

Institutionalizing a Fully Realized Right to Food: Progress, Limitations, and Lessons Learned from Emerging Alternative Policy Models

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INSTITUTIONALIZING A FULLY REALIZED RIGHT TO FOOD: PROGRESS, LIMITATIONS, AND LESSONS LEARNED FROM EMERGING ALTERNATIVE POLICY MODELS

Nadia Lambek* and Priscilla Claeys**†

INTRODUCTION.....	744
I. A BRIEF BACKGROUND ON THE RIGHT TO FOOD AS A LEGAL CONCEPT	746
II. ASSESSMENT OF POLICIES, STRATEGIES, AND LEGAL FRAMEWORKS FOR THE NATIONAL IMPLEMENTATION OF THE RIGHT TO FOOD	751
A. Progress in Legal Protection of the Obligation to Fulfill the Right to Food	753
B. Progress in National Policies that Fulfill the Right to Food	759
C. Lack of Progress in Respecting and Protecting the Right to Food and the Need for Regulatory Tools and Frameworks.....	764
III. ASSESSMENT OF EFFORTS TO ESTABLISH ALTERNATIVE MODELS OF FOOD SYSTEMS GOVERNANCE AT THE LOCAL, NATIONAL, AND GLOBAL LEVELS	775
A. National Implementation of Food Sovereignty	776
B. Alternative Food Networks and Food Policy Councils	779
C. Progress in Creating Space for the Participation of Social Movements in Global Food Debates: Civil Society Participation in the Committee on World Food Security	782
D. Negotiations on a Declaration on the Rights of Peasants and Other People Working in Rural Areas at the United Nations Human Rights Council	786
CONCLUSION	788

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INTRODUCTION

Twenty years ago, in 1996, world leaders, activists, and food producers met in Rome for the World Food Summit. One of the many outcomes of this meeting was a clear direction to the United Nations human rights bodies that States and stakeholders were interested in how the right to food could be operationalized at the national level.¹ Over the past two decades, the right to food has gone through a period of intense normative elaboration, from a little-theorized right to a largely fully elaborated human rights framework with corresponding State obligations and interpretations applying the right to food to a variety of contexts.² Today there is a greater understanding of the concrete implications of the right to food as a legal doctrine for a range of state, international, and private actors, as well as a greater understanding of the importance of adopting a holistic approach to food insecurity.

The right to food has now entered a new era, with advocates focused on its promotion, adoption, and implementation, particularly at the national level.³ As a result of these efforts, the visibility of the right to food has increased remarkably over the last decade, particularly through the work of a number of non-governmental organizations (NGOs), civil society organizations, and the United Nations Special Rapporteurs on the right to food. States are increasingly adopting the right to food framework—or more accurately some elements of the framework—as a policy guide or as a legal norm through a variety of laws, constitutional amendments, policies, and programs. The right to food as a guiding framework is also increasingly discussed in international fora, notably at the United Nations Committee on World Food Security (CFS).

1. See World Food Summit, *Rome Declaration and Plan of Action*, at para. 61 (Nov. 17, 1996), <http://www.fao.org/docrep/003/w3613e/w3613e00.htm>.

To clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger, as stated in the International Covenant on Economic, Social and Cultural Rights and other relevant international and regional instruments, and to give particular attention to implementation and full and progressive realization of this right as a means of achieving food security for all.

Id.

2. Priscilla Claey, *The Right to Food: Many Developments, More Challenges*, 2 CAN. FOOD STUD. 60, 60 (2015); Asbjørn Eide, *State Obligations Revisited*, in 2 FOOD AND HUMAN RIGHTS DEVELOPMENT: EVOLVING ISSUES AND EMERGING APPLICATIONS 137, 138 (A. Eide & Kracht eds., 2007) (discussing how state obligations for the right to food are evolving through progressive interpretation).

3. See MARGRET VIDAR, *THE RIGHT TO FOOD IN INTERNATIONAL LAW* 1 (2003) (discussing the historical milestones of the international right to food); Claey, *supra* note 2, at 60–61.

This Article focuses on the right to food in the context of national implementation—and not as an analytical tool for assessing the ails of the food system or as a uniting principle between different constituents.⁴ It argues that, despite the advancements noted above, little progress has been made overall at legal, policy, and institutional levels in effectively creating an environment in which the right to food can be fully realized in national contexts. Indeed, the adopted legal and policy frameworks have largely focused on the obligations of states to fulfill the right to food, leaving unaddressed the obligations to respect and protect the right to food. This has resulted in a failure to fully endorse the right to food in such a way that it would lead to the structural change needed to improve the realization of the right and to decrease food insecurity for individuals and communities.

Many factors can be credited with limiting the success of the right to food as a legal tool. These include a lack of political will among States and a reluctance to recognize economic and social rights; increased corporate capture of food governance fora and of the food supply chain more broadly; a lack of political constituency for the right to food, with implementation efforts largely stemming from a handful of NGOs and the Food and Agriculture Organization of the United Nations (FAO) right to food team; and weak implementation mechanisms, which often fail to reflect the core State obligations imposed by the right to food.⁵

While these obstacles and limitations are well documented in the literature, we argue in this Article that some of the most relevant and interesting developments allowing us to reflect on the challenges facing the right to food have taken place not within the right to food field, but outside and in parallel. Indeed, the last decade has seen a rise in new and alternative models for transforming the food system, such as alternative food networks, local food policy councils, and food sovereignty. These are often implemented in response to the challenges and the limited progress achieved with the right to food. These alternatives—often defended by local and transnational peasant organizations and food movements more generally—have succeeded not only in creating new narratives about the structural changes needed in our food system, but also in establishing new rights,

4. See Claeys, *supra* note 2, at 60–61 (providing commentary on these approaches to the right to food); Nadia Lambek, *The Right to Food: Reflecting on the Past and Future Possibilities*, 2 CAN. FOOD STUD. 68, 71–72 (2015) [hereinafter Lambek, *The Right to Food*] (providing further commentary on these approaches).

5. NADIA LAMBEK, FIAN INT'L, 10 YEARS OF THE RIGHT TO ADEQUATE FOOD GUIDELINES: PROGRESS, OBSTACLES AND THE WAY AHEAD 2, 4, 10, 41 (2014), http://www.fian.org/fileadmin/media/publications/10yearGuidelines_CivilSociety_SynthesisPaper_en.pdf [hereinafter LAMBEK, 10 YEARS OF THE RIGHT TO ADEQUATE FOOD GUIDELINES]; Lambek, *The Right to Food*, *supra* note 4, at 70; Claeys, *supra* note 2, at 60–61.

institutions, and governing practices. Our objective in this Article is to document these developments and the lessons we believe they bear for right to food advocates and practitioners. These alternatives provide an important lens through which to view the perceived limits of the right to food as a legal tool. Further, taking them seriously invites us to expand our understanding of the right to food in at least two ways: (1) towards a more inclusive participation of citizens in the governance of food and agriculture; and (2) towards a transition to more localized food systems.

In Part I of this paper, we provide a brief overview of the right to food's legal framework. In Part II, we review some of the key developments in implementing the right to food over the last two decades—both with respect to national implementation of legislation, as well as through policies. We show that progress has been made when it comes to fulfilling the right to food, but that much needs to be done to respect and protect the right. We also highlight a number of accountability challenges that need to be addressed. In Part III, we assess alternative models, grounded in the alternative paradigm of food sovereignty, that have emerged from the bottom up at the local, national, and regional levels over the past two decades. We discuss food sovereignty laws and policies, as well as alternative food networks and food policy councils. We then move to the international level, where we explore efforts at institutionalizing space for civil society in food system governance at the global level—specifically at the CFS. We also discuss the current elaboration of the Declaration on the Rights of Peasants and Other People Working in Rural Areas at the United Nations Human Rights Council as an articulation of new human rights norms to reflect the experience and claims of peasants and other people working in rural areas. Drawing from the alternative models, we conclude with a discussion of how the right to food could better address the twin crises of accountability and participation.

