

**FIVE PROPOSALS FOR A GENUINE INTEGRATION OF THE RIGHT TO FOOD IN
THE REVISED COMPREHENSIVE FRAMEWORK OF ACTION
(CONTRIBUTION TO THE DUBLIN CONSULTATION, 18-19 MAY 2010)**

**by Mr. Olivier De Schutter
Special Rapporteur of the United Nations Human Rights Council on the
right to food**

**10 April 2010
Geneva**



FIVE PROPOSALS FOR A GENUINE INTEGRATION OF THE RIGHT TO FOOD IN THE REVISED COMPREHENSIVE FRAMEWORK OF ACTION

The Special Rapporteur welcomed the Comprehensive Framework of Action (CFA) when it was initially presented in July 2008. The CFA is a unique document: it identifies a number of strategies that States could pursue in order to strengthen food security without falling into the trap of one-size-fits-all approaches. It also constitutes a useful guide to international agencies working at national level.

In this note, the Special Rapporteur puts forward five proposals to integrate the right to food framework and principles at the core of the revised CFA, in order to make it consistent with international obligations as well as with statements made at the highest level, both by the UN Secretary general and by governments during the 2009 World Summit on Food Security. The key message is the following : the right to food is not merely a slogan, and it is not only of symbolic value ; it is a tool, with clear operational impacts, that can improve the impacts of interventions in a variety of domains, and make them more sustainable in the long-term. Because it improves targeting, it can act as a compass for tackling food insecurity. Because it promotes accountability, it can ensure that efforts are directed to those whose rights are violated.

The background

The UN High Level Task Force on the Global Food Security Crisis (HLTF) is to be commended for having achieved agreement on the Comprehensive Framework for Action (CFA), representing the consensus view of agencies and organizations about which actions may be taken in order to address the global food price crisis and what the crisis revealed about the fragility of the food systems in many developing countries.

While welcoming this important effort to replace agricultural development at the centre of the agenda of the international community and to improve coordination across UN agencies and other international organizations at country level, the UN Special Rapporteur on the right to food has consistently insisted on the need to strengthen this global response by relying on tools specifically based on the recognition of the right to food as a human right, recognized in international law.

The year 2009 saw repeated calls at the highest level for stronger implementation of the right to food in national and international food security policies. In his concluding remarks to the Madrid High-Level Meeting on Food Security for All on January 27th, 2009, the UN Secretary-General Mr. Ban Ki-Moon stated: ‘We must continue to meet urgent hunger and humanitarian needs by providing food and nutrition assistance and safety nets, while focusing on improving food production and smallholder agriculture. This is the twin-track approach taken in the Comprehensive Framework for Action. We should be ready to add a third track – the right to food – as a basis for analysis, action and accountability’. The Declaration adopted at the World Summit on Food Security (16-18 November 2009) also called upon Governments to ‘collectively accelerate steps ... to set the world on a path to achieving the progressive realization of the right to adequate food in the context of national food security.’ In addition, the 35th session of the Committee on World Food Security (14-17 October 2009) endorsed the reform of the CFS, which unambiguously refers to one of the most important documents on the right to food, the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, approved unanimously by the State members of FAO, gathered in the FAO Council, in November 2004: ‘The CFS will 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.’

Consistent with this emerging consensus, the HLTF identified the right to food as one of the five areas to emphasize further in the CFA in its progress report covering the period April 2008-October 2009. But it is crucial to acknowledge that the right to food is not a slogan of purely rhetoric nature, which

ought to be listed in the ‘considering’ elements of any international document. Nor is the right to food simply an obligation imposed on States under international law. In recent years, the right to food is increasingly seen as an operational tool, which can act as a compass to guide possible responses at the national and international levels. Grounding our efforts on the right to food means that our efforts must be guided by the need to support the most vulnerable, the poorest and most marginalized, who are often left out by support schemes, and who today may be unable to capture the benefits from the renewed interest in agriculture. Describing food insecurity as a violation of the right to food also means seeking to identify responsibilities in the development of situations that result in hunger and malnutrition, and putting in place mechanisms ensuring that measures will be taken that can challenge actions or omissions that produce such consequences.

A wide number of countries – from Brazil to South Africa, India, Nicaragua or Mali – have integrated the right to food in their constitutions, laws, policies, institutions or judicial mechanisms.¹ A number of agencies such as UNICEF, the UNDP or FAO, also increasingly refer to the right to food in the design and implementation their policies. This can contribute to the success of strategies aimed at improving food security: once policies are defined in a rights-based approach, beneficiaries become rights-holders, and the authorities designing and implementing programmes accept that they may be held accountable to them. This is empowering and it improves effectiveness, particularly if the beneficiaries have access to independent mechanisms that can ensure such accountability and check against any misuse by the authorities of their position. The right to food also means that, to the fullest extent possible, policies aiming to support to food-insecure persons should be designed and implemented with the active participation of the beneficiaries. Human rights-based approaches to development lead to a better prioritization and targeting of activities; they increase accountability at different levels of government; and ultimately, they contribute to reducing marginalization and poverty.

