UNITED NATIONS
HUMAN RIGHTS
SPECIAL PROCEDURES
SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

Mandate of the Special Rapporteur on the right to food

21 March 2019

Dear CFS Chair, Secretariat, stakeholders,

It is with pleasure that I am sharing this statement and comments below to contribute to the CFS efforts towards this important milestone. These comments build on and expand preliminary comments that I made during the OEWG on March 8, 2019.

Thanking the CFS Chair, Secretariat and Technical Task Team for the work undertaken so far, I hope that this document strongly advocates for the inclusion of the right to adequate food in the Preliminary Zero Draft of the Voluntary Guidelines on Food Systems and Nutrition. Please let me know if there is a need for further discussion and/or clarification.

Sincerely,

Hilal Elver
Special Rapporteur on the right to food

General Comments

1. **Preamble:** Right to adequate food and SDGs should be included in the preamble.

2. **The definition section is currently too selective and too narrow.** This section should include the well-established definition of "the right to adequate food." For reference, "[t]he right to adequate food is realized when every men, woman, and child alone or in community with others has physical and economic access at all times to adequate food or means for its procurement" (Committee on Economic, Social, and Cultural Rights, Fact Sheet No. 16). The more detailed definition defines the right as follows: "The [right to adequate food] is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear." (UNSR on Right to Food, Fact Sheet No. 27)

3. **Clear reference should be made to previous guidelines to ensure policy coherence, hence complementarity and non-duplication.** The lack of cross-references to other CFS guidelines as well as other instruments must be addressed.

4. **Human rights-based approach (HRBA) should be mainstreamed throughout the Guidelines.**

5. **The Guideline should speak to all duty-bearers and rights-holders**, and just like the RTFG and VGGTs should be consistent with, and draw on, **international and regional instruments, including the SDGs,** that address the right to adequate food and **all fundamental human rights that impact food systems** (*e.g.*, decent work, social security, housing, health, education, water and sanitation, right to information, etc.)

6. **The Voluntary Guidelines should reflect existing human rights standards** and provide useful guidance to States on how to implement existing obligations. The Guidelines must cover the full range of actions to be taken by Governments at the national level in order to build an enabling environment for the progressive realization of the right to adequate food.

7. **Voluntary Guidelines are soft-law instruments, which are** endorsed (or in some cases even *adopted*) by States. The VG on FS and Nutrition will serve as guidance for the implementation of specific policy areas, with the ultimate goal to realize the right to food. With that in mind, these Guidelines, just like previous documents that were endorsed by CFS (the VGGTs, the FFAs, the RAI) or adopted by FAO Council (the RTFG), while they are not legally

binding as such, should propose concrete measures to hold Governments accountable to rights-holders.

8. **There needs to be a greater discussion of power-imbalances** intrinsic in the food system; greater inclusion in decision-making processes; avoiding and assessing conflict of interest; consideration of minority, women, children, indigenous, and vulnerable populations; and greater accountability by States. The HLPE report no. 12 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."

   I also addressed conflict of interest in my nutrition report in the context of breast-milk substitutes (A/71/282, paras. 50-56). Interventions by private companies to influence policies for young and child feeding needs to be discussed more broadly than just in the context of regulations for advertising and marketing of foods.

9. **Women** are specifically discussed in terms of being food producers, but there needs to be more general gender-integration, and greater discussion of access by women heads of households to nutrition security programmes and projects. Similarly, there are only general references to gender equality, but no attention to discriminatory practices against women and girls (even within the household) that may result in nutritional imbalances.

10. **Adequacy:** With regard to nutrition, adequacy is an important concept. The right to adequate food is more than the right to safe food. Adequacy refers to quantity, quality and appropriateness, taking into account free from hazardous substances, cultural aspects as well as the physiology of the individual (e.g. sex, age and health).

11. There's no mention of **poverty reduction or alleviation**, even though these efforts often go hand-in-hand with nutritional programs. See, e.g. CESCR General Comment No. 12, para 5: "The Committee observes that while the problems of hunger and malnutrition are often particularly acute in developing countries, malnutrition, under-nutrition and other problems which relate to the right to adequate food and the right to freedom from hunger also exist in some of the most economically developed countries. Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food, inter alia because of poverty, by large segments of the world's population."

12. There should be a reference to **social protections** and their importance to supporting economic access to nutritional foods both directly (through food assistance progress), and indirectly (by supporting sufficient income to allow for the purchase of potentially more expensive fresh foods).

13. The section on food supply chains should include **agriculture and food workers** within the chains. Given the research that we've conducted on workers in the primary and secondary stages of agricultural and fishery supply chains, the prevalence of women and children in these chains, and the lack of social protection; sanitation infrastructure and education on health; access to nutritious foods, etc. specific provisions for this population must be included in any supply chain discussion. (See A/73/164 and A/HRC/40/56).

