



## Right to Food: a Vital Tool for World Food Security

In 2010, the first Note of Coordination SUD's Agriculture and Food Commission (C2A) was devoted to the right to food! It reviewed the origins of this issue and highlighted some of its aspects, such as the various obligations for countries that place special importance on this right. Since then, the institutionalization of the right to food has undergone noteworthy developments. With this Note, to be read in comparison with that of 2010, the C2A seeks to give an overview of the current situation and to reassert the considerable importance of a food-security approach based on human rights.



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In his final report as United Nations special rapporteur on the right to food, Olivier De Schutter gave a commonly accepted definition of the issue: *"the right of every individual, alone or in community with others, to have physical and economic access at all times to sufficient, adequate and culturally acceptable food that is produced and consumed sustainably"*.<sup>2</sup> The right to food is a vital tool for world food security because it involves, concretely, the following: capacity

building for people, who possess rights and who are not just beneficiaries; the obligation of accountability on the part of Governments; and control mechanisms. Recognition of this right is absolutely fundamental, especially because real enjoyment of civil and political rights as well as the right to health care or education depends on it. This right has existence in law: in 2014, it was recognized explicitly in 28 national constitutions, and implicitly in around

1. Coordination SUD, C2A Notes No. 1, «The Right to Food: An Operational Tool for World Food Security», June 2010: [https://www.coordinationsud.org/wp-content/uploads/notes\\_c2a\\_1\\_en.pdf](https://www.coordinationsud.org/wp-content/uploads/notes_c2a_1_en.pdf)

2. Olivier De Schutter, *Final report: The transformative potential of the right to food*, United Nations Human Rights Council, January 2014.

40 others.<sup>3</sup> As with other economic, social, and cultural rights (ESCRs), it is subject to case-law in each separate country.<sup>4</sup> This fundamental right is enshrined in the International covenant on economic, social and cultural rights (Icescr, 1966, Article 11). The Icescr, ratified by France in 1980, was strengthened by an Optional Protocol that came into force in 2013. Since 2004, the international community has acquired Voluntary Guidelines<sup>5</sup> that help make headway, at different levels, towards a food-security policy based on human rights. However, there are still many challenges to be taken up, the foremost of which is the justiciability of the right to food.

## For a food-security policy based on human rights

### 1. The slow progress of the right to food

In its Reviewed Strategic Framework (June 2013), FAO notes that the right to food is “an increasingly accepted value” that has “led to new concerns on food insecurity and commitments to eradicate hunger, as well as under nutrition at national and international levels.” The following year, on the occasion of the 10<sup>th</sup> anniversary of the Voluntary Guidelines, it published a series of works to provide a comprehensive

review of the situation,<sup>6</sup> and the Committee on World Food Security (CFS) reaffirmed its importance in the report on its 41<sup>st</sup> session (in October 2014). This gradual recognition can be explained by various reasons: “*Treating food as a human right brings coherence and accountability. It helps to close the gaps by putting food security of all citizens at the top of the decision-making hierarchy, and making these decision-making processes participatory and accountable.*”<sup>7</sup> State public policies are most effective when based on rights that can be invoked (rights to productive resources, to access to food, or to social protection), especially because people participate in working out those policies (see below). This evolution is also and above all explained by the mobilization of national and international civil societies everywhere around the world. Let us take the example of the Philippines. In 2014, civil society organizations there decided to create the National Food Coalition (NFC). Based on lessons learned from the experience of Brazil, the NFC carried out several flagship actions and formed support groups throughout the country in order to promote the adoption of a national food policy. It also sent an urgent appeal to the president at that time, Benigno Aquino, and to Congress, asking for adoption of legislation on the right to food. Following this mobilization, the Filipino authorities worked out a draft bill that was put to debate in 2016.<sup>8</sup>



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3. Luisa Cruz, Yoon Jee Kim, and Margret Vidar, *Legal Developments in the Progressive Realization of the Right to Adequate Food*, FAO, 2014.

4. International Development Law Organization, *Realizing the right to food: legal strategies and approaches*, 2014. For an overall view, cf. the international network for ESCRs, [www.escr-net.org](http://www.escr-net.org). Several hundred legal decisions on ESCRs at the national, regional, and international levels are recorded there.

