

THE RIGHT TO FOOD GUIDELINES, FOOD SYSTEMS DEMOCRATIZATION AND FOOD SOVEREIGNTY: REFLECTIONS BY OLIVIER DE SCHUTTER¹

Interview

This article outlines the key issues highlighted by Mr. Olivier De Schutter, UN Special Rapporteur on the Right to Food between May 2008 and May 2014, during an interview conducted on 25 March 2014. The interview focused on the *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security* (hereinafter Right to Food Guidelines),² which were adopted ten years ago by the FAO Council. Mr. De Schutter frequently urged States to consider and implement this important instrument.

During his tenure, Mr. De Schutter contributed greatly to the understanding and implementation of the right to adequate food and nutrition (RtAF) as a holistic human right. His work on the intersection between this right and other legal and policy areas—including nutrition, international governance, trade and development, business, and women’s rights—has shown the importance of guaranteeing human rights primacy and creating strong frameworks to close the existing gaps in protection and accountability.³

KEY ACHIEVEMENTS, LIMITATIONS AND CHALLENGES AHEAD FOR THE RIGHT TO FOOD GUIDELINES

Question: How have the Right to Food Guidelines contributed to the promotion and protection of the right to adequate food over the last ten years? What were the key achievements and the main limitations of the Guidelines and their implementation?

Answer: It is usually independent experts with extensive experience who clarify the normative content of economic, social and cultural rights. In contrast, the legitimacy of the Right to Food Guidelines is very unique because they were negotiated by governments. Consequently, they are potentially at least as powerful a tool as the General Comments adopted by the UN Committee on Economic, Social and Cultural Rights (CESCR) and other human rights treaty bodies: governments should not be allowed to ignore a text they themselves have negotiated, and approved by consensus within the FAO Council.

In my experience, however, the Guidelines are less frequently invoked by certain actors than the General Comments. The fact that they are quite extensive and detailed can be seen as an asset, but perhaps that also makes them somewhat difficult to use for many policy makers, who may find them over-prescriptive. They were also the first document of this nature to be developed at the Committee on World Food Security (CFS), an intergovernmental body of the FAO, so people in some circles, particularly those who do not specialize in the right to adequate food, may not be used to referring to such sources, and be more likely to turn to the work of the treaty bodies or the Special Procedures of the Human Rights Council (HRC).

- 1 This interview was conducted by [Martin Wolpold-Bosien, Abby Carrigan and M. Alejandra Morena](#) on 25 March 2014. Special thanks to Abby Carrigan, M. Alejandra Morena and Carolin Callenius for their support in drafting and reviewing this article.
- 2 “Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security”. Adopted by the 127th Session of the FAO Council in November 2004. Food and Agriculture Organization of the United Nations, Rome, 2005. <http://www.fao.org/docrep/009/y7937e/y7937e00.htm>
- 3 To learn more about his work and access his reports, please visit: <http://www.srfao.org/en> and <http://www.ohchr.org/EN/issues/food/Pages/FoodIndex.aspx>

It is therefore a somewhat paradoxical fate: on the one hand, the Guidelines are a remarkable instrument, extremely detailed and highly legitimate. At the same time, they do not seem to be used very frequently by policy makers to shape their decisions. There is much more we could do with them than has been until now.

Q: What do you regard as the main achievements of the Guidelines in terms of shaping national legislation and public policies?

A: There are three dimensions of the Guidelines in this regard. The first dimension is that domestic sectoral policies may take into account ways to enhance the right to food, concerning for instance economic development (Guideline 2) or the organization of markets (Guideline 4). The second dimension relates to institutions and procedures, for example, the development of a national strategy (in line with Guideline 3), the establishment of institutions for intersectoral coordination (Guideline 5) or the establishment of participatory mechanisms to effectively ensure the right to participation and consultation, etc. The third is the international dimension, which is dealt with in a separate part of the Guidelines, as a sort of add-on, due to the opposition expressed by some delegations to include this in the Guidelines as such.