I. A BRIEF BACKGROUND ON THE RIGHT TO FOOD AS A LEGAL CONCEPT

As a legal doctrine, the right to food is the human right

to have regular, permanent and unrestricted 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.⁶

The right to food is often described as the right to feed oneself, in that it requires that the State not directly engage in, and prevent third parties from engaging in, actions that inhibit the ability of people and communities to meet their own food needs. The right to food only requires that States provide access to food when individuals and communities are unable to meet their own food needs. The right to food moves beyond a charity-based model by making food an entitlement and requiring the State take an active and holistic approach to the food system and not simply to alleviating hunger.⁷

The right to food has been recognized internationally as a human right since its inclusion in the Universal Declaration of Human Rights (UDHR) in the 1940s, where it formed part of the right to an adequate standard of living.⁸ The right to food was later included in the International Covenant on Economic, Social and Cultural Rights (ICESCR) where it again formed part of the right to an adequate standard of living but was also enshrined as “the fundamental right of everyone to be free from hunger,” with a number of corresponding State obligations listed.⁹ Since the 1960s, the right to food has

6. Jean Ziegler (Special Rapporteur on the Right to Food), *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, at para. 17, U.N. Doc. A/HRC/7/5 (Jan. 10, 2008).

7. Priscilla Claeys & Nadia C.S. Lambek, *Introduction: In Search of Better Options: Food Sovereignty, the Right to Food and Legal Tools for Transforming Food Systems*, in *RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW* 1, 4 (Nadia C.S. Lambek et al. eds., 2014) [hereinafter Claeys & Lambek, *In Search of Better Options*]; Olivier De Schutter (Special Rapporteur on the Right to Food), *Building Resilience: A Human Rights Framework for World Food and Nutrition Security*, at para. 17, U.N. Doc. A/HRC/9/23 (Sept. 8, 2008) [hereinafter De Schutter, *Building Resilience*]; OLIVIER DE SCHUTTER, UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD, 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 2 (2010) [hereinafter DE SCHUTTER, TACKLING HUNGER], http://www2.ohchr.org/english/issues/food/docs/Briefing_Note_01_May_2010_EN.pdf.

8. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, at art. 25 (Dec. 10, 1948) [hereinafter U.D.H.R.].

9. International Covenant on Economic, Social and Cultural Rights art. 11, at para. 2, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-

been incorporated into a number of other international and regional instruments.¹⁰ While several academics have provided accounts of the right to food over the years,¹¹ the core content of what the right contains and what corresponding obligations fall on States and other entities was only fully elaborated by the international community over the previous two decades.¹²

Following the 1996 World Food Summit, a number of important documents, key figures, and organizations have helped shape the normative elaboration of the right to food as a legal concept. The first key document, General Comment 12, drafted by the Committee on Economic, Social and Cultural Rights, authoritatively clarified the content of the right to food and provided greater detail on State obligations.¹³ It outlined three key State obligations stemming from the right to food—the obligations to respect, protect, and fulfill the right to food¹⁴—as well as a number of procedural

exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Id.

10. *See, e.g.*, Convention on the Rights of the Child art. 24, Nov. 20, 1989, 1577 U.N.T.S. 3 (requiring “adequate nutritious foods” to prevent disease and malnutrition in children); Convention on the Elimination of All Forms of Discrimination Against Women art. 12, Dec. 18, 1979, 1249 U.N.T.S. 13 (ensuring adequate nutrition during pregnancy); Convention on the Rights of Persons with Disabilities art. 28, Dec. 13, 2006, 2515 U.N.T.S. 3 (requiring adequate food for those with disabilities); European Social Charter art. 4, 12, 14, May 3, 1996, 2151 U.N.T.S. 277 (detailing the right to social security and a decent standard of living); African Charter on Human and Peoples’ Rights art. 16, 22, 24, June 27, 1981, 1520 U.N.T.S. 217; African Charter on the Rights and Welfare of the Child art. 14, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999 (detailing State obligations to combat malnutrition); American Convention on Human Rights art. 26, Nov. 22, 1969, 1144 U.N.T.S. 144 (seeking to achieve the “full realization” of implicit human rights); The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” art. 11, Nov. 17, 1988, O.A.S.T.S. 69 (noting Article 12 of the San Salvador Additional Protocol).

11. *See generally* THE RIGHT TO FOOD (Philip Alston & Katarina Tomasevski eds., 1984) (discussing the full historical breadth and depth of the right to food).

12. *See* Philip Alston, *International Law and the Human Right to Food*, in THE RIGHT TO FOOD, *supra* note 11, at 9, 9.

[D]espite the importance attached to the norm, no international agency or organ, whether in the human rights or food field, has ever endeavored to analyze, develop or codify the specific normative implications of the right to food. On the contrary, they have to a significant extent permitted a devaluation of the actual international law norm—the right to adequate food—by the use of surrogate terms purporting to affect international law but which are in fact devoid of any recognized normative content.

Id.

13. United Nations Comm. on Economic, Social and Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Adequate Food*, at paras. 40–41, U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter General Comment No. 12].

14. *Id.* at para. 15.

obligations such as the obligations to ensure nondiscrimination and participation in policymaking.¹⁵ The obligation to fulfill is described as having two components. The first, the obligation to facilitate, requires that States “proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security.”¹⁶ The second, the obligation to provide, requires that “whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly.”¹⁷ The obligation to respect requires that States not engage in activities that interfere with the ability of people to meet their food needs, while the obligation to protect requires that States ensure that *third parties* do not engage in activities that interfere with the ability of people to meet their food needs.¹⁸ The Committee also stressed the importance of adopting national policies and strategies for the right to food as well as framework laws, monitoring mechanisms, and remedy procedures.¹⁹

A second key document in developing the right to food as a legal concept, the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Voluntary Guidelines), was adopted by the 187 Member States of the FAO in 2004.²⁰ The Voluntary Guidelines provide steps for the implementation of

15. A rights-based approach means that decisionmaking processes should be guided by the human rights principles of Participation, Accountability, Nondiscrimination, Transparency, Human Dignity, Empowerment, and Rule of Law, following the PANTHER framework developed by FAO and based on the United Nations Common Understanding on a Human Rights Based Approach. See FOOD & AGRIC. ORG. OF THE UNITED NATIONS [FAO], GUIDE TO CONDUCTING A RIGHT TO FOOD ASSESSMENT 11 (2009), http://www.fao.org/fileadmin/templates/righttofood/documents/RTF_publications/EN/3_toolbox_Assessment_guide.pdf (giving an outline of a human rights approach); LORENZO COTULA ET AL., THE RIGHT TO FOOD AND ACCESS TO NATURAL RESOURCES 17 (2008), <http://www.fao.org/docrep/016/k8093e/k8093e.pdf> (explaining how the elements of PANTHER support a rights-based approach).

16. General Comment No. 12, *supra* note 13, at para. 15.

17. *Id.*

18. *Id.*

19. *Id.* at paras. 21–35.

