The contribution of the right to food
to combating hunger and malnutrition:
what it means and why it matters

Mr. Olivier De Schutter
Special Rapporteur on the right to food

New York and Geneva, 26 October 2011
I. Success stories in combating hunger and malnutrition

Until 2005, Peru seemed bound to remain with high and almost unchanged rates of child malnutrition. As measured by the rates of stunted children, chronic malnutrition was 25.8 per cent in 1996, and 22.9 per cent in 2005; in rural areas, the rates were even higher and the progress even slower, moving from 40.4 per cent to 40.1 percent over the same period. Then, after 2005, malnutrition rates began to fall. Between 2005 and 2010, they declined from 22.9 to 17.9 percent. Reductions mainly occurred in rural areas: by 2010, child malnutrition had decreased by a quarter, to 31.3 per cent according to the Peruvian National Statistical Office (INEI). This means that over 130,000 children under five have been rescued from chronic malnutrition.

To what can this success be attributed? A report prepared by the Institute for Development Studies (IDS) shows it is not explained by the presence of favourable socioeconomic changes in Peru. Rather, the researchers conclude, the political determinants were decisive. They argue that these changes would not have occurred without the formation in early 2006 of the Child Nutrition Initiative, which had ten Presidential candidates sign a commitment to reduce chronic malnutrition in children under five by 5 per cent in five years (‘5 by 5 by 5’), following which the new Government of Alan Garcia not only sought to meet that commitment, but also set a higher target (at 9 per cent of reduction) and launched a 100-day action plan to drive reform. The report analyzing this “Peruvian surprise” describes the Government efforts to form policy coalitions across representatives of different government and non-government agencies; it looks at the vertical integration of agencies and programmes between national, regional and municipal governments; and it analyses the allocation of government resources used to fund the Government’s nutrition effort. Key to the achievements of Peru, the research shows, was a concerted effort to create and sustain political momentum through civil society advocacy and the Child Nutrition Initiative campaign; the support of international donors aligning their commitments with programmes tackling malnutrition; and sustained government commitment to national coordination structures and mechanisms, increased public (and private) spending and the aligning of social programmes with the national nutrition strategy.

A parallel research shows that the example of Peru is not unique. Peru is one of a handful of countries where the rates of malnutrition diminished recently: the other countries are Bangladesh, Brazil, Malawi, and Mozambique. What made these countries succeed when so many others are failing to make significant progress? First, they sought to adopt a multi-sectoral approach to combating hunger and malnutrition. Their strategies combined an attention to agriculture, with the mainstreaming of nutrition in health policies, and coordinated policies in the areas of education, gender, water, sanitation and habitat, pro-poor economic development (both by employment and income generation for the poor and by social development), and trade (as in the case, in particular, of Malawi). With the exception of Bangladesh, the political impetus given at the highest level of government was a key factor: in Brazil, Peru, Malawi and Mozambique, the Governments defined food and nutritional security as their main priorities, placing them at the top of the political agenda and adopting strategies specifically aimed at combating hunger and poverty. Third, civil society participation and empowerment was essential, by contributing to the sustainability of policies across time and by improving their acceptance and impact among affected populations. Fourth, multi-phased approaches have been the most effective, as allowed by multi-year national strategies combining both short-term interventions and long-term approaches to nutrition. As the researchers explain: “Long-term initiatives, such as the enhancement of food production for self-reliance and the reinforcement of access to employment for the most vulnerable, have been complementary to short-term approaches, such as the improvement of health services to mothers and children, improvement of access to safe

---

water and better sanitation conditions, alongside social protection strategies such as cash conditional transfer programmes.”

Fifth, the establishment of institutions monitoring progress has proved essential in ensuring that the political pressure remains present throughout the implementation phase of the strategy, and to ensure that the resources are committed. Sixth, the continuity of financial investment is vital: one-time efforts, over short periods, almost by definition are bound to fail to achieve significant success.

