

# CFS POLICY RECOMMENDATIONS ON AGROECOLOGICAL AND OTHER INNOVATIVE APPROACHES FOR SUSTAINABLE AGRICULTURE AND FOOD SYSTEMS THAT ENHANCE FOOD SECURITY AND NUTRITION

## Comments on DRAFT ONE, submitted for consideration by the International Development Law Organization (IDLO)

### Introduction to IDLO

The International Development Law Organization (IDLO) is the only global intergovernmental organization exclusively devoted to promoting the rule of law and advancing its contribution to peacebuilding and sustainable development. IDLO supports partner countries and organizations worldwide to promote and deliver people-centred justice. Headquartered in Rome, IDLO works through its 17 country offices, its Branch Office in The Hague and its UN Liaison Offices in New York and Geneva. IDLO has experience in more than 90 countries around the world. Established as an intergovernmental organization in 1988, IDLO has 37 member states and United Nations Observer Status since 2001.

### IDLO work on Food Security and the Rule of Law

IDLO's work on food security focuses on strengthening the links between the rule of law (SDG16) and the right to food and nutrition (SDG2), based on promoting non-discriminatory access to nutritious food. Building on the principles of equality, inclusiveness, non-discrimination, participation, transparency and accountability, IDLO works to promote conducive legal environments for the realization of the right to adequate food and related human rights, such as the right to health. For this IDLO works in close collaboration with FAO and IFAD, including joint programmatic activities. IDLO has moreover conducted policy research on several dimensions of food and nutrition security and the rule of law, including on issues such as litigation as a legal strategy to realize the right to food and the role of secure land rights to strengthen food and nutrition security and gender equality.<sup>1</sup> IDLO also works to strengthen the links between customary and non-customary land rights, climate justice and food security and nutrition.

### General considerations

- IDLO welcomes the *CFS POLICY RECOMMENDATIONS ON AGROECOLOGICAL AND OTHER INNOVATIVE APPROACHES FOR SUSTAINABLE AGRICULTURE AND FOOD SYSTEMS THAT ENHANCE FOOD SECURITY AND NUTRITION*, which come at crucial juncture for rethinking food systems and how to make them more sustainable through the introduction of new sustainable innovative approaches for agriculture.
- IDLO welcomes the comprehensive overview on food security and nutrition provided in the preamble, as well as the focus it puts on marginalized and vulnerable groups, including smallholder producers. The preamble sets a clear and solid context for the policy recommendations and grounds the recommendations in the 2030 Agenda for Sustainable Development.

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<sup>1</sup> See IDLO, 2015. *Realizing the Right to Food Legal Strategies and Approaches*; IDLO, 2017. *Women, Food, Land: Exploring Rule of Law Linkages*.

