

Mandate of the Special Rapporteur on the right to food

5 February 2020

Dear CFS Chair, Secretariat, stakeholders,

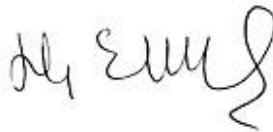
As my appointment to the right to food mandate draws to a close, it is with a sense of urgency and concern that I offer the following comments on the “**Voluntary Guidelines on Food Systems and Nutrition (VGFSyN) Draft One.**” These comments build upon those made during and subsequent to the OEWG in March 2019, May 2019 and June 2019, and to which I respectfully refer the CFS Chair, Secretariat and Technical Task Team. I am grateful for the work undertaken on the guidelines thus far; however, **I find it necessary to reiterate my call for the greater inclusion of the right to adequate food and a human rights-based approach (HRBA).**

As a member of the CFS Advisory Group, it is my responsibility to ensure that the right to food and human rights, generally, receive due consideration in this forum. This means that rights must be placed at the centre of the policy process—a point that I have previously stressed to the CFS. **Unfortunately, sporadic references to human rights throughout the VGFSyN is insufficient.** The VGFSyN must be rooted in a HRBA, embedding foundational human rights into the guidelines and principles contained therein. (For additional information on the interpretation and implementation of the HRBA, I respectfully refer the CFS Chair, Secretariat and stakeholders to my comment submitted to this forum on 28 June 2019).

In the comments below, I offer concrete recommendations for the meaningful integration of human rights into the VGFSyN Draft One. Article 11 of the International Covenant for Economic, Social and Cultural Rights establishes a strong legal foundation for such integration and, the Right to Food Guidelines adopted by the FAO in 2004 establishes a strong precedent for such an approach. If human rights are adequately integrated in the VGFSyN, these guidelines have the potential to not only stand up to, but to surpass, the Right to Food Guidelines as the leading tool for sustainable food system and nutrition policy.

The collaboration between my mandate and the CFS, to date, is poised to leave a legacy representative of the utmost mutual respect and multi-stakeholder cooperation. I hope that my final contribution to the VGFSyN drafting process serves only to solidify this legacy. Thank you again to the CFS Chair, Secretariat and stakeholders for the opportunity to contribute to this discussion. Please let me know if there is a need for further clarification. I will always be available for any further work and cooperation with the CFS, regardless of my mandate term.

Sincerely,



Hilal Elver
Special Rapporteur on the right to food

General Comments on CES Voluntary Guidelines on Food Systems and Nutrition—Draft One

The current draft of the VGFSyN falls far short of the intended purpose, as described in Part 1.2 of the document. This draft does not follow a “comprehensive, systematic and evidence-based approach to addressing policy fragmentation” or establish a set of coherent parameters that will enable relevant stakeholders to address the “challenges of social, environment and economic sustainability” (para. 3). Nor are the VGFSyN “founded upon the principles of the right to adequate food” as is claimed in the opening text of Part 3. On the contrary, the current iteration of this document is far too impenetrable and far too unfocused to provide any meaningful guidance in accordance with its intended purpose. Accordingly, it is premature to provide specific, text-based comments. Instead, the thematic and substantive comments offered below are intended to help the drafters reset and improve alignment with the stated objectives and goals.

1. The introductory paragraphs set a narrow, nutrition-centric focus that fail to account for the greater human rights context in which these guidelines must be based. Indeed, international human rights law clearly establishes that **the human right to adequate food includes the right to nutrition**. (See Article 11 of the International Covenant on Economic, Social and Cultural Right). States cannot consider hunger, malnutrition, food systems, or sustainability as isolated issues, but as part of a holistic and cohesive strategy, one which is rooted in human rights principles, and which is adequate from an economic, social, cultural perspective. Kindly refer to General Comment No. 12 by the Committee of Economic, Social and Cultural Rights adopted in 1999, the Declaration of the ICN2, and my early report on the Right to Food and Nutrition (A/71/282) for evidentiary support and model language.
2. The introduction also serves as an important opportunity to frame this document as one rooted in human rights principles, in accordance with a human rights-based approach (HRBA). Relegating the initial discussion of human rights instruments to Part 1.3 ‘**Nature of the Voluntary Guidelines and their Intended Uses**’ (paras. 9-10) fails to appropriately highlight the right to adequate food, and human rights, generally, as the necessary foundation for this document. While Part 1.3 contains important content, including added text on international human rights instruments, it must be featured more prominently. The need for requisite consideration of and attention to human rights should be addressed at the outset of the guidelines, consistent with Preambles and Prefaces of previous Voluntary Guidelines and Principles endorsed or adopted over the past decade and a half.
3. The recognition of governments as the designated target of the VGFSyN does not sufficiently convey the weight of the obligation on States to progressively realize the right to adequate food for all rights-holders. Nor is this focused target clearly maintained over the remainder of the text (see comment on this point, below). Throughout the document, private sector and government actors are conflated and obligations are watered down. Adopting an HRBA from the outset will necessarily convey that the guidelines are not just a tool that will assist in policy design, but in the implementation of legal obligations imposed under international human rights law.
4. As written, the key concepts introduced in Part 2 convey disjointed and potentially conflicting visions of food systems, sustainability and healthy diets. In reality, these concepts are all aligned, unified, and interrelated as the basic tenets of the right to food (para. 31). Framing these key concepts from an HRBA, and focusing on the elements of **adequacy, availability, accessibility and sustainability**, which comprise the right to food, will provide a more accurate, cohesive, and streamlined narrative for the guidelines.
5. On a related note, the definition of the right to adequate food provided in Part 2 (para. 31) remains unchanged from the previous iteration, and thus, insufficient. While technically correct