20. The World Food Summit: Five Years Later invited the United Nations Food and Agricultural Organization (FAO) Council “to elaborate . . . a set of voluntary guidelines to support Member States’ efforts to achieve the progressive realisation of the right to adequate food.” World Food Summit, Declaration of the World Food Summit: Five Years Later, at para. 10 (2002), <ftp://ftp.fao.org/docrep/fao/meeting/005/y7106e.pdf>. At the 127th Session of the FAO Council, these Voluntary Guidelines were adopted. FAO, VOLUNTARY GUIDELINES TO SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD SECURITY (2004), <http://www.fao.org/3/a-y7937e.pdf>. See Jean Ziegler (Special Rapporteur on the Right to Food), *Economic, Social and Cultural Rights: The Right to Food*, at paras. 27–33, U.N. Doc. E/CN.4/2005/47

the right to food at the national level, including guidance on integrating the right to food into economic development policies; the regulation of markets and resources such as labor, water, and land; and programs that support vulnerable groups.²¹ The Voluntary Guidelines have been used by the right to food unit/team at the FAO, a small group with a limited mandate, in efforts to assist governments in implementing the right to food domestically.

Finally, several key players, including a small and dedicated, but currently growing, collection of NGOs as well as the United Nations' Special Rapporteurs on the right to food, have advanced the right to food as a legal concept. The involvement of NGOs in the right to food has historically been limited to a small number of groups in the field of right to food advocacy, such as FIAN International, the Center for Economic and Social Rights (CESR), and church-based NGOs (such as Misereor).²² More recently, a number of development and social justice NGOs, such as Oxfam and ActionAid, have taken up the promotion of the right to food as part of their work.²³

The United Nations Commission on Human Rights established the office of the United Nations Special Rapporteur on the Right to Food in 2000.²⁴ The Special Rapporteur is appointed by the Human Rights Council, and mandated “[t]o promote the full realization of the right to food” and “[t]o examine ways and means of overcoming obstacles” to its full realization.²⁵ The three Special Rapporteurs appointed thus far have been instrumental in advancing the right to food. They have helped to bring public attention to issues of global hunger from a rights-based perspective. More importantly, they have provided road maps to applying a right to food perspective to a number of issues such as gender, sustainable agriculture, trade, financial speculation, fishery policy, health and nutrition, labour on farms, access to land and property rights, intellectual property, and more.²⁶ The Special

(Jan. 24, 2005) [hereinafter Ziegler, *Economic, Social and Cultural Rights*] (detailing the process of negotiating the guidelines and the purposes of the guidelines from the perspective of the Special Rapporteur).

21. Ziegler, *Economic, Social and Cultural Rights*, *supra* note 20, at paras. 31–33.

22. Claeys, *supra* note 2, at 61.

23. *Id.*

24. Office of the High Commissioner for Human Rights Res. 2000/10, at para. 10 (Apr. 17, 2000).

25. *See, e.g.*, Human Rights Council, Mandate of the Special Rapporteur on the Right to Food, U.N. Doc. A/HRC/6/L.5/Rev.1, at para. 2 (Sept. 26, 2007).

26. The third UN Special Rapporteur, Hilal Elver, currently holds the position. The previous two UN Special Rapporteurs, Olivier De Schutter and Jean Ziegler, each served for two terms. Together Dr. De Schutter and Dr. Ziegler conducted missions to over 20 states and produced over 20 official reports to the Human Rights Council and General Assembly on issues concerning the intersection between the right to food and health, gender, agroecology, contract farming, etc. Dr. Ziegler and his team produced a volume

Rapporteurs have also focused over the years on national implementation as a key step to achieving the right to food. As part of their work, they conduct missions to states to evaluate the enjoyment of the right to food and respond to allegations of human rights abuses by States.²⁷ In recognition of the importance of national implementation of the right to food, former Special Rapporteur, Olivier De Schutter, has defined the right to food as “the right, for all, to have legal frameworks and strategies in place that further the realization of the right to adequate food as a human right recognized under international law.”²⁸

II. ASSESSMENT OF POLICIES, STRATEGIES, AND LEGAL FRAMEWORKS FOR THE NATIONAL IMPLEMENTATION OF THE RIGHT TO FOOD

States adopt the right to food through a variety of means, such as legal protections (including constitutional recognition or legislative frameworks), by way of policy or strategy, and on occasion, as a result of judicial pronouncements.²⁹ Constitutionally protected rights can serve as governing principles for States, and depending on the domestic legal system can guide policy and put limits on State action or inaction. States generally cannot derogate from constitutionally protected rights, and often constitutionally protected rights provide citizens a means to challenge legislation or government actions and inactions that violate the right to food, by providing an individual cause of action before a court.

outlining their experience and lessons learned during the course of the mandate. *See generally* JEAN ZIEGLER ET AL., *THE FIGHT FOR THE RIGHT TO FOOD: LESSONS LEARNED* (2011). Dr. De Schutter still maintains a website where all of his reports, including a number of unofficial reports called briefing notes, can be accessed. *See Archive*, OLIVIER DE SCHUTTER, <http://www.srfood.org/en/un-special-rapporteur-archive> (last visited May 29, 2016) (listing, under “Reports,” the reports and documents Dr. De Schutter produced while holding the mandate of Special Rapporteur).

27. *See, e.g.*, Olivier De Schutter (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur on the Right to Food on his Mission to Malaysia*, U.N. Doc. A/HRC/25/57/Add.2 (Feb. 3, 2014) [hereinafter De Schutter, *Mission to Malaysia*]; DE SCHUTTER, *TACKLING HUNGER*, *supra* note 7, at 2.

28. DE SCHUTTER, *TACKLING HUNGER*, *supra* note 7, at 1.

29. We do not discuss in detail in this Article the role that courts have played in the national implementation of the right to food. Whether the right to food—as well as other economic and social rights—are justiciable has been a controversial topic over the years, but a number of national courts around the globe have upheld the right to food, expounded on what constitutes the right to food, and required that states remedy violations. For more information on justiciability and the right to food, see Nadia C.S. Lambek & Claire Debucquois, *National Courts and the Right to Food*, in 3 *ENCYCLOPEDIA OF FOOD AND AGRICULTURAL ETHICS* 1424 (Paul B. Thompson & David M. Kaplan eds., 2014); CRISTOPHE GOLAY, *THE RIGHT TO FOOD AND ACCESS TO JUSTICE: EXAMPLES AT THE NATIONAL, REGIONAL AND INTERNATIONAL LEVELS* 8 (2009); Christian Courtis, *The Right to Food as a Justiciable Right: Challenges and Strategies*, 11 *MAX PLANK Y.B. UNITED NATIONS* 317 (2007).

Right to food framework laws provide legal protection of the right to food, often in a more systematic and detailed fashion than through constitutional protection, by connecting and coordinating different policymakers that have an impact on the realization of the right to food (e.g., ministers for agriculture, health, trade, education, fisheries, social protection, finance, development, and so on). To be most effective (or arguably to achieve the promise of the right to food at all), right to food framework laws should adopt the right to food as a whole concept by including provisions for all three State obligations as well as procedural obligations, coordination, and a variety of accountability and recourse mechanisms to monitor implementation and provide remedies where violations occur. In addition, right to food framework laws should guarantee funding, ensuring that policies are integrated into greater food security strategies and that policies cannot be sidetracked by changes in political power.³⁰

National policies or strategies offer a means for: (1) identifying the measures to be adopted, assigning responsibility across different departments, and imposing deadlines; (2) allowing for a whole-of-government approach, in which various policies in areas like health care, education, employment, social protections, agriculture, and rural development can be coordinated; and (3) building multi-year plans that make it possible to combine short-term approaches and long-term concerns.³¹ National policies and strategies do not provide legal protection for the right to food, though they can include directions to draft legal protection.

