value. They may allow constitutional courts to strike down laws that lead to violations of the right to food, as in Colombia and Guatemala, or to sanction such violations that may result from administrative practice, as we have seen in India in the famous *People's Union for Civil Liberties v. Union of India and Others* case launched in 2001.¹⁰ The newly adopted provision of the Kenyan Constitution was already

¹⁰ Writ petition (Civil) No. 196 of 2001 (Supreme Court of India).

invoked by the Consumer Federation of Kenya in a suit it brought against the Kenyan government on 30 May 2011 for not adopting the measures that would allow the population to cope with the high prices of basic commodities, including unga [maize flour], the staple diet of Kenyans.

The constitutional protection of the right to food also may ensure that domestic laws and regulations are interpreted in accordance with the requirements of the right to food. In addition, many countries have established independent national human rights institutions, which monitor the compliance of the State with its obligations in the area of human rights, and which in some cases can receive complaints from aggrieved individuals. For example, the Human Rights Procurator's Office in Guatemala had issued a series of reports which monitor the implementation of the National Policy on Food and Nutrition Security, and a series of thematic report on the status of realization of the right to food have been prepared by the Human Rights Procurator's Office in El Salvador ; in Brazil, the Public Ministry is composed of independent public prosecutors that can hold public authorities accountable in the implementation of programmes related to food and nutrition ; in Argentina, it is following an action by the National Ombudsman that the Supreme Court decided, in September 2007, that the national State and the Government of Chaco Province should provide food and drinking water to the province's indigenous Toba communities. These are all means of ensuring that governments take measures guided by the need to support the most vulnerable, that they abstain from action that has a detrimental impact on the enjoyment of the right to food, and that they move at a reasonable speed towards the full eradication of hunger and malnutrition.

IV. An international enabling environment

The Committee on Economic, Social and Cultural Rights underlined that the full realization of the right to food is 'inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, *at both the national and international levels*, oriented to the eradication of poverty and the fulfillment of all human rights for all'.¹¹ It is fitting therefore that at our 35th session held in October 2009, when the Committee on World Food Security endorsed the reform of our body, we pledged to 'strive for a world free from hunger where countries implement the voluntary guidelines for the progressive realization of the right to adequate food in the context of national food security'. The right to food can serve as a compass to guide how we shape the international environment in order to supports efforts pursued at the national level.

1. The role of donors in supporting the realization of the right to food

I am encouraged to see that, increasingly, donors understand their role in supporting the realization of the right to food in partner countries. The latest development in this regard is the adoption by the European Parliament, on 27 September 2011, of a resolution detailing an EU policy framework to assist developing countries in addressing food security challenges.¹² The resolution is largely based on the *FAO Voluntary Guidelines to Support Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, and it recognizes the need to move towards "A Human-Rights-Based Approach to Sustainable Agriculture." The resolution also lists a series of measures based on the right to adequate food that could reduce price volatility and what it calls "uncontrolled land acquisition" ; and it insists on the need for the EU to ensure that all its policies converge towards the objective of realizing the Millennium Development Goals, consistent with its commitment towards "Policy Coherence for Development".

Explicitly grounding the reform of development co-operation policies in a human rights framework, in accordance with the definition of the right to development endorsed by the UN General Assembly,¹³ presents a number of advantages. By endorsing such a framework and seeking to define their policies in accordance with what such a framework prescribes, donor governments and international agencies

¹¹ General Comment No. 12: The right to adequate food, UN doc. E/C.12.1999/5, para. 6 (12 May 1999) (emphasis added).

¹² For the full text of the resolution, see <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0410+0+DOC+XML+V0//EN&language=EN>.

¹³ G.A. Res. A/RES/41/128, 4 December 1986, annex 41 UN GAOR Suppl. (No. 53) 186, UN Doc. A/RES/41/53 (1986).

and their partners are provided a reference point, based on their existing international obligations, for coordination efforts. This facilitates the search for a consensus between them. It also gives concrete meaning to policy guidelines which are already agreed to, such as those which emphasize national ownership, management for results, and accountability of both donors and partners for development results. A human rights framework also requires the participation, as a matter of right, in the design and implementation of development policies, of the ultimate beneficiaries of development. Such participation in turn is facilitated by the invocation of internationally agreed human rights as benchmarks, by which the effectiveness of development efforts could be judged. A reference to the realization of human rights as the ultimate aim of development strategies thus not only provides us with an objective evaluation tool of these strategies; it also improves the effectiveness of these strategies, by obliging donors and partners alike to pay greater attention to the impacts of their policy choices, both intended and unintended, direct and indirect, particularly on the most vulnerable sectors of society.