in its current form, the definition should include the more comprehensive explanation of the right's component parts and fundamental elements— as it was done in other guidelines, and which may be found in the CESCR's General Comment 12. The right to adequate nutrition is an element of the right to food, along with “availability, accessibility, adequacy and sustainability.” The International Covenant on Economic, Social and Cultural Rights acknowledges that the right guarantees not just “the fundamental right to freedom from hunger” but also from *malnutrition*. (Article 11.2, ICESCR). (Kindly refer to the UNSR Comment on the VGFSyN Zero Draft for a proposed definition).

6. The “Guiding Principles” conveyed in Part 2.2, and the document generally, lack any attention to or foundation in rule of law. Instead, the draft ignores the fundamental obligations, standards and norms that formalize States as duty-bearers, beholden to respect, protect and fulfil the human right to adequate food for all. **The “Guiding Principles” must therefore call for codification, formalization, and legislation to ensure that policy is coherent and effectively implemented.**
7. **The “Realization of the Right to Adequate Food” is not a “Guiding Principle” but a fundamental legal obligation imposed on all States. Adopting an HRBA is a more appropriate expression of a “Guiding Principle” that will inform the interpretation and implementation of the guidelines.**
8. **There needs to be a greater discussion of power-imbalances intrinsic in the food system;** greater inclusion in decision-making processes; and avoiding and assessing conflict of interest, as “Guiding Principles.” The draft includes only a passing and subdued reference to “inequitable power concentration and imbalances” but no further elaboration. **The draft does not include any explanation of the conflicts of interest among private sectors, or the exploitation of those who experience institutional inequality and marginalization.** The draft neglects the fact that the ICN2 Framework for Action prioritized these issues, calling for “robust safeguards against abuse and conflicts of interest” within national cross-government, inter-sector, and multi-stakeholder mechanisms for food security and nutrition. (ICN2 2014/2 Corr. 1, Recommendation 3). Attention to these considerations is fundamental for the progressive realization of the right to food and the adoption of an HRBA.
9. Further, as previously explained, the HLPE report identifies the right to food as a critical underpinning for improving dietary nutrition and for addressing the aforementioned issues (see 6.2.1 “Failure to recognize the right to adequate food” and para 36): “[a]ction requires recognizing the right to food and prioritizing this rights-based perspective for the **most vulnerable**. Although recent pledges by governments, and the SDGs themselves, emphasize rights-based approaches, many countries still fail to recognize this right. Power struggles present challenges as transnational food corporations use their economic power to hinder political action to improve food systems and diets.”
10. As previously mentioned, Part 3 critically states that **the guidelines are “founded upon the principles of the right to adequate food,” but fails to demonstrate the truth in this assertion.** The subsequent themes around which this section is structured do not align with the elements of the right to food; nor are they based in the **fundamental human rights principles of participation, accountability, non-discrimination, transparency, human dignity, empowerment, and rule of law.** These are cross-cutting principles that should be included in the guidance. This section of the guidelines serves only to announce a set of disjointed focal points without a clear theme or strategy to promote more inclusive, just, healthy and sustainable food systems.