While the proposals below are a contribution to the debate on the revision of the CFA with a view to improving the integration of the principles derived from the human right to adequate food, it is important at the outset to recognize the relatively narrow focus of the CFA on actions to be undertaken at the domestic level. The structural dimensions and, in particular, the international obligations of rich countries that correspond to the fulfilment of the right to development, are left out from the CFA. In his work, the Special Rapporteur has consistently highlighted a number of mechanisms that constitute obstacles to the realization of the right to food by poor countries. Among these obstacles are a deeply inequitable trading system, an international division of labor that leads to deteriorating terms of trade for many poor countries, and an unsustainable foreign debt. In addition, conditionalities included in trade and investment agreements may make it difficult for developing countries to strengthen their ability to feed themselves, and thus increase their dependency on foreign imports of lower-priced foods subsidized by rich countries or, even worse, on food aid. The gap between the world’s richest country and the poorest country increased from 3:1 in 1820 to 70:1 in 2000, and the overall pattern of distribution in the world is more unequal today than within any country but one. While these structural, and global, inequities, are not part of the CFA’s focus, any global plan of action should clearly address them in the future.

Five proposals for a genuine integration of the right to food in the Revised CFA

Framing the current efforts in a right-to-food perspective would have five concrete, operational consequences. They are listed below.

- 1. The revised CFA should recommend to all Governments to adopt and implement national strategies for the realization of the right to food,** as stated in Guideline 3 of the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of

¹ FAO (2006) The Right to Food in Practice – Implementation at the National Level ; FAO (2006) The Right to food Guidelines, Information Papers and Case Studies, Rome. Available on http://www.fao.org/righttofood/publi_en.htm

national food security and as recommended by the General Comment 12 of the U.N. Committee on Economic, Social and Cultural Rights².

- a. **National strategies 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; (iv) ensure the adequate participation, particularly, of the most food-insecure segments of the population; finally, they should (v) pay specific attention to the need to improve the situation of the most vulnerable segments of society, including girls and women whose specific situation must be taken into account, to the principle of non-discrimination, as well as to the explicit inclusion of access to adequate food as part of larger poverty reduction strategies.
 - b. This means that **Governments should be encouraged:** (i) to design policies on the basis of the needs identified through appropriate mapping of food insecurity and vulnerability, in order to make sure that the most food insecure groups benefit from whichever schemes are put in place; (ii) based on such a mapping, to identify the different groups in need, the obstacles each of these groups face, and the measures to be adopted to ensure that these obstacles will be removed, within specific timeframes and with the adequate mobilisation of resources; (iii) to develop national strategies in a participatory fashion, involving the representatives of the groups affected and civil society organisations, in order to ensure that they are not imposed in a top-down fashion but respond to real needs; (iv) to establish mechanisms to ensure that no community, household or individual will be excluded from the programme without justification and that, if they are excluded, they have access to a remedy to complain about this exclusion; (v) to clearly identify in legislation the beneficiaries of the programme (and the conditions at which one is a beneficiary), in order to ensure that the programme will not be tainted by corruption, by political or family clientelism, or by discrimination on the grounds, for instance, of ethnicity or gender ; (vi) to ensure that the communities concerned by the programme are involved in regularly evaluating the programme and identifying where it could be improved.
2. **The revised CFA should integrate the right to food framework and principles in all food security policies that States are encouraged to put in place.** The right to food should not be seen as an add-on, or as an element separate from the policies concerned. Specifically, agricultural policies and programmes as well as social assistance programmes should respect certain principles:
 - a. **Schemes that seek to support farmers** should be defined in consultation with them, ideally through a structure such as a council that includes various interests and that is permanent; it would ensure that the poorest farmers, living on the most marginal soils or away from communication routes, will benefit and will be adequately supported; that we will not see a disproportionate amount of support going to the largest producers, that have the easiest access to export markets and global supply chains, but that subsistence farmers and farmers serving the local food needs will also be supported; and it would ensure that complaints mechanisms, including judicial remedies, will be available to farmers unjustifiably excluded from whichever programmes are put in place ;
 - b. **Sustainable modes of production based upon agro-ecology and smallholder farming should be supported as a matter of priority.** While numerous reports from international organizations, including the International Assessment of Agricultural Knowledge, Science and

² Committee on Economic, Social and Cultural Rights, General Comment 12 (1999): The right to adequate food, available on <http://www.srfood.org/index.php/en/right-to-food>