5. FAO, *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*, November 2004: <http://www.fao.org/docrep/009/y7937e/y7937e00.htm>

6. See the website of reference: [www.fao.org/righttofood](http://www.fao.org/righttofood)

7. Olivier de Schutter, “No longer a forgotten right” – UN expert hails a decade of right to food progress, 25 October 2013. Also, cf. Manuel Eggen and Nathalie Janne d’Othée, *Point Sud, “Those Who are Hungry are Entitled (Victor Hugo)”* available in French as “Ceux qui ont faim ont droit” (Victor Hugo). *Le droit à l’alimentation comme outil de cohérence des politiques en faveur du développement*, CNCD-11.11.11, October 2013: <http://www.ccpd-abco.be/publications/those-who-are-hungry-are-entitled/?lang=en>

8. FIAN International, *FIAN Philippines to the “List of Issues for the Philippines”*, Committee on Economic, Social and Cultural Rights, Pre-Sessional WG - 57 Session, Geneva, March 2016 : [http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/PHL/INT\\_CESCR\\_ICO\\_PHL\\_23033\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/PHL/INT_CESCR_ICO_PHL_23033_E.pdf)



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## 2. The Voluntary Guidelines to support the progressive realization of the right to adequate food: a suitable framework

The Guidelines adopted in 2004 have various advantages. First, they reaffirm the importance of both using an approach based on human rights and of fighting against the structural problems of food and nutritional insecurity. Second, they are precise and detailed in their proposal for progressive and integrated implementation of the right to food. Today, they represent the best available tool for Governments and other stakeholders that want to implement the right to food in their country. Finally, the fact that they were worked out collectively and adopted unanimously within the FAO Council gives them significant legitimacy. The Guidelines are relevant for the countries of the North as well. For example, within the framework of the Universal Periodic Review in 2013, the Committee on ESCR recommended that Belgium take them into account.<sup>9</sup> In November 2016, one of the main recommendations by the Independent Working Group on Food Poverty to the Scottish Government was that the right to food be enshrined within the country's legislation.<sup>10</sup>

## 3. Several examples of laws and programs implemented

The case of Brazil and its "Zero Hunger" policy set up in the 2000s is probably the best-known and best documented. It involved creating a set of coordinated programs, with real participation from civil society. These included a system of family allowances, a program to strengthen family farming, a program of public purchase of food products, and a program for food at school. Initiated by public authorities, in particular Consea (National food and nutritional security council), it has met with undeniable success: in less than 10 years, nearly 20 million Brazilians were raised out of poverty.<sup>11</sup> "Zero Hunger" is a model for many countries or regions (Ecowas drew inspiration from it for its Zero Hunger Initiative of 2012), and Brazil has developed South-South cooperation on the subject.<sup>12</sup> During the 41<sup>st</sup> session of the CFS, El Salvador reported on three significant measures enacted in that country: the Draft Law on Food Sovereignty and Food Security and Nutrition, reform of its Constitution to explicitly include the right to food, and the establishment of a universal social protection system. It highlighted the "importance of political will" and noted that "the

9. Manuel Eggen, "Loi sur le droit à l'alimentation en Belgique : un pas nécessaire à franchir !", in Alejandra Morena (coord.), *Retour sur les succès, les préoccupations et les luttes à l'occasion des dix ans des Directives sur le droit à l'alimentation*, L'Observatoire du droit à l'alimentation et à la nutrition, 2014, p.87

10. Lynsey Bews, "Scotland considers legally enshrining the 'right to food'", *Independent.co.uk*, 17 November 2016: <http://www.independent.co.uk/news/uk/politics/scotland-is-considering-enshrining-the-right-to-food-in-its-own-laws-a7422631.html>

11. Marine Raffray, *Inter-réseaux*, "La stratégie "FAIM ZERO" au Brésil", Summary Note, September 2012

12. Since 2011, Brazil has been the home of the Centre of Excellence against Hunger, a joint initiative between the World Food Programme (WFP) and the Brazilian government.

strengthening of the results achieved was based on dignifying the population.” In 2015, more than \$30 million was invested in a School Feeding and Health Program that benefited more than 5,300 schools. In India, the objective of the National Food Security Act (NFSA), passed in 2013, is to allow “people to live a life with dignity.” India asserts that this legislation “marks a paradigm shift in addressing the problem of food security – from the current welfare approach to a right based approach.” While we cannot really talk about a “paradigm shift”—especially because accountability and transparency have been reduced to a minimum in this law—more than 800 million poor Indians (including 75 % of the rural population) are entitled to highly subsidized prices for foodgrains. Free meals are also offered to children in public or government-subsidized schools, children less than 6 years old, pregnant women, and all breast-feeding women. Maternity benefits are also provided for. El Salvador and India place emphasis on human dignity. This aspect is at the heart of the definition of the right to food, as recalled by the first of the Voluntary Guidelines to support the progressive realization of the right to adequate food.