II. The significance of the right to adequate food

Political will, empowerment and participation of civil society, the monitoring of progress in the implementation of multi-year strategies: all these matter. This should not come as a surprise. As Amartya Sen once remarked, “the law stands between food availability and food entitlement.” What he meant is that unless we take seriously our duties towards the most vulnerable, and the essential role of legal entitlements in ensuring that the poor have either the resources required to produce enough food for themselves or a purchasing power sufficient to procure food from the market, our efforts at increasing production shall change little to their situation. For they are hungry not because there is too little food: they are hungry because they are marginalized economically and powerless politically. Protecting the right to food through adequate institutions and monitoring mechanisms should therefore be a key part of any strategy against hunger.

Over the past few years, significant progress has been made in the implementation of the human right to adequate food, the result of the co-construction of issues by civil society, social movements and Governments. Governments now understand that hunger is not simply a problem of supply and demand, but primarily a problem of a lack of access to productive resources such as land and water, of unscrupulous employers and traders, of an increasingly concentrated input providers sector, and of insufficient safety nets to support the poor. They understand that while attention has been focused on addressing the mismatch between supply and demand on the international markets – as if global hunger were the result of physical scarcity at the aggregate level – they should now pay greater attention both to the imbalances of power in the food systems and to the failure to support the ability of small-scale farmers to feed themselves, their families, and their communities. They understand the importance of more equity in the food chains, of empowerment, and of accountability: they understand that the right to food can constitute a tool to improve the effectiveness of policies that seek to combat hunger and malnutrition.

III. Constitutional protection of the right to food

A growing number of States, 24 worldwide according to a recent survey, now explicitly protect the right to food in their constitutions. South Africa has led this movement, with the inclusion of the right to food in Article 27 of the post-apartheid Constitution. But other countries are now moving in this direction. The new Constitution of Kenya, approved by a popular referendum in 2010, states that “(1) Every person has the right … (c) to be free from hunger, and to have adequate food of acceptable

---

3 Constitutional and Legal Protection of the Right to Food Around the World (by Lidija Knuth and Margret Vidar), FAO Right to Food Unit, Rome, 2011, p. 13. Ten countries (now including Mexico) recognize the right to food as a self-standing right recognized to all. Ten other countries stipulate the right to food for a specific category of the population only, such as children or prisoners. Five countries have constitutional provisions that stipulate the right to food explicitly as being part of another human right.
quality”; and like in South Africa, the Constitution imposes on the State a duty to respect, protect, promote and fulfil that right.

Also last year, Brazil incorporated the right to food into article 6 of the Federal Constitution and in October 2011, the constitutional reform process was completed in Mexico, inserting the right to food in the Constitution by amending articles 4 and 27. Other countries whose constitutions explicitly guarantee the right to food include Bolivia (art. 16), Ecuador (art. 13), Guatemala (art. 99), Guyana (art. 40), Haiti (art. 22) and Nicaragua (art. 63) in Latin America and the Caribbean, while in Asia the Interim Constitution of Nepal recognizes an individual right to food sovereignty (art. 18.3). A range of countries in all regions protect the right to food of specific categories of persons, such as children, or they ensure a protection of the right to food through other constitutional provisions, such as those related to the right to health or the right to life. In some countries such as Argentina and Costa Rica, the right to food is given constitutional rank by the International Covenant on Economic, Social and Cultural Rights being directly integrated in the domestic legal order, thus empowering courts to give effect to article 11 of the Covenant.

IV. Framework laws and national strategies for the realization of the right to food

But the constitutional protection of the right to food in only one component of a comprehensive approach towards guaranteeing the entitlements of individuals in order to ensure that they have access to adequate food, sufficient to meet their dietary needs. Therefore, following the request expressed by the experts of the Committee on Economic, Social and Cultural Rights have insisted on the need for States to work towards “the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks.” Such a national strategy 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; and (iv) ensure the adequate participation, particularly, of the most food-insecure segments of the population. As part of such a national strategy, States should adopt a framework legislation ensuring that the right to food is justiciable before national courts or that other forms of redress are available, so that in situations such as the current one when the prices of food undergo a sudden increase, the other branches of government will not be allowed to remain passive.