- IDLO recommends, in line with the HLPE report, that the transition towards sustainable food systems takes into account the seven principles of a human rights-based approach: Participation, accountability, non-discrimination, transparency, human dignity, empowerment and the rule of law. More specifically, in the context of food security and nutrition, a “human rights-based approach [...] includes important substantive and procedural guarantees such as non-discrimination, the right to participate in the formulation of laws and policies on food and nutrition, the obligation to prioritize the needs of the most marginalized sections of the community, as well as the creation of appropriate monitoring and accountability mechanisms to measure progress and enable claims to be made concerning violations of the right to food.”<sup>2</sup>
- IDLO considers that the document would benefit from a more explicit anchoring in the rule of law principles. The rule of law is an essential enabler of the transformation of food systems and the transition towards Sustainable Food Systems (SFSs) for Food Security and Nutrition (FSN), which is an enabler of human development. The principles of the rule of law should guide the governance of SFSs especially when shifting to new frameworks, including through the implementation of agroecology and other innovative approaches. The 2020 report of the HLPE “*Food Security and Nutrition Building a Global Narrative Towards 2030*”<sup>3</sup> has included two new dimensions to the concept of Food Security and Nutrition: agency and sustainability. The rule of law is inalienably linked to the dimension of agency by promoting inclusive participation in decision-making processes, which is also linked to the concept of food sovereignty. A rule of law approach to food security and nutrition includes elements such as creating monitoring, transparency, and accountability mechanisms, developing and implementing consistent and effective legal and policy frameworks, respecting the rights of marginalized and vulnerable groups, building transparent and effective institutions, including fair and accessible justice systems, as well as an active and engaged civil society. These should serve as the foundation of sustainable agriculture and food systems, while promoting and protecting the right to adequate food.<sup>4</sup>
- The rule of law principles underpinning land reform processes and agriculture investments can ensure that these processes contribute to enhancing the right to adequate food and land tenure for the most marginalized. Accessible and transparent justice systems, as well as enabling legal and regulatory frameworks for civil society action, are therefore crucial in the implementation of agroecology and other innovative approaches to comply with the progressive realization of the right to adequate food.
- A rule of law approach to sustainable agriculture and food systems also takes into account customary and informal legal systems. In many countries, customary or community norms and justice mechanisms regulate land tenure at the local level and provide the most accessible pathways to dispute resolution, in particular when access to formal courts is hindered by socioeconomic and other barriers. Engaging with these systems is crucial to enacting a truly participatory transition towards SFSs. This, however, also entails engaging with the challenges of informal justice systems. Whilst customary law can work in synergy with and contribute to statutory laws, it may also reflect and perpetuate structural

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<sup>2</sup> IDLO, 2017. Women, Food, Land: Exploring Rule of Law Linkages, p.11.

<sup>3</sup> See CFS HLPE, 2020. Food security and nutrition: Building a global narrative towards 2030.

<sup>4</sup> IDLO, 2017. Women, Food, Land: Exploring Rule of Law Linkages, p.11.

inequalities, power asymmetries and discriminatory social norms, and conflict with human rights frameworks.<sup>5</sup>

- Finally, the rule of law can contribute to enhancing access to markets and finance for SHPs in the agriculture sector, thereby help reduce barriers and obstacles to integrate food value chains, reducing food insecurity and contributing to the realization of the right to food.
- A rule of law approach – based on the elements outlined above – contributes to enhance the governance of sustainable food systems when integrating agroecological and other innovative approaches, and contributes simultaneously to multiple development outcomes, such as food security and nutrition, gender equality, access to land and natural resources. IDLO proposes to strengthen rule of law principles and elements across the documents. While some have been captured (e.g. participation, non-discrimination), others can be strengthened or added (such as accountability, access to justice).

## Specific comments

ILDO welcomes the reference to the right to food across the recommendations. Given the intrinsic interlinkages between food systems, adequate nutrition and health, we recommend that where the right to food is referred the right to health is equally considered as a legal basis (notably **Paragraph 1 e**)).

### 1. Comments on the Preamble

- ✓ ILDO considers that the document would be strengthened by including in the **Preamble** a recognition of the importance of the Rule of Law in promoting effective legal and policy frameworks, particularly to address inequalities in agriculture and food systems to enhance food security and nutrition.
- ✓ IDLO welcomes the acknowledgment of the interrelated nature of the SDGs. For this reason, we suggest in para 3) to include reference also to health-related targets from SDG 3 (Health and wellbeing) and SDG 5 (Gender), in particular in relation to target 5a, 5b and 5c.
- ✓ IDLO notes the importance of highlighting data on the impact of interrelated challenges associated with agriculture and food systems. For instance, the text would be further enriched by data reflecting the disproportionate impact experienced by women. Women account for 70 percent of the world's hungry, and are disproportionately affected by malnutrition, yet they are responsible for more than half of the global food production.<sup>6</sup> Also, according to the latest State of Food Security and Nutrition Report (SOFI 2020), women have a 13 percent higher change of experiencing moderate or severe food insecurity than men, and close to 27 percent higher chance of being severely food insecure at the global level.<sup>7</sup>
- ✓ IDLO recommends expanding the contextual analysis to explore in more detail the question of land rights in **Paragraph 4**, after “*generally continue to ignore their needs*“. Most

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<sup>5</sup> Ibid.