The most prominent achievements have probably been reached in the second block, the institutional block. The report I presented to the sixty-eighth session of the UN General Assembly summarizes some of the key developments that took place around the world in this regard.⁴ There are wide differences between various regions. Progress has been most significant in Latin America. This is the result of combined efforts by various actors, including a network of parliamentarians that has been quite effective in supporting these developments and civil society organizations (CSOs) that are significantly better organized on these issues than they have been in Africa or Asia. The important work conducted by the FAO Regional Office in Santiago de Chile, and the support of the Spanish Agency for International Development Corporation (AECID) to the Hunger-Free Latin America and the Caribbean Initiative, have also played a key role.⁵

Q: How do you assess the achievements of the Guidelines regarding right to food accountability?

A: Accountability is making progress. There are more and more courts using the right to food in adjudication. The key idea of national strategies that aim to realize the right to food was derived from the recognition that we needed to build accountability, also for the dimensions of human rights subject to 'progressive realization'. When the CESCR developed this idea in the late 1990s, which was influential in shaping the Guidelines adopted in 2004, the goal was to send the message that simply because a right is subject to progressive realization in some dimensions, it does not mean it is acceptable for a state to remain passive. What must be done is to adopt an action plan with clear timelines for the implementation of each action to be taken, clear indicators to measure progress, and a clear allocation of responsibilities. In this way, no single part of government can avoid having to account for failing to take the measures it is expected to take.

That idea is a very powerful one. And in countries that have adopted such national strategies, it has acquired some degree of impact. Again however, the implementation of this idea is very uneven from region to region. Even in Latin America, where many countries have adopted a framework law on the RtAF, and have for the most part adopted national strategies, it is not clear whether there is always

4 De Schutter, Olivier. "Final report on the transformative potential of the right to food" (A/HRC/25/5). 25th Session of the UN Human Rights Council. 10 March, 2014. http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_57_ENG.DOC

5 *Ibid.*, pp. 14–15.

independent monitoring of the implementation of these strategies. It is also unclear whether there are any sanctions associated with non-compliance for the timelines that are set. So there is certainly still work to be done.

Q: How do you assess the shortcomings of the Guidelines, particularly with regard to Guideline 19 on the international dimension?

A: Guideline 19 was probably less effective than the gradual invocation of the extra-territorial dimension of human rights. It seems to me that the CESCR has not referred to this Guideline when addressing extraterritorial obligations (ETOs) in Concluding Observations on states' reports. Instead, it has argued that it would be inconsistent to allow a state to ignore the human rights impacts of its policies or decisions outside of its jurisdiction while insisting that it pays attention to this within its jurisdiction. The International Covenant on Economic, Social and Cultural Rights (ICESCR), it should be recalled, does not include a reference to "jurisdiction" or territory: it imposes duties on States parties across all their actions or omissions.

Significant progress has been made on understanding the implications of extra-territorial human rights obligations. As far as I am aware, nonetheless, this development was largely separate from the invocation of Guideline 19, as there was no such explicit use of this guideline by human rights courts or treaty bodies. As you know, I am very committed to ETOs based on general international human rights law. We are on the right track, with the superb work done by the ETO Consortium⁶ that Rolf Künemann has been instrumental in setting up and energizing. The manner in which this has been carried out to push the idea forward is exemplary.

Q: Would you like to reflect further on the Guidelines?

A: I would like to highlight one striking fact: I was at the Belgian Senate on 25 March, where a proposed right to food framework law is under discussion.⁷ It is interesting to note that in the past, including to a large extent during the negotiations of the Right to Food Guidelines in 2002–2004, this issue was seen as something of interest only to developing countries where there was, and still is, widespread hunger and malnutrition. Today, the problems that stem from the lack of a food policy, from the environmental impact of agro-industrial food production, from impoverished populations being unable to eat healthily, are problems that are increasingly recognized as relevant to countries in the affluent part of the world, including the OECD countries. We have agricultural policies of course, and we have health policies and environmental policies. But we do not have the integrated "systems" approach that food policies require.