#### Ratification of the Icescr Optional Protocol by France in 2014...<sup>15</sup>

On 26 June 2014, the French National Assembly voted for ratification by France of the Optional Protocol of the Icescr. The aim of this Protocol, which was adopted by the United Nations General Assembly on 10 December 2008, is to strengthen the Icescr. To do so, rather than creating new rights, it provides a mechanism for implementing those already recognized. The Protocol came into force on 5 May 2013 and represents progress, as people whose economic, social, and cultural rights have been violated can—just as in the case of civil and political rights—have access to recourse at an international level when they have not been able to obtain justice at the national level.

## Justiciability: a major issue concerning right to food

In 2014, on the occasion of the 10th anniversary of the Voluntary Guidelines, the civil society organizations active within the CFS listed the major challenges to realizing the right to food. Among others, it identified: lack of political recognition and implementation; absence of political coherency; absence of monitoring, accountability, and access to justice; poor governance of food systems; and environmental degradations. Here we insist on the importance of access to justice.

### 1. A justiciable right, under certain conditions

Michael Roberts, Executive Director of the Resnick Program for Food Law and Policy at the University of California – UCLA, recently explained that law schools could indeed help better connect food and human rights. Legal experts and judges have already shown that the right to food is justiciable, “that is, a judicial or quasi-judicial body can identify violations of the right to food and provide for corrective measures without infringing on the competencies of the national political branches of government.” In reality, following the strengthening of national legislative frameworks and mobilization by civil society, the justiciability of the right to food has made progress, though slightly, in the last 15 years. Following a comparative study between India, South Africa, Argentina, Colombia, and Switzerland, the jurist Christophe Golay has shown that there are at least four conditions required for access to justice on the right to food. The first requirement is that a legal basis exists. Second is the possibility of appealing to the courts. Third is recognition of the justiciability of this right by judges and lawyers, which often entails extra training. Fourth is social mobilization strong enough so that this law does not go unheeded.

### 2. Several cases of access to justice at the national level

In 2001, a case concerning a public-interest action dealing with the right to food was referred to the Supreme Court of India. The Court issued a series of rulings establishing a legal right to food as well as to work within the framework of various governmental programs. The combination of civil society mobilization and explicit rulings from the Supreme Court helped improve implementation of public welfare programs at the national level, all the while considerably strengthening the accountability of agents of the Indian

13. Food and Nutrition Security Platform: <http://plataformacelac.org/en/programa/132>

14. Biraj Patnaik, “Projet de loi nationale sur la sécurité alimentaire en Inde : véritable espoir ou simple poudre aux yeux ?”, in *Alternatives et résistance aux politiques générant la faim*, L’Observatoire du droit à l’alimentation et à la nutrition, 2013, pp. 79-82

15. This box summarizes elements from the ESCR Platform press release of 19 June 2014: “Ratification par la France du Protocole facultatif au Pacte international relatif aux droits économiques, sociaux et culturels”

16. Nadia Lambek (coord.), *10 Years of the Right to Adequate Food Guidelines. Progress, Obstacles and the Way Ahead. Civil Society Synthesis Paper for the 41<sup>st</sup> Session of the UN Committee on World Food Security*, FIAN International as the secretariat of the Global Network for the Right to Food and Nutrition, 2014, pp. 31-39

17. An event was especially devoted to this aspect at FAO headquarters on 24 January 2017, entitled «Right to food and accountability to affected populations»: <http://www.fao.org/webcast/home/en/item/4291/icode/>

18. Ucfodobserver.com, interview with Rose Hayden-Smith, 10 March 2016:

<http://ucfoodobserver.com/2016/03/10/qa-michael-roberts-uclas-resnick-program-for-food-law-and-policy/>

19. Christophe Golay, *The Right to Food and Access to Justice*. Examples at the national, regional and international levels, FAO, 2009, p. 20