In this Part, we explore national right to food policies and legislative and constitutional schemes that States have adopted. Adopting holistic right to food-based strategies—as contemplated in General Comment 12, or the Voluntary Guidelines—has not been achieved per se by many governments. However, a number of States have adopted components of the right to food in policies or laws, which are wide-reaching, somewhat holistic, and have rights-based elements.

We find that the majority of national policies adopted focus on achieving the State obligation to fulfill, most often through a combination of programs aimed at both providing food directly and assisting with the means of acquiring food. For example, States achieve the obligation to fulfill through extension services, guaranteed work schemes, or various labor regulations. It is harder to locate national rights-based legislation, strategies, or policies that

30. Olivier De Schutter (Special Rapporteur on the Right to Food), *Interim Rep. of the Special Rapporteur on the Right to Food*, at paras. 46, 50, 58(j), U.N. Doc. A/68/288 (Aug. 7, 2013) [hereinafter De Schutter, *Interim Report*].

31. *Id.* at paras. 43–45.

focus on State obligations to respect and protect the right to food.³² Even fewer States have national strategies to enforce State obligations in a holistic sense, including the respect, protect, and fulfill dimensions as well as coordination between multiple responsible areas of government with some jurisdiction over the food system. After presenting an overview of legislation, policies, and strategies geared toward fulfilling the right to food, we outline the lack of progress made in regulating aspects of the food system that impact the ability of people to meet their food needs, leading to serious accountability challenges.

A. Progress in Legal Protection of the Obligation to Fulfill the Right to Food

Over the past two decades, a considerable number of States have adopted constitutional amendments to protect the right to food.³³ South Africa led the charge, providing constitutional protection to the right to food, as well as a number of other economic and social rights, in its 1994 post-apartheid constitution.³⁴ Today, close to 30 States, including Kenya, Bolivia, Ecuador, Mexico, and Brazil have adopted constitutional provisions guaranteeing the right to food.³⁵ Pakistan protects only the obligation to fulfill in its

32. See Nadia C.S. Lambek, *Respecting and Protecting the Right to Food: When States Must Get Out of the Kitchen*, in RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW, *supra* note 7, at 101 (discussing how States usually implement the right to food by focusing on providing food for everyone, and not on respecting or protecting the right of people to meet their own food needs).

33. GOLAY, *supra* note 29, at 8; DE SCHUTTER, TACKLING HUNGER, *supra* note 7, at 5.

34. S. AFR. CONST., 1996, art. 27(1)(b) (“Everyone has the right to have access to . . . sufficient food and water.”). See Olivier De Schutter (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur on the Right to Food on his Mission to South Africa*, at para. 11, U.N. Doc. A/HRC/19/59/Add.3 (Jan. 13, 2012) [hereinafter, De Schutter, *Mission to South Africa*].

35. MARGRET VIDAR ET AL., FAO, LEGAL DEVELOPMENTS IN THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD 2 (2014) [hereinafter VIDAR, LEGAL DEVELOPMENTS], <http://www.fao.org/3/a-i3892e.pdf>; LIDIJA KNUTH & MARGRET VIDAR, FAO, CONSTITUTIONAL AND LEGAL PROTECTION OF THE RIGHT TO FOOD AROUND THE WORLD 16, 31 (2011), <http://www.fao.org/docrep/016/ap554e/ap554e.pdf>; LAMBEK, 10 YEARS OF THE RIGHT TO ADEQUATE FOOD GUIDELINES, *supra* note 5, at 15; DE SCHUTTER, TACKLING HUNGER, *supra* note 7, at 1 (surveying progress in implementing the right to food at the national level in Africa, Latin America and South Asia); OLIVIER DE SCHUTTER, U.N. SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD, FROM CHARITY TO ENTITLEMENT: IMPLEMENTING THE RIGHT TO FOOD (2012) [hereinafter DE SCHUTTER, FROM CHARITY TO ENTITLEMENT] (discussing constitutional protection of the right to food and implementation of the right to food through laws and policies in nine countries in Eastern and Southern Africa); OLIVIER DE SCHUTTER, U.N. SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD, A RIGHTS REVOLUTION: IMPLEMENTING THE RIGHT TO FOOD IN LATIN AMERICA AND THE CARIBBEAN (2012) [hereinafter DE SCHUTTER, A RIGHTS REVOLUTION] (discussing constitutional protection of the right to food and implementation of the right to food through laws and policies in Latin America and the Caribbean); De Schutter, *Interim Report*,

constitution.³⁶ Numerous other States protect the right to food indirectly, as a part of the right to an adequate standard of living (Sri Lanka) or as the right to the minimum conditions of life (Switzerland), or even as an aspirational goal (Uganda).³⁷ The Supreme Court of India, in the landmark *People's Union for Civil Liberties v. Union of India and Others*, recognized the right to food as part of the constitutionally protected right to life.³⁸ Through a series of interim decisions over the past ten years, the Court has ordered the government to take a variety of steps to meet its obligation to fulfill the right

supra note 30 (providing a summary at the end of his mandate on progress in implementing the right to food). Article 16.1 of Bolivia's Constitution guarantees "Every person has the right to water and food." POLITICAL CONST. OF THE STATE, 2009, art. 16.I (Bol.) (HeinOnline World Constitutions Illustrated Library 2011). The State obligation to fulfill the right to food is further detailed in article 16.II, which states: "The State has the obligation to guarantee food security, by means of healthy, adequate and sufficient food for the entire population." *Id.* at art. 16.II. *See generally* RIGHTS & DEMOCRACY, THE HUMAN RIGHT TO FOOD IN BOLIVIA: REPORT OF AN INTERNATIONAL FACT-FINDING MISSION 11 (2011), http://cesr.org/downloads/Bolivia_Right_To_Food_eng.pdf (assessing hunger and food insecurity in Bolivia from the human rights perspective and offering recommendations for both government and civil society). In addition to recognizing the right to food, the Constitutions of Ecuador and Bolivia also recognize the duty to ensure food sovereignty. *See, e.g.*, LAMBEK, 10 YEARS OF THE RIGHT TO ADEQUATE FOOD GUIDELINES, *supra* note 5, at 16 n.25 (citing Juan Carlos Morales González, *First Decade of Voluntary Guidelines on the Right to Food in Latin America: An Approach to the Trends, Progress and Obstacles in its Implementation*, in 10TH ANNIVERSARY OF THE RTAF GUIDELINES (2014) (unpublished manuscript)) (using González's article to support the assertion that "[t]he Constitutions of Ecuador and Bolivia also recognize the duty to ensure food sovereignty").

36. PAKISTAN CONST. art. 38(d) ("The State shall . . . provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.").

37. VIDAR ET AL., LEGAL DEVELOPMENTS, *supra* note 35, at 3; FAO, *Right to Food Around the World: Sri Lanka*, <http://www.fao.org/right-to-food-around-the-globe/en/> (under "select country" select "Sri Lanka") (last visited Feb. 7, 2016); *see, e.g.*, LAMBEK, 10 YEARS OF THE RIGHT TO ADEQUATE FOOD GUIDELINES, *supra* note 5, at 15 n.24 (citing Jennie Jonsén, *Europe and the Right to Adequate Food and Nutrition: Assessing a Decade of Progress, Shortcomings, and Challenges Ahead*, in 10TH ANNIVERSARY OF THE RTAF GUIDELINES (2014) (unpublished manuscript)) (using Jonsén's article to support the assertion that Switzerland's Constitution includes "the right to the minimum conditions of life, including the right to food"). To date, Judges in Switzerland have protected the right to the minimum conditions of life, and have explicitly singled out the right to food directly with respect to cases of undocumented people and rejected asylum seekers. CONST. OF THE REPUBLIC OF UGANDA, 1995, objective XIV ("The State shall endeavour to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that . . . all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, decent shelter, adequate clothing, food security and pension and retirement benefits.").