Technology for Development and recent reports from UNEP and UNCTAD,³ recommend this approach for reasons that emphasize the potential of agriculture to mitigate climate change and the need to preserve soils, this shift also would be consistent with an emphasis on the realization of the right to food. Reliance on locally-generated inputs such as manure, compost, or organic fertilizers, and on techniques such as rainwater harvesting or biological control, as well as the development of techniques such as the use of leguminous trees to fertilize the soils, are particularly well suited to the needs of farmers who have little access to credit and work on the poorest soils, or who are removed from communication routes. Sustainability should not only refer to the environmental dimensions, but also to the economy of rural households. While the topic box on ‘Sustainable food production systems: soil fertility and conservation agriculture’ (CFA, p. 26), appropriately puts forward the advantages of what it refers to as ‘conservation agriculture’, the advantages of agro-ecological approaches remain underestimated in the presentation that is made of such approaches, because the political economy of the food systems is not explored in any depth.

- c. **Land policies should be made more sensitive to the right to food, and prioritize protection and realization of the right to food above the creation of a market for land rights.** The legal protection of access to productive resources, including in particular land and water, is vital for the rural poor. The CFA should recommend strengthening it, particularly in the light of currently increasing commercial pressures on land. In numerous cases, smallholders or indigenous communities have been driven off the land they depended on for their livelihoods, as a result of the arrival of investors using land for industrial projects or large-scale plantations, particularly related to agrofuels production, or as a result of the building of dams, tourist resorts, or other large-scale infrastructure projects. In this context, enhancing security of land tenure, while necessary, is not sufficient. The CFA notes that ‘a transparent land tenure policy for managing land effectively while securing access to land rights for communities or individuals, particularly marginalized groups (e.g. indigenous people, women) is critical to long term sustainability and growth. The better defined and more secure tenure or use rights, the more sustainably those resources are managed’ (p. 28). It would be appropriate to note that the approach usually advocated in this regard – individual titling as a means to protect security of tenure – can present serious deficiencies, and lead in time to a counter-agrarian reform (i.e., re-concentration of land ownership) unless measures are taken both to support the viability of smallhold agriculture, and unless communal rights over land are recognized and institutionalized. Access to land and security of land tenure are vital for smallholders and indigenous peoples, and States should be reminded in the CFA of their commitments under the Final Declaration adopted at the International Conference on Agrarian Development and Rural Development (Porto Alegre, 7-10 March 2006). But it would be naïve to think that the sequence from security of tenure to improved production and to increased incomes for the land-users is an automatic one. Instead, if not carefully managed, security of land tenure through titling schemes can mean that land will be increasingly subject to speculation and to commercial pressures, and that, in time, the poorest and cash-strapped farmers will lose the land on which they depend. Even when compensation is offered to them, they may not be able to find alternative means of securing a decent livelihood, and food insecurity can increase as a result.
- d. **Social assistance programmes** could be significantly strengthened by using human rights principles (see further A/HRC/12/31, paras. 26-32). Firstly, whenever possible, universal programmes are preferable to targeted programmes, since the latter may be costly to implement and present a serious risk of under-inclusion particularly for the poorest and the illiterate. Given this risk, particularly in countries with a low administrative capacity, the imposition of conditionalities or eligibility criteria may not constitute the best solution. However, where programmes do target the most vulnerable rather than being universal in scope, the definition of beneficiaries on the basis of a prior mapping of food insecurity can

³ IAASTD (2008) Executive Summary of the Synthesis Report and Summary for Decision Makers of the Global Report, approved in detail by Governments attending the IAASTD Intergovernmental Plenary in Johannesburg, April 2008.

improve targeting significantly, and thus the contribution of social assistance schemes to improving food security and poverty reduction as well. Secondly, the clear definition of beneficiaries in legislation - making access to social assistance a right for the beneficiaries - may limit the risk of resources being diverted as a result of corruption or clientelism. It can also improve accountability of the administration responsible for implementation, particularly if courts or other independent institutions are empowered to monitor implementation. Thirdly, defining the benefits allocated through the programme as a right held by all (or by all those who qualify, where the programme is targeted) can reduce the element of stigma attached to participating in the programme, which could otherwise reduce significantly the participation of eligible persons. Fourthly, the participation of beneficiaries in the design and implementation of programmes can improve their effectiveness. Fifthly, the gender dimension needs to be taken into account in the design of conditional social assistance programmes in particular, since such programmes can have both a positive and a negative influence on gender stereotypes, depending on how well the programmes are framed.

3. **The revised CFA should clarify that the HLTF will prioritize its support to the countries which will implement the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security.** The HLTF is currently working in more than 60 countries, with ‘intensified coordination’ being promoted in 33 countries.⁴ Where significant support and coordination is done, it should serve to help and encourage States to implement the rights-based approach to food security as well as to ensure a real compatibility between the progressive realization of the right to food and the policies and programmes which are advised or implemented by members of the HLTF, some of them who pursue other priority goals than food security and the right to food. This is vital if statements are to be connected to real actions on the ground. Similarly, the country visits done by the HLTF Coordination Team should use the right to food ‘as a basis for analysis, action and accountability’.