20. Christophe Golay, *Droit à l’alimentation et accès à la justice*, Bruylant, 2011



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government. In Uganda, in March 2013, the high court in Kampala charged that the Ugandan government had failed to protect and respect the food rights of more than 2,000 peasant farmers evicted from their lands, which were given over to a foreign company. “The Court not only held agents of the State liable but also stated that the investors ‘had a duty to ensure that [the] indigenous people were not exploited. [...] they should have not moved into the lands unless they had satisfied themselves that the tenants were properly compensated, relocated and adequate notice was given to them’.” In Europe as well, despite great reluctance to recognize the justiciability of the ESCRs, things are starting to change. For example, in 2010, the German Constitutional Court established human dignity as a fundamental right, which includes a right to food that must be guaranteed by the State. It consequently declared that the rules used since 2005 to calculate the unemployment benefits for the long-term unemployed and the “subsistence minimum” for people without resources were in violation of the constitution. More recently, in France, the first reading in the National Assembly of draft law no. 2715 on the effective implementation of the right to water (June 2016) seems to be going in this direction, although the Senate blocked the draft law in February 2017.



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21. Cf. «India – Legal Campaigns for the Right to Food,» in FAO, *Right to Food. Making It Happen. Progress and Lessons Learned through Implementation*, 2012, pp. 93-117
22. Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect, and to fulfil (or “establish”) human rights. To «respect» means that States must refrain from interfering with the enjoyment of human rights, “protect” that States must protect individuals and groups against human rights abuses, and “fulfil” that States must take positive action to facilitate the enjoyment of basic human rights: <http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>
23. Olivier De Schutter, *Interim report of the Special Rapporteur on the right to food*, A/68/288, 2013, p. 7
24. Michel Verrier, “La Cour constitutionnelle allemande condamne l’insuffisance des indemnités de chômage”, *La-croix.com*, 10 February 2010
25. Cf. the press release of Coalition Eau, by Coordination Eau Île-de-France and Fondation France Libertés - Danielle Miterrand, “Le Droit à l’eau potable et à l’assainissement: le droite sénatoriale enterre la proposition de loi”, 24 February 2017



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### ... BUT NO RECOGNITION OF RIGHT TO FOOD IN FRANCE

The law of October 2014 on the future of agriculture, food, and forestry set down new goals for the agricultural and food policy in France. Family farming, agro-ecology, and food quality are particularly highlighted in it. However, this law neither creates nor provides for any mechanism to monitor the actions recommended by the authorities in charge of their implementation. Yet, such monitoring is vital in order to identify the weaknesses and problems obstructing the realization of the right to food. In actuality, there is no law in France enshrining the right to food. Integration of the ICESCR into French law has not been accompanied by the adoption of measures to implement it. Nonetheless, national programs concerning food do exist. They could help lead to the realization of this right, but without any legal force they have no binding power for public authorities.

Despite the encouraging progress noted here, the justiciability of the right to food remains the exception rather than the rule. This aside, as with all rights, the right to food is never something taken for granted, and the defenders of rights are always threatened. Finally, at both the international and national levels, "there is a constant risk that [the right to food] be limited to the right to be free from hunger." This is confirmed by the fact that it does not appear in the sustainable development goals, which nonetheless

mention the ICESCR and the fundamental right to drinking water and sanitation. The most recent version of the future French strategy for food security was drawn up by the Interministerial committee on international cooperation and development (Cicid) in 2005. It is thus all the more important that this strategy take into account how the issue of the right to food has evolved and not only explicitly recognize it, but also advocate its implementation throughout the world.

26. For a broader and more detailed analysis, cf. Plateforme française pour les droits économiques, sociaux et culturels (coord. Anaïs Saint-Gall), *Rapport contradictoire de la société civile française sur la mise en œuvre des droits économiques, sociaux et culturels en France*, January 2015, pp. 22-27: "Droit à l'alimentation (Article 11). Un droit ignoré".
27. Flavio Valente (FIAN International), quoted in Alejandra Morena (coord.), *Retour sur les succès, les préoccupations et les luttes à l'occasion des dix ans des Directives sur le droit à l'alimentation*, L'Observatoire du droit à l'alimentation et à la nutrition, 2014, p.19
28. Its absence can be explained in particular by the frank opposition by the United States and the prevarications of the European Union on this point, as well as the necessity to reach a consensus. Cf. Jose Luis Vivero Pol and Claudio Schuftan, "No right to food and nutrition in the SDGs: mistake or success?", *BMJ Glob Health*, 2016.

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