38. *People's Union for Civil Liberties v. Union of India*, Writ Petition (Civil) No. 196 of 2001 (India Nov. 28, 2001) (interim opinion); Lauren Birchfield & Jessica Corsi, *Between Starvation and Globalization: Realizing the Right to Food in India*, 31 MICH. J. INT'L L. 691, 693-94 (2010); Lauren Birchfield & Jessica Corsi, *The Right to Life is the Right to Food: People's Union for Civil Liberties v. Union of India & Others*, 17 HUM. RTS. BRIEF 15, 15 (2010) [hereinafter Birchfield & Corsi, *The Right to Life*].

to food, including determining a basic nutritional floor, establishing accountability mechanisms to monitor noncompliance with Court orders, and providing directives in the creation of various programs, such as a national midday meal scheme in schools.³⁹

With respect to national legislation on the right to food, Latin America has led the way.⁴⁰ In the past 15 years, food and nutrition laws with right to food elements have been adopted in Argentina (2003), Brazil (2010), Ecuador (2009, amended 2010), Guatemala (2005), Honduras (2011), Mexico (2004 and 2013),⁴¹ Nicaragua (2009), and Venezuela (2008, amended 2009).⁴² In addition, a number of other Latin American States are considering framework laws: Bolivia, Costa Rica, El Salvador, Haiti, Panama, Paraguay, and Peru.⁴³ Civil society, social movements, parliamentarians, and human rights institutions, as well as the right to food team at the FAO and the UN Office of the High Commissioner for Human Rights, contributed to the success in passing legislation.⁴⁴ Outside of Latin America there has been some movement to include the right to food, or elements of the right, into legislation in states such as Indonesia and India.⁴⁵

Looking more in-depth at two statutory schemes highlights the difference between citing the right to food in legislation and actually ensuring that the right to food is realized. India provides a good example of a State that has used legislation to enshrine the right to food but has only adopted some elements of the right to food, instead of taking a holistic approach to

39. Birchfield & Corsi, *The Right to Life*, *supra* note 38, at 15.

40. DE SCHUTTER, A RIGHTS REVOLUTION, *supra* note 35, at 2.

41. The Mexican Senate is currently discussing a specific piece of legislation, the Draft Law on the Right to Adequate Food. The draft law institutionalizes a number of accountability mechanisms to ensure that public institutions respond in a timely and effective manner to the food needs of Mexican citizens, including an Intersectoral Board on the Right to Food, a National Council with social participation, and a National Plan on Food and Nutrition Security. See *Draft Law on Right to Food to Be Discussed at the Mexican Senate*, FAO (June 15, 2015), <http://www.fao.org/righttofood/news-and-events/news-detail/en/c/293981/>.

42. VIDAR ET AL., LEGAL DEVELOPMENTS, *supra* note 35, at 5; LAMBEK, 10 YEARS OF THE RIGHT TO ADEQUATE FOOD GUIDELINES, *supra* note 5, at 16; DE SCHUTTER, A RIGHTS REVOLUTION, *supra* note 35, at 5.

43. LAMBEK, 10 YEARS OF THE RIGHT TO ADEQUATE FOOD GUIDELINES, *supra* note 5, at 16; DE SCHUTTER, A RIGHTS REVOLUTION, *supra* note 35, at 5 & 14 n.18.

44. See FAO, RIGHT TO FOOD: MAKING IT HAPPEN: PROGRESS AND LESSONS LEARNED THROUGH IMPLEMENTATION 55, 75, 93, 119, 135 (2011), <http://www.fao.org/docrep/014/i2250e/i2250e.pdf> (providing detailed description of processes in Brazil, Guatemala, India, Mozambique, and Uganda, and of FAO's contribution); LAMBEK, 10 YEARS OF THE RIGHT TO ADEQUATE FOOD GUIDELINES, *supra* note 5, at 16.

45. VIDAR ET AL., LEGAL DEVELOPMENTS, *supra* note 35, at 6, 8; DE SCHUTTER, TACKLING HUNGER, *supra* note 7, at 6; De Schutter, *Interim Report*, *supra* note 30, at para. 24. See DE SCHUTTER, FROM CHARITY TO ENTITLEMENT, *supra* note 35, at 13 (mentioning the role that courts in India have played in enforcing a right to food).

address the systemic causes of hunger. Recently, and in response to orders from its Supreme Court, India passed national legislation, the 2013 National Food Security Act (the Act).⁴⁶ The Act does not specifically mention the right to food or India's right to food obligations under the ICESCR.⁴⁷ However, it does adopt some rights-based elements.⁴⁸ First, the Act provides entitlements in law for a number of social protection schemes and programs. The Act enshrines in law the right of roughly two-thirds of the state to a fixed amount of rice, wheat, and cereals per month, or a basic income to be able to purchase food.⁴⁹ Second, the Act provides additional entitlements for particularly vulnerable populations, specifically women and children.⁵⁰ Under the Act, pregnant women, lactating mothers, and children from 6 months to 14 years are entitled to special benefits, including meals under the Integrated Child Development Services and the midday meal schemes, and cash benefits for pregnant women and new mothers.⁵¹ Third, the Act adopts a rights-based approach through institutionalizing a variety of redress mechanisms for when the State fails to meet its obligations.⁵²

However, the Act focuses almost exclusively on the obligation to fulfill, with a variety of schemes that ensure access to adequate food through entitlement and social protection benefits. Civil society has criticized the Act as at best a food entitlement law, without adopting a holistic approach to the right to food and without changing structural conditions that cause food insecurity.⁵³ Indeed, the Act fails to move beyond the obligation to fulfill and fails to address the ways in which the Indian government may—through its policies, programs, and laws—hinder people's ability to meet their own food needs or allow third parties to do the same. Critics have pointed out that the Act does not address production issues, has no relief for farmers, does not

46. The National Food Security Act, No. 20 of 2013, GAZETTE OF INDIA, Sept. 10, 2013, <http://indiacode.nic.in/acts-in-pdf/202013.pdf>.

47. NAT'L HUMAN RIGHTS COMM'N, A HANDBOOK ON INTERNATIONAL HUMAN RIGHTS CONVENTIONS 22 (2012), http://nhrc.nic.in/Documents/Publications/A_Handbook_on_International_HR_Conventions.pdf. India ratified the ICESCR on April 10, 1979.

48. The preamble of the Act describes it as: "An Act to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto." The National Food Security Act, at pmb1.

49. *Id.* § 8.

50. *Id.* §§ 4–6. The rights-based approach to economic, social, and cultural rights requires ensuring the rights of the most vulnerable and marginalized in society. General Comment No. 12, *supra* note 13, at paras. 13, 28 (speaking specially about the obligations of States in this respect).

51. The National Food Security Act, §§ 4–6, Schedule II.

52. *Id.* §§ 14–21.