This is something to reflect upon. How can we gradually convince governments and policy makers that right to food strategies, food councils and the integration of the right to food in the different sectoral policies that affect its enjoyment can be as equally relevant for the North, as for the South? It would be interesting to read again through the Guidelines and identify whether the bias towards addressing issues in the Global South is too strong. But I believe that the Guidelines are largely also applicable to the North, where the problems are significantly more similar than we previously thought. There is certainly a new interest in food issues in the North due to the public health impacts attributed to the way food systems have developed and their effects on the environment, the inadequate attention given to nutrition, and the disappearance of small-scale and family farms in the region.

⁶ The ETO Consortium is a network of around 80 human rights related CSOs and academics, which has been established to address the gaps in human rights protection that have opened up through the neglect of ETOs. For more information, visit: www.etoconsortium.org

⁷ For more information, see article "The Law on the Right to Adequate Food: A Necessary Step in the Fight against Food Insecurity and Malnutrition in Belgium" in this year's edition of the *Right to Food and Nutrition Watch*.

WORLD FOOD SYSTEMS AND FOOD SOVEREIGNTY

Q: In your last report, there is a call for the “world’s food systems to be radically and democratically redesigned.” What would be the main elements of such a redesign, in order to ensure the right to adequate food and nutrition?

A: Reforms are very difficult to achieve without the food system being more accountable and democratic in the way it operates. There are many limitations in mainstream food systems. First, investments are rewarding large agribusiness corporations and not supporting local food systems. Second, economic incentives are rewarding the most efficient producers, rather than those who contribute to preserving the ecosystems. Third, our tastes and eating habits have changed to processed foods—more convenient, easy to prepare, and suited to our rushed lifestyles, even though they may be less healthy. Finally, there are major actors who are able to block change as a result of the dominant position they have acquired in the food and political systems. That is why food democracy is really the key to achieving more sustainable food systems. The democratization of the food systems is a necessary condition for effecting change.

Q: Your final report also makes reference to food sovereignty as being a condition for the full realization of the right to food. Can you please expand on this connection between food sovereignty and the right to adequate food?

A: The concept of food sovereignty seems to have changed significantly over the past fifteen years—or even less than that. Originally, it was used as a sort of counter-slogan to trade liberalization and the idea that food producers from all over the world should compete against one another, so that the most competitive would emerge and the most efficient regions would produce for the others, who would then depend on trade and aid to support their needs. The original claim of food sovereignty, as envisioned by La Vía Campesina in the Mons Declaration of 1993 for instance, was initially a reaction to this, arguing that we should not allow food and agricultural policies to be shaped by the demands of international trade, but instead design them taking into account the priorities that each country or region sets for itself.

Now food sovereignty is increasingly invoked by larger constituencies than those who first coined the concept—small-scale farmers under the umbrella of La Vía Campesina—including NGOs and urban populations. It is seen more and more as influencing micro-politics at the local level, rather than being simply opposed to global trade and trade liberalization at a global level. Food sovereignty today seems to be a movement deployed on new frontlines: school canteens, company canteens, farmers’ markets, the way poor communities can access fresh food through mobile markets circulating in poor neighborhoods, etc. The concept is used in a sufficiently ambiguous way to encapsulate both meanings in my final report.

It is imperative that we rebuild local food systems. There is now a consensus that there has been a very strong imbalance in the way that food systems have developed in the past, with an overemphasis on large-scale global food chains and international trade. But as I stressed above, people need to own the food systems on which they depend, to exercise democracy in the food systems. These new ways in which food sovereignty is invoked are quite recent, yet both meanings are indispensable to the realization of the right to food.

Q: If you had a ‘wish’ for the implementation of the Right to Food Guidelines, what would it be?

A: The Right to Food Guidelines were developed in 2002–2004, at a time when many specialists were aware of the impasse of dominant approaches to food security (based on increased production, trade and aid), but the broader community lacked a sense of urgency on the matter. The global food price crises of 2008 and 2010, the increasingly severe impacts of climate change on price volatility and the pressure on resources, now make them more relevant than ever: we now understand, much better than a few years ago, the importance of a “whole-of-government” approach to the realization of the right to food (cutting across distinct sectoral policies), as well as the importance of legal, institutional and policy frameworks that improve participation and accountability. The review of ten years of implementation is an opportunity. In my view, the Guidelines are still entirely valid and relevant, and they should play an even greater role in the years to come.