14. There is also no mention of **water or sanitary infrastructure,** which suggests that the guidelines are not affording sufficient consideration of interrelated issues. The RTFG include a provision on interrelatedness that would be useful to emulate: "States are invited to take parallel action in the areas of health, education and sanitary infrastructure and promote inter-sectoral collaboration, so that necessary services and goods become available to people to enable them to make full use of the dietary value in the food they eat and thus achieve nutritional well-being." This brings back to the point made earlier about the need for an expanded definition section that would capture the **interrelation and interdependence between human rights** (e.g. water and sanitation, and the right to food).

15. It should be clarified that **food fortification can be used only exceptional situations** (see specific suggestions, below). Food fortification should be limited to emergency and short-term situations. Nutritious food should not be medicalized.

16. The concept of "**climate smart**" should be replaced with "ecosystem friendly" or "**sustainable agriculture**" (see specific suggestions, below) as climate smart agriculture undermines agroecology-based solutions to climate change and hampers the enjoyment of the human rights, including the right to adequate food for all.

17. **Sustainability and respect to eco-system:** Food systems can be shaped in order to contribute to improved nutrition and to **ensure that food is produced, distributed, and consumed in a sustainable manner that protects the right to adequate food, especially for the most vulnerable people and groups without damaging to ecosystem and environmental resources.**

18. The reference to "**food waste**" under "Storage and Distribution" is an emerging topic, but it presents practical complications, especially in developed countries where liability laws are seen as prohibiting or deterring food saving measures. There is a need to expand upon this concept. This is also one area in particular where the category of demographics from the HLPE report, and country-specific information will significantly alter the applicability of the guideline.

FAO has recently developed a study, which illustrates how food lost and waste is hampering the right to food.

19. There also should be greater discussion of **social movements** and **coalition building among civil society and private sector** to support the efforts of States.
20. **Nutrition education** at every level and for all stakeholders should be a vital part of the fight against nutrition and should be discussed in greater detail.

21. Besides institutional structure, the Guidelines should recommend to State parties **measurable financial commitments** to fight against all types of malnutrition policies.

22. **Conflict zones, natural disasters, and extreme weather events** are major stumbling blocks to realizing the right to adequate food and nutrition. There needs to be greater clarification of the framework for the guidelines and the scope of their applicability. The guidelines must remind States that obligations cannot be abrogated in times of conflict, or disaster, must discuss the role of the private sector and various stakeholders, and must address in greater detail the role of humanitarian assistance in ensuring adequate nutrition.

23. **The implementation and monitoring section should be much more comprehensive**. There is an assumption, currently, that the appropriate institutions will be in place to implement and monitor nutrition policies. The guidelines should discuss the need to develop appropriate institutional mechanisms that secure a representative process towards the formulation of a strategy with measurable targets and goals (See CESCR, General Comment No. 12, para 24).

24. **Clear principles of implementation** should be stated, as essential to contribute to sustainable food systems: **participation, accountability, non-discrimination, transparency, human dignity, empowerment and equality, and the rule of law**.

Specific Suggestions

- Para. 1, in line 4: after "global food security" and before "sustainable development" insert ", the right to adequate food"

- Para.7, in line 2: delete extra word "action"

- Para.9, in line 2: after "other stakeholders" insert "including international organizations"

- Para.13, in sub-section (d) in parenthesis: insert "human rights"

- Para. 14, in line 2 after "international law": insert "Voluntary Guidelines on right to food and other CFS guidelines" (each should be named). Also include in The UN Declaration on the Rights of Indigenous Peoples

(UNDRIP), and the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas.

- In Section II. Key Concepts and Guiding Principles (Para 17-23) include "the right to adequate food"

- Para. 21, in line 3 after "adolescent girls": insert "and boys" or delete "girls," keep it just adolescents

- Para. 21, in line 4 after "indigenous people": insert "peasants, agriculture and food chain workers"

- Para. 33, in sub-section (g): replace "climate smart" with "ecosystem sensitive or sustainable"

- Para. 33, subsection (h): after "conflicts" add "extreme weather events"

- Para. 33, subsection (i) add "education".

- Para. 34, subsection (a) in last line: delete "increasing shelf life"

- Para. 35, in line 1: replace "appropriate" with "minimize, " then change to "appropriate packaging"

- Para. 38, in line 3: after "forced displacement", include "poverty and lack of purchasing power"

- Para. 38, include another subsection: "(d) Support spaces, and designate common areas for local gardens and vegetable production, create urban gardens."

- Para. 43 should be further articulated to improve understanding. It should also include a recommendation to better control, reduce the use of, and otherwise ban hazardous pesticides.

- Para. 43, subsection (b): second sentence should be corrected as: "Food fortification is also an effective public health intervention, [but is only appropriate in emergency situations and for limited time periods to prevent nutritional deficiencies while contributing to an improved health outcome."

- Para. 45, subsection (a) last line: after "community engagement" insert "to support fruit and vegetable based local production and consumption"

———