53. Biraj Patnaik, *India's National Food Security Bill: Hope or Hype?*, in RIGHT TO FOOD AND NUTRITION WATCH 68, 69 (2013); LAMBEK, 10 YEARS OF THE RIGHT TO ADEQUATE FOOD GUIDELINES, *supra* note 5, at 16.

adequately address questions of nutrition, and has left out provisions in earlier drafts focused on urban poor and other marginalized communities.⁵⁴ By not addressing these elements, the Act's effectiveness is limited. In many ways, the Act has failed to achieve the systemic change that served as the impetus for its drafting. In the long term, it is unlikely to create a food system in India that will allow people to meet their own food needs in dignity, despite providing support for alleviating hunger.

A second example draws more specifically from the Voluntary Guidelines, but this example suffers from its limited scope and jurisdiction. While not on the national level, the right to food framework law of Zanzibar⁵⁵ is also noteworthy as well as unique. It uses a rights-based perspective by outlining government obligations, establishing a National Food Security and Nutrition Council to monitor the realization of the right to food, and attempting to integrate relevant sector ministries.⁵⁶ The Zanzibar law takes a relatively holistic perspective regarding what kinds of support the government must provide, enshrining a government obligation to "facilitate accessibility of right to food to every person through maintaining the right to have continuous access to the resources that will enable someone to produce, earn or purchase enough food [to] not only prevent hunger, but also to ensure health and well-being."⁵⁷ The obligation's scope on paper requires that the government support farming, as well as address issues relating to income or food costs more broadly. In addition, the government's obligations under the Zanzibar law include the obligation to respect the right to food, including "refraining from actions that undermine access to adequate, safe, nutritious and culturally accepted food."⁵⁸ The right to food team at the FAO pushed for and elaborated the law.⁵⁹ The law does have significant limits. As it is

54. Patnaik, *supra* note 53, at 69–70.

55. Zanzibar is part of the federation of the United Republic of Tanzania. It consists of two principal islands, as well as a number of smaller islands, approximately 40 km from the mainland coast. From 2005 to 2010, the basic needs poverty rate in Zanzibar declined from 49% to 44.4%; however, food poverty declined only marginally from 13.2% in 2005 to 13% in 2010. UNITED NATIONS DEV. PROGRAMME, TANZANIA HUMAN DEVELOPMENT REPORT 2014: ECONOMIC TRANSFORMATION FOR HUMAN DEVELOPMENT 10, 13 (2014), <http://hdr.undp.org/sites/default/files/thdr2014-main.pdf>. Other indications of food insecurity also showed mixed results. The number of stunted children increased from 23.1% in 2004 to 30.2% in 2010, and the proportion of wasting children increased from 6.1% in 2004 to 12% in 2010. *Id.*

56. The Zanzibar Food Security and Nutrition Act, No. 5 of 2011, at art. 5–8 (Tanz.), <http://faolex.fao.org/docs/pdf/tan108982.pdf>; Maarten Immink et al., *Facilitating Right to Food Actions Through an Enabling Policy and Legislative Environment: The Zanzibar Experience*, in RIGHT TO FOOD AND NUTRITION WATCH 54, 55 (2014).

57. The Zanzibar Food Security and Nutrition Act, at art. 20(1).

58. *Id.* at art. 20(3)(a).

59. FAO, RIGHT TO FOOD IN ACTION 6 (2007), http://www.fao.org/fileadmin/user_upload/righttofood/docs/rtf_in_action_en.pdf.

only a law for Zanzibar, it has no sway over areas in which the broader Tanzanian government has jurisdiction, such as trade and foreign affairs. As a result, it is not possible to build wide-scale policy coherence. Furthermore, the effectiveness of the law at reducing hunger and ensuring the right to food does not appear to have been assessed to date.

A particularly interesting phenomenon has been the pattern whereby right to food legislation has been proposed, and even drafted, in a number of states but has failed to pass through the legislature and be implemented.⁶⁰ In the Philippines, over 50 civil society organizations drafted a right to food framework law in 2014, which would harmonize various sectoral laws, clarify the scope and content of the right to food, and establish standards for compliance. The framework law is founded on the principles of participation, empowerment, nondiscrimination, and transparency, and includes requirements for engagement with civil society.⁶¹ It has not yet passed. Parliamentarians from the opposition party in Belgium submitted a right to food framework bill in 2014. The bill is based on the Voluntary Guidelines⁶² and seeks to establish State obligations to implement the right to food into law, by defining government responsibility, introducing a holistic approach to the entire food chain, and creating increased participation mechanisms, through the creation of a National Food Policy Council.⁶³ It has not yet passed. Other states with pending national framework laws include Uganda, Mozambique, and Malawi, where the FAO has been a major player in pushing for national legislation, often without a significant public base of support.⁶⁴

60. LAMBEK, 10 YEARS OF THE RIGHT TO ADEQUATE FOOD GUIDELINES, *supra* note 5, at 32–33.

61. AUREA G. MICLAT-TEVES, THE PHILIPPINE RIGHT TO ADEQUATE FOOD: AN ALTERNATIVE REPORT 22 & n.120 (2015), http://www.fian.org/fileadmin/media/publications/RTAF_Alternative_Report.pdf.

62. FAO, THE VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE (2015) [hereinafter FAO, VOLUNTARY GUIDELINES], <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

63. LAMBEK, 10 YEARS OF THE RIGHT TO ADEQUATE FOOD GUIDELINES, *supra* note 5, at 17 (citing Proposition de Loi-Cadre: Instaurant L'obligation D'une Mise en Oeuvre Effective du Droit à L'alimentation par la Belgique [Proposal for a Framework Law: Requiring Instituting the Effective Implementation of the Right to Food by Belgium], Doc. 53-3317/001, at 12–13 (Belg.)). According to Manuel Eggen, “[s]ectoral approaches have proven insufficient to overcome these obstacles. It is therefore necessary to develop intersectoral and holistic policies based on human rights that can enable citizens to regain control of the food system.” The new draft bill seeks to provide a holistic approach. Manuel Eggen, *The Law on the Right to Adequate Food: A Necessary Step in the Fight Against Food Insecurity and Malnutrition in Belgium*, in RIGHT TO FOOD AND NUTRITION WATCH 74, 74, 76 (2014).

64. See DE SCHUTTER, FROM CHARITY TO ENTITLEMENT, *supra* note 35, at 8 (identifying the FAO’s and the public’s roles in pursuing Malawi, Mozambique, and Uganda’s right to food legislation); Isabella Rae, *Implementing the Right to Food in Uganda: Advances, Challenges and the Way Forward*, in RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW, *supra* note 7, at 75, 77 (noting the FAO Guidelines’ role in formulating Uganda’s Food and Nutrition Bill).

The reasons that these framework laws have not been adopted are state-specific. However, it may be possible to broadly say that in many instances the right to food has failed to capture a large political constituency and remains largely advocated for by human rights NGOs, the FAO or a small group of committee individuals and parliamentarians, as opposed to a broad swath of civil society organizations. Without widespread political support, governments are unlikely to respond to requests for legislation. In addition, adopting the right to food as a full legal concept changes power relations in the food system and, in many states, would require considerable efforts by the State to change its actions and to regulate the actions of third parties, including agribusiness. States are highly reluctant to make such changes, and third parties, such as agribusiness, remain incredibly powerful opponents to the right to food.