<sup>6</sup> See IDLO, 2017. Women, Food, Land: Exploring Rule of Law Linkages.

<sup>7</sup> SOFI 2020: Transforming Food Systems for Affordable Healthy Diets, p. 24.

community land is held under traditional and customary tenure systems, which in many countries are not recognized or adequately protected by national laws.<sup>8</sup> This means that there may be no formal, legal avenue for indigenous peoples and local communities, especially women, to obtain ownership of their lands. In addition, insecure land tenure is a major barrier to investments from smallholder producers and can therefore affect the uptake of agroecological and other innovation approaches in smallholder agriculture.<sup>9</sup>

- ✓ Moreover, IDLO recommend amending **Paragraph 4** as follows: “These realities point to imbalances of power in agriculture and food systems, and emphasize the importance of leaving no one behind, by respecting, **protecting and fulfilling** human rights and empowering the most vulnerable.”
- ✓ **Paragraphs 9 and 13:** IDLO recommends that while fully acknowledging the role of technology and digitalization in promoting food security and nutrition, attention should also be given to digital inequalities, especially inequalities in access to technology and digital services. Here the document may call on governments to adopt legal and policy measures to ensure equal access. It may also call on IGOs to provide assistance for capacity building in this area.
- ✓ **Paragraph 10:** IDLO recognizes the importance of defining and listing agroecological and other innovative approaches. While the concept of food sovereignty is related to sustainable food production, it would appear to fall short of being a single innovative approach itself. As food sovereignty is linked to the agency dimension of food security and nutrition, IDLO suggest removing the term from the list of innovative approaches, perhaps moving it to the governance mechanisms.
- ✓ **Paragraph 15:** IDLO suggest integrating the list of international human rights instruments including the **Universal Declaration of Human Rights, the ICESCR and the UN Declaration on the Right to Development.**
- ✓ IDLO suggested adding a new Paragraph 16 as follows: “**The implementation of these recommendations is based on the seven PANTHER principles of Participation, Accountability, Non-discrimination, Transparency, Human Dignity, Empowerment and the Rule of Law.**”

## 2. Comments on the Recommendations

### Recommendation 1

*Recognizing the need to promote an enabling environment for agroecological and other innovative approaches for sustainable agriculture and food systems that enhance food security and nutrition*

Promoting a legal environment that enhances food security and nutrition.

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<sup>8</sup> See Rights and Resources Initiative, 2015. Who Owns the World’s Land? A global baseline of formally recognized indigenous and community land rights.

<sup>9</sup> See HLPE. 2013. Investing in smallholder agriculture for food security. A report by the High-Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security, Rome.