1. Framework laws

In recent years, we have seen significant progress in this regard. Framework laws grounded in the right to food have been adopted in rapid succession in Argentina in 2003 (Law creating the National Nutrition and Food Program (17 January 2003)), in Guatemala in 2005 (National Nutrition and Food Security System Law (6 April 2005)), in Ecuador and in Brazil in 2006 (Nutrition and Food Security Law (27 April 2006), and Law creating the National Nutrition and Food Security System (15 September 2006), respectively), and in Venezuela in 2008 (Nutrition and Food Security Law (Ley Orgánica de Seguridad y Soberanía Agroalimentaria, 31 July 2008)). In ten other countries in the Latin American and Carribean region, similar laws are currently proposed for adoption by the respective parliaments. This remarkable growth of framework laws on the right to food in this region has been favored by the dedication and commitment of parliamentarians, many of whom are connected through the Frente Parlamentario contra el Hambre, a network in which best practices are exchanged between national parliaments to encourage the drafting and adoption of legislation that

---

7 General Comment No. 12, para. 21.
8 The countries concerned are Costa Rica, Dominican Republic, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Bolivia.
improves the protection of the right to food.\textsuperscript{9} It has also been encouraged by the América Latina y Caribe Sin Hambre Initiative on the right to food, launched with the support of Spain, and that seeks to promote the right to food across the continent.

These laws may set targets for Governments to achieve, allocating responsibilities for taking action across different branches of government and coordinating their action.\textsuperscript{10} They typically allow for a permanent dialogue between government and civil society organizations, by establishing national food security councils, often linked to the highest level of government and whose members are ministers or their delegates and civil society representatives.\textsuperscript{11} The mechanisms through which participation of civil society is ensured vary across States. In Honduras for instance, civil society participates in local entities overseeing the Poverty Reduction (\textit{Estrategia para la Reducción de la Pobreza, ERP}) and is involved in the elaboration of the draft food and nutrition security law. In Brazil, two thirds of the members of the National Council on Food and Nutrition Security (CONSEA) represent civil society organizations. In Peru, civil society is represented in the Inter-Ministerial Commission for Social Affairs (\textit{Comisión Interministerial de Asuntos Sociales, CIAS}). In Venezuela, civil society can participate through the agrarian assemblies (\textit{Asambleas Agrarias}) and Community Councils (\textit{Consejos Comunales}). Civil society participates in the National Council for Food and Nutrition Security (\textit{Consejo Nacional de Seguridad Alimentaria y Nutricional, CONASAN}) in Nicaragua, and in the National Council for Food and Nutrition Security (\textit{Consejo Nacional de Seguridad Alimentaria y Nutricional}) and the Council for Urban Rural Development (\textit{Consejo de Desarrollo Urbano Rural}) in Guatemala.

The status of these food security councils also may differ from jurisdiction to jurisdiction. In the Brazilian case, CONSEA has a consultative nature, addressing recommendations to the Inter-Ministry Chamber of Food and Nutrition Security, the cross-department taskforce in charge of implementing the national food security strategy.\textsuperscript{12} But in other countries such as Guatemala and Ecuador the body can make binding decisions. Some of these councils allow for the participation of the private sector. They may then favour a chain-wide learning process about the food system, from the farmer to the consumer, allowing Governments to identify blockages and to improve the sustainability of the system as a whole. During my mission to South Africa earlier this year, I was encouraged by the intention expressed by the South African Human Rights Commission to deepen the work launched through the Southern African Food Security Change Lab, linking the various actors of the chain in the search of innovative solutions that can improve the sustainability of the food chains. A new framework law on the right to food in South Africa could institutionalize this dialogue, and improve its linkage to policy-making. The South African Human Rights Commission already contributes major reports on issues such as access to land and the situation of agricultural workers; by facilitating a dialogue about the inclusiveness and sustainability of the food system, it would be making another major contribution to the implementation of the right to food in South Africa.

2. National strategies for the realization of the right to food

In a number of regions, States are designing national strategies for the realization of the right to food. These strategies are usually developed through a dialogue with civil society, including but not limited to farmers’ organizations, and they set targets to be achieved within specific timeframes based on a shared diagnosis of which priority actions should be taken.