11. **The guidance on “transparent, democratic and accountable governance of food systems” does not speak directly to these issues**, but instead confuses several unrelated, and often conflicting themes. Consider, for example, the emphasis on the “pivotal role of the private sector” (para. 3.1.1 (b)) and call for increased “financial investment” (para. 3.1.1(c)). Such recommendations must also take into account the conflicts of interest and power dynamics embedded in the current food system and which are undermining the realization of the right to food, especially for the most marginalized communities. The guidelines cannot advocate for increased agency of these actors without also providing adequate safeguards. Moreover, the VGFSyN draft singles out the private sector as a pivotal actor, but diminishes the contribution of small food producers and local businesses that are still the major food providers around the world.
12. Throughout Part 3 of the guidelines, there is no longer a clear preference of States as the primary duty bearers or sufficient attention to the fundamental human rights principles inherent in the HRBA. Taking steps to improve food systems and nutrition requires States, **as primary duty bearers**, to fulfil obligations relevant to other economic, social and cultural rights, as **all human rights are universal and inalienable; indivisible, interdependent, and interrelated**. While it is important that the guidelines speak to all duty-bearers and rights-holders, there must be greater and clearer recognition of State responsibility, especially in relation to regulatory power.
13. The guidelines call for more sustainable food systems, ones which promote management of natural resources, the health of farm and food system workers, and more responsive climate change adaptation and mitigation. The guidelines also repeatedly reference the importance of “traditional” practices and crops and “nutrition knowledge.” Yet, **such goals are not feasible within the current model of industrialized agriculture**. Today’s food production is characterized by high-inputs, intensive use of pesticides and agro-chemicals, and land-management practices that strip away ecosystems of biological and agricultural diversity. **The guidelines should therefore promote agroecology as a more viable strategy for supporting sustainable, inclusive, and healthy food systems.**
14. **The attention to “equitable access to sustainable and healthy diets” leans towards an HRBA in title, recognizing that inequitable access is the primary barrier to the realization of the right to food. However**, the execution and subsequent discussion of this issue does not adopt a sufficiently nuanced perspective. **The State interventions are short-sighted** (e.g. vouchers and taxes) as opposed to systematic; making nutritious food more affordable is not simply a matter of adopting disincentives but taking a comprehensive view of State fiscal policies that promote subsidies, austerity measures and neoliberal reforms to the detriment of local, diverse and sustainable food production. This section fails to address health, inequality or the regressive nature of narrow policy-interventions that fail to adopt a HRBA.
15. Attention to **gender equity and women’s empowerment** is well-received, yet it also highlights the absence of other marginalized and vulnerable populations that play a critical role in food systems, but which are disproportionately impacted by human rights violations. Migrant workers, for example, receive no mention in this guidance and peasants are referenced just once, and only in the narrow context of malnutrition. As previously explained, food systems can be traditional, modern, or mixed, and the types of vulnerabilities that can be found are incredibly vary and depending on a multitude of economic, social and cultural contexts. This includes women, children, disabled, youth, indigenous peoples, small-scale fishermen, etc. Focusing on the most vulnerable groups and individuals helps addressing the root causes of malnutrition and can be key to identify where but most of all how policy action can be most

effective and sustainable. Previous Guidelines offer insight on how this particular challenge has been addressed.

16. **Food Systems and Nutrition in Humanitarian Context:** considering that conflicts, wars and natural disasters are major root causes of hunger and severe malnutrition and 500,000 million people lives is conflict or post conflict zones, States, humanitarian agencies, and the international community has joint responsibility to provide nutritious food to the most vulnerable first, and in a non-discriminatory manner. While section 3.6.1. (d) recommends “micronutrient-fortified food,” fortification should be used only in limited times and places, and should not disrupt local market and accessibility of fresh, nutritious food in longer term. Similarly, baby food formula should not replace long-term breast-feeding practices. To protect against these consequences, strong monitoring mechanisms must be put in place, and conflict of interests should be carefully evaluated.

17. **Part 4-Implementation and Monitoring of the use and Application of the Voluntary Guidelines:** the inclusion of text elaborating the importance of implementation and monitoring in Part 4 is a welcome addition from the previous draft of the guidelines. The content of this section, however, is concerning. **Stating clear principles of implementation is essential for promoting sustainable food systems.** Merely encouraging “voluntary efforts by States” is not only ineffective, but disregards the legal obligations of States to respect, protect, and fulfil the right to adequate food and nutrition. Once again, the discussion on multi-stakeholder platforms, should not include a reference to the Scaling Up Nutrition (SUN) Movement. Providing such a specific example that highlights only one organization or platform is not appropriate in voluntary guidelines. The paragraph should also acknowledge the need for these platforms and partnerships to be more inclusive, especially of vulnerable and marginalized communities, and address other shortcomings that the HLPE on Food Security and Nutrition have raised in the context of the 2030 Agenda (See, HLPE. 2018. Multistakeholder partnerships to finance and improve food security and nutrition in the framework of the 2030 Agenda. A report by the High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security, Rome.) Related to multi-stakeholder platforms, I encourage drafters to reference the role played by parliamentarians to promote normative, legislative action ensuring sustainable food systems and nutrition.