B. Progress in National Policies that Fulfill the Right to Food

How the right to food has been adopted into national policies and strategies follows a similar trajectory to its legal adoption. Brazil is often cited as a leading case study for national strategies aimed at ending hunger. Through policies pursued by Brazil's federal government, like the National Policy on Food and Nutrition⁶⁵ and the Zero Hunger strategy, Brazil has instituted over 50 initiatives to address food insecurity throughout the state.⁶⁶ Eleven different ministries implement these initiatives, which include social protection programs such as Bolsa Família; a cash transfer program; the National School Feeding Program; and income-generating initiatives such as support programs for family agriculture and "solidarity economy initiatives."⁶⁷ Other programs such as food banks, community kitchens, and cisterns further supplement peoples' access to food. Brazil's strategy is often

65. MINISTÉRIO DA SAÚDE [MINISTRY OF HEALTH], POLÍTICA NACIONAL DE ALIMENTAÇÃO E NUTRIÇÃO [NATIONAL POLICY ON FOOD AND NUTRITION] (2012) (Braz.), <http://dab.saude.gov.br/portaldab/biblioteca.php?conteudo=publicacoes/pnan>.

66. Cecilia Rocha, *Developments in National Policies for Food and Nutrition Security in Brazil*, 27 DEV. POL'Y R. 51, 51–52 (2009). See Olivier De Schutter (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur on the Right to Food on his Mission to Brazil*, at para. 14, U.N. Doc. A/HRC/13/33/Add.6 (Feb. 19, 2009) [hereinafter De Schutter, *Mission to Brazil*] (highlighting the initiatives Brazil has implemented in its effort to fight hunger); see generally MARÍLIA MENDONÇA LEÃO & RENATO S. MALUF, EFFECTIVE PUBLIC POLICIES AND ACTIVE CITIZENSHIP: BRAZIL'S EXPERIENCE OF BUILDING A FOOD AND NUTRITION SECURITY SYSTEM (Abrandh & Oxfam eds., 2012), <https://www.oxfam.org/sites/www.oxfam.org/files/rr-brazil-experience-food-nutrition-security-190214-en.pdf> (describing methods toward constructing a new governance framework that fosters public policies that assist in the elimination of hunger and poverty in Brazil).

67. De Schutter, *Mission to Brazil*, *supra* note 66, at para. 33.

praised because of its participatory dimension.⁶⁸ Indeed, as noted by former Special Rapporteur on the Right to Food, Olivier De Schutter, the Zero Hunger strategy is characterized “by an impressive degree of involvement of civil society” in the design and implementation of its policies and by a “decentralized approach that empowers local authorities and improves targeting.”⁶⁹ The various policies are supported by a set of institutional and legal frameworks, including the National Council on Food and Nutrition Security (CONSEA)⁷⁰ and the National Food and Nutrition Security Framework Law.

While the Zero Hunger strategy has successfully reduced hunger, its weaknesses have impacted its success. The strategy focuses almost entirely on the provision of food or the facilitation of access to food. It does not address many of the structural causes of poverty and hunger in Brazil, such as: access to land; discrimination and inequality; the protection of social movements against criminalization; transitions to sustainable farming methods such as agroecology; or the creation, strengthening, and guaranteeing of mechanisms for claiming the human right to adequate food.⁷¹ This approach contrasts with a strategy that looks at, for example, access to land or land reform, the impact of agricultural or health policies on adequate diets, indigenous rights, or a host of other areas aimed at taking seriously the promise of the right to food to allow people to meet their own food needs. The strategy also fails to capture all three State obligations—respect, protect, and fulfill—encompassed by the right to food.

A number of States in Africa have implemented food policies and strategies with rights-based components.⁷² For example, South Africa has implemented various national policies that contribute to realizing the right to food.⁷³ One of these policies is the Integrated Food Security Strategy 2002 (IFSS), which aims to attain universal physical, social, and economic access to adequate and nutritious food by increasing household production and trading of food, improving income generation, creating job opportunities, improving nutrition and food safety, and increasing safety nets and food emergency management systems.⁷⁴ IFSS is made up of a number of programs

68. Rocha, *supra* note 66, at 63.

69. De Schutter, *Mission to Brazil*, *supra* note 66, at para. 33.

70. The CONSEA advises the President of the Republic on the development of food and nutrition security policies. The Council is made up of 57 councilors, two-thirds of whom represent civil society and one-third the government.

71. Rocha, *supra* note 66, at 62; LEÃO & MALUF, *supra* note 66, at 63–65.

72. DE SCHUTTER, FROM CHARITY TO ENTITLEMENT, *supra* note 35, at 10–11.

73. De Schutter, *Mission to South Africa*, *supra* note 34, at para. 13.

74. AGRIC. DEP'T., REP. OF S. AFR., THE INTEGRATED FOOD SECURITY STRATEGY FOR SOUTH AFRICA 6 (2002), <http://www.nda.agric.za/docs/Policy/Foodsecuritystrat.pdf>.

including the Zero Hunger Program of 2009, which seeks to increase food production and trade, as well as household food security, rural development, farmer capacity, and the diversification of incomes through the production of vegetables, small stock, and small-scale aquaculture.⁷⁵ The program also promotes the participation of rights-holders and aims to strengthen institutions to increase farmer participation.⁷⁶ More recently, the Annual Performance Plan 2014–2015 identified national goals, which include building “vibrant, equitable, sustainable rural communities and food security for all.”⁷⁷ These programs, along with the broader South African social safety net, emphasize facilitating the right to food and also seek to provide food to populations in need. Despite these efforts—and the fact that South Africa was the first state to enshrine a constitutional right to food in the 1994 post-apartheid constitution—South Africa has failed to really take the rights-based approach seriously by building policy coherence or using the right to food, as enshrined in the constitution, as a guiding principle in the development of policy.⁷⁸

Uganda has also adopted a national right to food policy. In 2003, Uganda adopted a Food and Nutrition Policy, championed by the Ministry of Agriculture, Animal Industry and Fisheries and the Ministry of Health. The policy aims to improve the nutritional status of the people of Uganda, through a focus on food security, improved nutrition, and increasing incomes.⁷⁹ The policy specifically mentions Uganda’s duties under the ICESCR and recognizes the right to adequate food.⁸⁰ The policy focuses on a number of key objectives, which include ensuring “availability, accessibility, [and] affordability of food in the quantities and qualities sufficient to satisfy the dietary needs of individuals sustainably.”⁸¹ The policy seeks “to promote the formulation and/or review of appropriate policies, laws and standards for food security and nutrition.”⁸² The policy identifies 12 main areas of action: (1) food supply and access; (2) food processing and preservation; (3) food

75. *Id.* at 13; AGRIC., FORESTRY, & FISHERIES DEP’T, REP. OF S. AFR., THE FRAMEWORK FOR THE ZERO HUNGER PROGRAMME 4, 6 (2015), <https://pmg.org.za/files/docs/120515framework.rtf>.

76. De Schutter, *Mission to South Africa*, *supra* note 34, at para. 14.

77. DEP’T OF AGRIC. AND RURAL DEV., REP. OF S. AFR., DELIVERY, ANNUAL PERFORMANCE PLAN 2014–15, at viii, 6 (2014), [http://www.kzndard.gov.za/Portals/0/Documents/Dept%20of%20Agric%20APP%202014%2012-8-14%20\(1\).pdf](http://www.kzndard.gov.za/Portals/0/Documents/Dept%20of%20Agric%20APP%202014%2012-8-14%20(1).pdf).