\textsuperscript{9} See the national reports by the América Latina y Caribe Sin Hambre Initiative on the right to food: \url{http://www.rlc.fao.org/iniciativa/infda.htm}.

\textsuperscript{10} Coordination may be improved by other means than by the adoption of a framework law. In Panama for instance, a coordination body was established by Executive Decree of 18 October 2004, creating the National Secretariat for the Coordination of the National Plan on Food Security (\textit{Secretaría Nacional de Coordinación y Seguimiento del Plan Alimentario Nacional}) (SENAPAN).

\textsuperscript{11} While not fully ensured yet, the participation of civil society organizations is being considered with coordinating bodies of Bolivia (\textit{Consejo Nacional de la Alimentación y Nutrición}), Argentina (\textit{la Comisión Nacional de Nutrición y Alimentación}), and Colombia (\textit{Comité Nacional de Prevención y Control de Micronutrientes, CODEMI}).

On this front, progress in Latin America has been particularly remarkable. Several national strategies and action plans have been developed in the region in recent years, including the Plan Nacional de Seguridad Alimentaria 2009–2015 of Paraguay, the Política Nacional de Seguridad Alimentaria y Nutricional of Nicaragua, the Política de Seguridad Alimentaria y Nutricional 2005–2015 of Honduras, the Política Nacional de Seguridad Alimentaria y Nutricional 2008 in Colombia, the Programa para la Erradicación de la Desnutrición Crónica 2007–2012 in Guatemala, and the Política Nacional de Seguridad Alimentaria y Nutricional in El Salvador. Brazil just adopted a rights-based Food and nutritional Security Plan, involving seventeen ministries within the Interministerial Food and Nutritional Security chamber for the 2012–2015 period. A series of national social programmes also explicitly aim at combating hunger and food and nutrition insecurity, such as the “Fome Zero” in Brazil, the “Vivir mejor” programme in Mexico, the “Bogotá sin Hambre” programme in Colombia, the “Desnutrición Cero” programme in Bolivia, or the “Hambre más urgente” national plan in Argentina.

But advances have been spectacular also in Africa. On 18 August 2011, the Kenyan Cabinet, meeting under the Chairmanship of President Mwai Kibaki, approved a National Food Security and Nutrition Policy that has been developed through a dialogue with civil society since 2007. Targets are set in the four areas covered by the new strategy: (1) food availability and access; (2) improved nutrition and basic health; (3) stability of food and access through enough relief and safety nets; and (4) improved food and nutrition information. Progress in moving towards these targets should be monitored with an active role for civil society. Togo passed the Programme National d’Investissement Agricole et de Sécurité Alimentaire 2008–2015 (PNIASA) that promotes rights to food and to be free from hunger. In December 2008, Togo also adopted the Programme National de Sécurité Alimentaire (PNSA), making the right to food a central pillar in the Government’s strategy for achieving food security.

Already in 2002, South Africa adopted the Integrated Food Security Strategy (2002). A Zero Hunger Strategy was further adopted in 2009, and the Government has also defined 12 Outcomes that address the priority areas for the implementation of their Medium Term Strategic Framework 2009–2014. Among these Outcomes is Outcome 7, defined as “vibrant, equitable and sustainable rural communities and food security for all.” The Outcome 7 Delivery Agreement frames food security policy by addressing food availability, accessibility, utilization and affordability. It sets out the key work to be completed before 2014 as well as long-term targets for improving food security by identifying the specific activities particular departments must undertake to reach the outlined goals. Although the Outcomes are not legally binding, the Government has committed to ensuring the achievement of the Outcomes through the establishment of the Department for Performance Monitoring and Evaluation (DPME) within the Presidency.