- ✓ Legal systems are key in contributing to create enabling environments for policy progression. IDLO suggests including a specific recommendation to governments to strengthen their legal and regulatory frameworks to create an enabling environment for the implementation of the policy measures recommended in the document. IDLO recommends adding the following point: **[Strengthen global and context-specific legal environments to create agroecological and sustainable legal frameworks for inclusive and sustainable food systems, ensuring the participation of SHPs, especially women, in the decision-making processes by stablishing peer-to-peer discussion fora and dialogue platforms. Specialized agencies and IGOs can support in the elaboration of these legal frameworks].**
- ✓ **1 e)**: IDLO recommends the following amendment: *“Integrating access to justice angle [...] in particular by ensuring that laws and policies ensure inter alia equal access to natural resources and public services, [including access to justice].”* Moreover, add the following recommendation: **“Recognize legal rights relevant to food security and nutrition (such as the rights to work, land and food) in national laws and implementing regulations and in the mandates of dispute settlement mechanisms, including national human rights institutions.”**
- ✓ **1 i)**: While welcoming the recommendation of adopting appropriate food labelling and certification systems, IDLO recognize that there are other additional policies and regulatory and fiscal measures available to promote healthy diets. IDLO suggests expanding this recommendation by adding the following phrase: **“[and other evidence and science-based regulatory, policy and fiscal measures.]”** IDLO also recommends expressively referring to WHO recommendations and guidelines **(Suggest including a footnote with reference to: Codex Alimentarius; World Health Assembly (WHA) Resolution 57.17, paragraphs 40.4 and 61, and WHA Resolution 66.10.)**
- ✓ **1 l)** IDLO suggest the following amendments: *“Strengthen [laws], policies, programmes and actions that challenge the underlying causes of gender inequality, in particular by ensuring that laws and policies ensure inter alia equal access to natural resources and public services, respecting and protecting women’s rights, knowledge, and ending gender violence and sexism, [...]”*
- ✓ After **1 m)**, IDLO recommends adding the following recommendation: **“[Establish accountability mechanisms, including procedural mechanisms to bring claims asserting the right to adequate food, to measure progress and enable claims to be made concerning violations of the right to food in the implementation of agriculture and food transition plans.]”**

### Recommendation 3

- ✓ IDLO suggests including **legal measures**, in addition to policy measures, throughout the text of this recommendation.
- ✓ *Recognizing the urgent necessity of the responsible use of agrochemicals for the protection and improvement of human, animal and environmental health.*

IDLO suggests including here a paragraph recognizing the **right to the highest attainable standards of physical and mental health** as legal foundation for this recommendation.

- ✓ *Recognizing the multiple functions of markets and the need to promote innovative approaches to ensure that markets respond to the needs of resilient, diversified, and integrated production systems, and recalling the CFS Policy Recommendations on Connecting Smallholders to Markets (CFS 43, 2016)*

In line with recommendations included in the VGFSYN, IDLO suggests including in this section a recommendation to **foster science and evidence-based strategies, guidelines, and instruments to help consumers to make informed and healthy choices and as a basis to avoid inappropriate marketing and publicity of food and non-alcoholic beverages to children as recommended in resolution WHA 63.14 and taking into account CODEX Alimentarius Commission standards (PARA 3.2.4 d).**

#### Recommendation 4

- ✓ IDLO welcomes the acknowledgment of the role of multi-disciplinary and participatory approaches to research, dissemination and education, such as transdisciplinary science, and we suggest highlighting also the role of legal research in the different areas addressed by the Policy Recommendations.
- ✓ **4 l):** Acknowledging the reference to responsible investments, IDLO suggests amending the paragraph as follows: *“Increase responsible investments in public and private research and development at national, regional and international levels and redress the relative under-investment in agroecological approaches including [by supporting inclusive multi-stakeholder dialogues and capacity building to strengthen legal frameworks for responsible investments.]”*
- ✓ **4 m):** IDLO suggests the following amendment: *“Prioritize and strengthen public research to address the needs of family farmers, in particular small- scale food producers, women and youth, [and vulnerable groups.]”*

#### Recommendation 5

- ✓ IDLO welcomes the content of Recommendation 5 in relation to promoting inclusive, democratic and multi-stakeholder decision-making processes, empowering groups and addressing inequalities, including through building capacity initiatives for stakeholders to meaningfully engage in these processes.
- ✓ **5 a):** IDLO suggests the following amendment: *“Create and strengthen associations, organizations and cooperatives [legal frameworks] in all parts of food systems, including food producers and consumers, build capacities, create and exchange knowledge, and promote inclusive decision-making processes.”*
- ✓ **5 e):** IDLO suggests the following amendment: *“Reinforce the autonomy of women particularly, family farmers, their organizations, collective action, negotiation and leadership skills, [legal empowerment], to increase access to and control over inter alia education,*

*appropriate extension services, gender-friendly technology, and full participation related policy processes.”*

IDLO remains available for further clarifications and consultations in relation to the recommendations provided herewith.