The transformative potential of a human rights framework on development co-operation is considerable. At its core, the introduction of this framework leads to a shift from a bilateral relationship between donors and partner States, to a triangular relationship actively involving the ultimate beneficiaries and their representatives (national parliaments and civil society organisations) in the design and implementation of development policies. This represents a gain in effectiveness (since these policies will be more evidence-based), but also in legitimacy (since they will be grounded on human rights as universally recognized values), and in accountability (since we move from the realm of charity and discretion in relations between donors and recipients to relations defined as those between duty-bearers and rights-holders). While the recent efforts in reforming aid with a view to improving its effectiveness are moving in the same direction, explicit reliance on a human rights could strengthen those efforts and help guide them. This would be consistent with one of the commitments of the States adhering to the 2005 Paris Declaration on Aid Effectiveness, which is to enhance partner countries' accountability to their citizens and parliaments for their development policies, strategies and performance (para. 3, iii, and para. 14). It is also consistent with the reference that the Accra Summit on Aid Effectiveness of 2-4 September 2008 makes this this objective (para. 13, a, of the Accra Agenda for Action).

2. The role of the Committee on World Food Security

The CFS has an essential role in shaping the international environment in order to make it more supportive of the country-level efforts towards achieving food security. When the CFS was reformed in November 2009, it was agreed that in phase II of its work, it would “promote accountability and share best practices at all levels.”¹⁴ The governments noted in this regard that “the CFS should help countries and regions, as appropriate, address the questions of whether objectives are being achieved and how food insecurity and malnutrition can be reduced more quickly and effectively. This will entail developing an innovative mechanism, including the definition of common indicators, to monitor progress towards these agreed upon objectives and actions taking into account lessons learned from previous CFS and other monitoring attempts.”

This means for instance that, as proposed in the decision box on the policy roundtable concerning food price volatility, the CFS Secretariat should prepare a general report on the state of implementation of recommendations and action points agreed upon, for presentation to the CFS. But it means more : I propose a standing rule that the recommendations adopted upon should be associated with indicators allowing the CFS, at its annual sessions, to be provided with a mapping of the global and regional initiatives that aim to translate such recommendations into action at country, regional and global levels. This would allow us to strengthen the unique position of the CFS in promoting learning through the exchange of best practices. It would establish the relevancy of the CFS and distinguish it clearly from its predecessor, which did not succeed in its task of following upon the commitments

¹⁴ CFS:2009/2, Rev. 1, para. 6.

made at the 1996 World Food Summit, because it lacked indicators allowing for comparisons to be made and progress to be measured.

If, where recommendations and action points are agreed upon, we could follow progress in implementation on an annual basis, we could learn. For instance, how can food reserves contribute, by local purchases, to supporting the incomes of poor farmers, and by a definition of emergencies that includes sudden price spikes, to reducing the impacts of price volatility on the poorest segments of the population, and how can the lessons learned in this respect feed into a code of conduct on the use of food reserves to be developed through an inclusive process? How can the Voluntary Guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security take into account the diversity of contexts in which they apply, and how could governments learn from the way in which they have been implemented in various regions? And when the Principles on responsible agricultural investment that respects rights, livelihoods and resources (whatever new denomination they shall be given) shall have been made consistent with the Voluntary Guidelines currently under negotiation, and enriched and improved by being made the subject of an inclusive discussion involving all the stakeholders of the CFS, we shall also have to ask what problems arise in their implementation? Which obstacles do governments and private investors face in aligning their practices with the expectations defined in the Principles? And before 2014, ten years after their adoption by the FAO Council, perhaps we could ask how States are implementing the Voluntary Guidelines on the progressive realization of the right to food in the context of national food security, on the basis of a mapping of implementation by the High Level Panel of Experts.

My proposal is a simple one: that, as we review at our annual session the global and regional initiatives that seek to improve food security, we take as our departure point and grid of analysis the corpus of guidelines, recommendations and action points on which a consensus has been found, and that we thus follow-up on our commitments at the same time that we learn about the obstacles we face in implementation. These recommendations cannot remain a dead letter: they should not be a one-time event. It is thus that the added value of the CFS, and the unique contribution it can make to the global governance of food security, shall become both clear and beyond dispute.

Olivier De Schutter was appointed the UN Special Rapporteur on the right to food in March 2008 by the United Nations Human Rights Council. He is independent from any government or organization, and he reports to the Human Rights Council and to the UN General Assembly. For more on the work of the Special Rapporteur on the right to food, visit www.srfood.org or www2.ohchr.org/english/issues/food/index.htm