However, national strategies are worth nothing if they are not solidly grounded in the human right to adequate food. This means that the setting of targets and the identification of the concrete measures to be adopted should be the result of meaningful public participation; that the authorities responsible for implementation should be held accountable for results; that the indicators allowing the measure progress should be based on the normative components of the right to food, including non-discrimination. Most importantly, to ensure accountability, independent monitoring is required of the policy documents adopted by the Government, a task that could be entrusted to national human rights institutions, to public prosecutors, or to ombudspersons. Additionally, ring fencing of resources is required to ensure sustainable funding of these plans. Until these different conditions are met, the various strategies adopted by the Government may remain ineffective, since there will be no sanction associated with a failure to deliver.¹³

¹³ On national strategies and the opportunities they present for empowerment, participation and accountability, see in particular The right to food in practice. Implementation at the national level, FAO, Right to Food Unit, 2006; and Special Rapporteur on the right to food, Olivier De Schutter, Briefing Note: Countries tackling hunger with a right to food approach. Significant progress in implementing the right to food at national scale in Africa, Latin America and South Asia, May 2010, available from http://www.srfood.org/index.php/en/right-to-food.
V. The role of monitoring mechanisms -- judicial and non-judicial

The recognition of the right to food in domestic legal orders is not only of symbolic value. They may allow constitutional courts to strike down laws that lead to violations of the right to food, as in Colombia and Guatemala,14 or to sanction such violations that may result from administrative practice, as we have seen in India in the famous People’s Union for Civil Liberties v. Union of India and Others case launched in 2001.15 The newly adopted provision of the Kenyan Constitution was already invoked by the Consumer Federation of Kenya in a suit it brought against the Kenyan Government on 30 May 2011 for not adopting the measures that would allow the population to cope with the high prices of basic commodities, including unga (maize flour), the staple diet of Kenyans.

The constitutional protection of the right to food also may ensure that domestic laws and regulations are interpreted in accordance with the requirements of the right to food. In addition, many countries have established independent national human rights institutions, which monitor the compliance of the State with its obligations in the area of human rights, and which in some cases can receive complaints from aggrieved individuals. For example, the Human Rights Procurator’s Office in Guatemala had issued a series of reports which monitor the implementation of the National Policy on Food and Nutrition Security, and a series of thematic report on the status of realization of the right to food have been prepared by the Human Rights Procurator’s Office in El Salvador; in Brazil, the Public Ministry is composed of independent public prosecutors that can hold public authorities accountable in the implementation of programmes related to food and nutrition; and in Argentina, it is following an action by the National Ombudsman that the Supreme Court decided, in September 2007, that the national State and the Government of Chaco Province should provide food and drinking water to the province’s indigenous Toba communities. These are all means of ensuring that Governments take measures guided by the need to support the most vulnerable, that they abstain from action that has a detrimental impact on the enjoyment of the right to food, and that they move at a reasonable speed towards the full eradication of hunger and malnutrition.

VI. The relationship to the Millennium Development Goals

The Committee on Economic, Social and Cultural Rights underlined that the full realization of the right to food is “inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all.”16 As acknowledged recently by the European Parliament,17 the right to food can serve as a compass to guide how we shape the international environment in order to support efforts pursued at the national level.

Indeed, the relevance and credibility of the United Nations Millennium Development Goals could be significantly strengthened by being grounded in the requirements of human rights. The outcome document

16 General Comment No. 12: The right to adequate food, UN doc. E/C.12.1999/5, para. 6 (12 May 1999) (emphasis added).
17 On 27 September 2011, the European Parliament adopted a resolution detailing an EU policy framework to assist developing countries in addressing food security challenges. The resolution is largely based on the FAO Voluntary Guidelines to Support Progressive Realization of the Right to Adequate Food in the Context of National Food Security, and it recognizes the need to move towards “A Human-Rights-Based Approach to Sustainable Agriculture.” The resolution also lists a series of measures based on the right to adequate food that could reduce price volatility and what it calls "uncontrolled land acquisition"; and it insists on the need for the EU to ensure that all its policies converge towards the objective of realizing the Millennium Development Goals, consistent with its commitment towards “Policy Coherence for Development”. For the full text of the resolution, see http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0410+0+DOC+XML+v0//EN&language=EN.
that was adopted at the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals of 20–22 September 2010 is an important step in this regard, since it makes an explicit reference to human rights and, as regards specifically MDG 1, reaffirms “the right of everyone to have access to safe, sufficient and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger, so as to be able to fully develop and maintain his or her physical and mental capacities.”