Such a support would also enable States and agencies to identify the lessons learned of the national implementation of the FAO Voluntary Guidelines in various countries. By learning from both successes and failures in this regard, States could make true progress towards improving the lives of the poor⁵.

4. **The revised CFA should recommend for a stronger integration of food security issues, the right to food, in trade policies, international property regimes, competition laws and the regulatory framework of global supply chains (sourcing, pricing, and wages policies of commodity buyers, food processors and retailers impact the right to food).** The Special Rapporteur has made specific recommendations on each of these topics.⁶ The Revised CFA should also recommend and support a systematic implementation of human rights impact assessments of multilateral and bilateral trade and investment agreements, in order to analyse the possible impacts of such agreements on food insecure groups. This should enable States either to amend such agreements, or to take measures which would prevent negative impacts on the right to food.
5. **The rights of agricultural workers should be significantly strengthened.** Over half the world's hungry are food producers – waged agricultural workers and smallholder producers. Realizing the right to food requires action inside the food system itself in dealing with the multiple impacts of agribusiness (buyers, processors, retailers). While much emphasis is put in the CFA on strengthening the ability of smallholders to improve their productivity, agricultural workers have been almost entirely neglected – indeed, they do not even appear mentioned. Yet, there are more

⁴ UN High Level Task Force on the Global Food Security Crisis (2009) Progress Report April 2008-October 2009, November 2009.

⁵ The Special Rapporteur has made proposals for a review of the implementation of these voluntary guidelines by the reformed CFS. See U.N. Special Rapporteur on the right to food (2010) The future tasks of the Committee on World Food Security: three proposals, 3 February 2010.

⁶ See, on the impact of trade liberalization in agricultural commodities, A/HRC/10/005/Add.2 (22 December 2008); on seed politics and the enhancement of agrobiodiversity, A/64/170 (23 July 2009); the regulation of food chains, A/HRC/13/33 (22 December 2009).

than 450 million waged agricultural workers globally, and they form one of the most vulnerable groups to food insecurity. Among the recommendations the Special Rapporteur has made with respect to agricultural workers and the right to food are:

- the ratification and implementation by states of all ILO Conventions relevant for the agrifood sector ;
- establishing in national law a minimum wage corresponding to a living wage as required by international human rights standards ;
- devoting sufficient resources to ensure compliance with these standards through labour inspectorates in agriculture;
- establishing in law the access to social security by agricultural workers equivalent to those applicable to other industries;
- establishing compulsory registries of agricultural workers and the compulsory licensing of labour contractors;
- negotiating international framework agreements with global unions which, to be effective, should protect the basic rights of workers throughout the whole supply chain, covering not only the direct employees of the transnational corporation, but also those of its suppliers, contract growers or joint venture partners.

The right to adequate food is recognized under article 25 of the Universal Declaration of Human Rights⁷ and under article 11 of the International Covenant on Economic, Social and Cultural Rights.⁸ articles 24, para. 2, c) and 27 para. 3 of the Convention on the Rights of the Child also impose on States parties an explicit obligation to combat child malnutrition. **In order to be consistent with international human rights law and to reflect the growing consensus of the usefulness of the right to food as an operational tool, the revised CFA should clarify that the right to food is not a symbol, but that it represents a set of obligations and principles that apply both to States and to all international organizations.** It should therefore contain unambiguous references not only to the instruments above, but also to the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, approved unanimously by the State members of FAO, gathered in the FAO Council, in November 2004; General Comment No. 12 of the U.N. Committee on Economic, Social and Cultural Rights.

Improving the revised CFA along the five dimensions outlined above would significantly enhance its usefulness as a tool for countries and the international agencies that are members of the HLTF. We have learned from past experience that hunger and malnutrition are not a natural calamity. They are the result of social injustice, of widespread inequality, and of the marginalisation of wide segments of the population, particularly indigenous peoples and smallholders, but also agricultural workers. Strengthening the legal entitlements of these categories would be first step towards identifying long-term solutions to food insecurity: redefining the needs of these groups as rights with corresponding obligations for governments and international agencies is therefore essential. It is the hope of the Special Rapporteur that the revised CFA, as improved taking into account the right to food, will be considered by the Committee on World Food Security (CFS) in the elaboration of the Global Strategic Framework it will be led to adopt during its next phase.

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,

⁷ G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948).

⁸ 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.

and he reports to the Human Rights Council and to the UN General Assembly. All reports are available on <http://www2.ohchr.org/english/issues/food/annual.htm>. See <http://www.srfood.org> for a thematic classification of all reports and statements of the Special Rapporteur.