Why does this matter? Until now, the MDGs largely failed to recognize human rights as essential to any sustainable development strategy. Yet, human rights are not just symbols; they are also tools. They are valuable because they are operational. The world’s one billion hungry people do not deserve charity: they have a human right to adequate food, and governments have corresponding duties, which are enshrined in international human rights law. Governments that are serious about making progress on development objectives should be asked to adopt a legislative framework for the realization of economic and social rights such as the right to food or the right to health care. This framework should present a number of characteristics:

1. It should be designed through a participatory process involving civil society. It should define who, within which timeframe and with what resources, should take what actions. The intended beneficiaries of these actions should be defined as rights-holders.

2. Accountability mechanisms should be established, allowing victims to hold Governments responsible for their failure to take action. This removes the stigma of charity, and it is empowering for victims. Instead of being helped because they have unsatisfied needs, they are granted remedies because their rights are being violated.

3. The framework also should include a non-discrimination requirement, ensuring that we focus our attention on the most vulnerable groups – not just the well-connected, the literate and the favourites of the regime, and not just groups for which quick wins can be achieved.

4. Because participation should be ensured in the process, the people whom we seek to support will co-design and co-improve the systems that are meant to serve them. They become actors rather than passive recipients of aid, and aid is more effective as a result.

The transformative potential of a human rights framework on how national policies seeking to move towards the full eradication of hunger and malnutrition is thus considerable. But its potential to bring about improvements in development co-operation is equally important. At its core, the introduction of this framework leads to a shift from a bilateral relationship between donors and partner States, to a triangular relationship actively involving the ultimate beneficiaries and their representatives (national parliaments and civil society organizations) in the design and implementation of development policies. This represents a gain in effectiveness (since these policies will be more evidence-based), but also in legitimacy (since they will be grounded on human rights as universally recognized values), and in accountability (since we move from the realm of charity and discretion in relations between donors and recipients to relations defined as those between duty-bearers and rights-holders). While the recent efforts in reforming aid with a view to improving its effectiveness are moving in the same direction, explicit reliance on human rights could strengthen those efforts and help guide them. This would be consistent with one of the commitments of the States adhering to the 2005 Paris Declaration on Aid Effectiveness, which is to enhance partner countries’ accountability to their citizens and parliaments for their development policies, strategies and performance (para. 3, iii, and para. 14). It is also

---

18 UN General Assembly Resolution 65/1, Keeping the promise: united to achieve the Millennium Development Goals, Para. 70, (u). See also para. 13, in which the Heads of States and Governments "recognize that development, peace and security and human rights are interlinked and mutually reinforcing", and "reaffirm that our common fundamental values, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility, are essential for achieving the Millennium Development Goals".
consistent with the reference that the Accra Summit on Aid Effectiveness of 2–4 September 2008 makes this objective (para. 13, a, of the Accra Agenda for Action).

**VII. Conclusion**

It is the role of parliamentarians to hold Governments accountable. It is their role to create the legislative framework that will ensure that we will make progress towards the full eradication of hunger and malnutrition, by setting clear targets, by monitoring progress, and by institutionalizing the dialogue between government and civil society to ensure that we move away from technocratic stop-gaps, imposed from the top down, towards the identification of real solutions, developed from the bottom up. The human right to adequate food provides a signpost. It obliges us to pay attention to the situation of the most vulnerable. It requires participation and accountability. It asks questions that are political and not merely technical. It enriches our understanding of what hunger is about, and how to combat it. It offers a better diagnosis of what has gone wrong, and of what to do to eliminate, at last, the injustice of hunger. By acting together, this is a battle we can win.

***

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, and he reports to the Human Rights Council and to the UN General Assembly. For more on the work of the Special Rapporteur on the right to food, visit [www.srfood.org](http://www.srfood.org) or [www2.ohchr.org/eng/Issues/food/index.htm](http://www2.ohchr.org/eng/Issues/food/index.htm)