78. De Schutter, *Mission to South Africa*, *supra* note 34, at paras. 3, 11–12, 19.

79. Rae, *supra* note 64, at 86.

80. THE UGANDA FOOD AND NUTRITION POLICY §§ 1.1, 2.3.1 (2003), <http://faolex.fao.org/docs/pdf/uga145392.pdf>.

81. *Id.* § 2.2.2(i).

82. *Id.* § 2.2.1–2.2.2(viii).

storage, marketing, and distribution; (4) external food trade; (5) food aid; (6) food standards and quality control; (7) nutrition; (8) health; (9) information, education, and communication; (10) gender, food, and nutrition; (11) food, nutrition and surveillance; and (12) research.⁸³ The policy makes important inroads in addressing some of the systemic reasons why individuals and communities lack adequate food. However, it has been criticized for weak implementation mechanisms due to an absence of targets and the lack of an appropriate supporting legal framework, as well as a lack of mechanisms for individuals to address failed implementation.⁸⁴

Though not specifically policies, a number of States—including Bolivia, Brazil, Guatemala, Malawi, Mozambique, Nicaragua, and Peru—have established national food security and nutrition coordination institutions.⁸⁵ These institutions are central to the right to food approach. Such an approach advocates for more coordinated efforts across ministries and sectors and more participation of civil society in the elaboration and implementation of food and agriculture policies. Brazil is a leading example. Brazil created a national council for food and nutrition security, entitled CONSEA, and which is composed of two-thirds civil society organizations and one-third government representatives. CONSEA reports directly to the President and advises the government on guidelines and policies to advance the right to food in the state.

Sometimes, coordinating institutions are not independent or do not stand alone, but are housed in a particular ministry, such as the health or agriculture ministry. In Mozambique, the Technical Secretariat for Food and Nutrition Security (SETSAN) is located within the Ministry of Agriculture. SETSAN is tasked with advising the government on food security and on right to food-related policy, with a view to integrating the right into relevant policies and programs. These institutions play an important role in working towards coordinated and holistic approaches to the right to food. However, their ability to achieve results depends largely on the powers afforded them and their connection to higher levels of government.

83. *Id.* § 3.

84. Rae, *supra* note 64, at 87.

85. *Id.* at 89. The Bolivia Food Security Council was re-established following the model of the Brazil National Council for Food and Nutrition Security. *Id.* at 89 n.64. Malawi, Nicaragua, and Peru all have national food security institutions which report to the national President: the Malawi National Food and Nutrition Security Committee reports to the Cabinet Committee on Food and Nutrition chaired by the President; the Nicaragua National Commission on Food and Nutrition Sovereignty and Security is attached to the Office of the President of the Republic; and the Peru Multisectoral Commission on Food Security was created within the Presidency of the Council of Ministers. *Id.* at 89 nn.67, 69–70.

While Canada does not have a national right to food strategy, policy, or law,⁸⁶ a collection of civil society has actively engaged in a participatory process to draft a proposed national food policy.⁸⁷ The policy, *Resetting the Table: A People's Food Policy for Canada*, was first published in 2011 and is the product of consultations with 3,500 people from across Canada, including farmers' organizations, indigenous peoples, and the urban poor. *Resetting the Table* seeks to offer "a menu of workable policies that can put [Canada] on the right path."⁸⁸ While the core concept animating the policy is food sovereignty, the document takes a rights-based perspective and provides a holistic approach to policy prescriptions. These policy prescriptions are in the areas of health, trade, access to land, and sustainable agricultural practices and address the obligations of the State to respect, protect, and fulfill the right to food, although the policy itself does not use this terminology.⁸⁹ According to its authors, it is "the first-ever national food policy to be developed by the food movement itself—a diverse and dynamic network of organizations and

86. Canada, despite having ratified the International Convention on Economic, Social and Cultural Rights (ICESCR), does not recognize the right to food in the Charter of Rights and Freedoms, or any legislation (or for that matter, the enforceability of the ICESCR or economic rights more broadly). The Canadian Supreme Court has rhetorically left open the possibility that one day the Charter's section 7 right to "life, liberty and security of the person" could encompass economic rights and enforce positive obligations on the State. However, to date it has never found as such. *Gosselin v. Québec (Att'y General)*, [2002] 4 S.C.R. 429, 491–92, at paras. 82–83. The former government of Prime Minister Stephen Harper took an increasingly hostile stance on the right to food, as can be seen in its negative response to the 2012 mission to Canada by the Special Rapporteur on the Right to Food and its attempt to block the adoption of the human right to food as a guiding norm of the reformed Committee for World Food Security. See Letter from Food Secure Canada et al., to Stephen Harper, Prime Minister, Can., (May 30, 2012), <http://foodsecurecanada.org/sites/foodsecurecanada.org/files/Letter-to-PM-on-SR-final-EN-new.pdf> (expressing concern over the Government of Canada's treatment of the Special Rapporteur on the Right to Food); cf. Matias E. Margulis, *Forum-Shopping for Global Food Security Governance? Canada's Approach at the G8 and UN Committee on World Food Security*, 21 CAN. FOREIGN POL'Y J. 164 (2015) (examining Canada's foreign policy on food insecurity).

87. *Resetting the Table*, FOOD SECURE CAN., <http://foodsecurecanada.org/people-food-policy> (last visited Apr. 14, 2016). The process of elaborating the policy was led by Food Secure Canada, a pan-Canadian alliance of organizations and individuals working together to advance food security and food sovereignty.

88. *Id.*

89. *Discussion Papers of the People's Food Policy*, FOOD SECURE CAN., <http://foodsecurecanada.org/resources-news/newsletters/discussion-papers-peoples-food-policy> (last visited Apr. 14, 2016). Along with the master document, ten topic-specific policy papers were developed in the following areas: indigenous food sovereignty; food sovereignty in rural and remote communities; access to food in urban communities; agriculture, infrastructure, and livelihoods; a sustainable fishery and reasonable livelihood for fishers; environment and agriculture; science and technology for food and agriculture; food trade and international aid; healthy and safe food for all; and food democracy and governance. *Id.*

individuals working to build a healthy, ecological, and just food system for Canada.”⁹⁰

While the policy has not been adopted in Canada, it has had some success in shaping the political landscape. The organizations supporting this policy have succeeded in putting food onto the national agenda. Under the previous government, the official opposition party launched a pan-Canadian food strategy.⁹¹ The current government has publicly announced its intention to develop a national food policy.⁹² It remains to be seen if this policy will support the agro-industrial food system or if it will truly rethink how the food system should be governed to ensure the right to food by respecting the environment, farmers, labor up and down the supply chain, Canada’s extra-territorial human rights obligations, health, remote and marginalized communities, and so on.

C. Lack of Progress in Respecting and Protecting the Right to Food and the Need for Regulatory Tools and Frameworks

While some States have made progress facilitating the coordination of actors across sectors and across levels of government to better fulfill the right to food, far less progress has been made when it comes to putting in place the regulatory framework necessary to avoid or at least limit right to food violations and to meet the State obligations to respect and protect the right to food. This trend is disappointing, as enshrining the obligations to respect and protect can provide important legal tools for transitions to more equitable and sustainable food systems, ensuring people can meet their own food needs, protecting the environment (and consequentially access to safe and nutritious food in the future), and addressing the systemic causes of hunger, malnutrition, food insecurity, and poverty more broadly.

90. FOOD SECURE CAN., *RESETTING THE TABLE: A PEOPLE’S FOOD POLICY FOR CANADA* 1 (2d ed. 2015), http://foodsecurecanada.org/sites/default/files/fsc-resetting-2015_web.pdf.

91. See, e.g., *NDP Launches Pan-Canadian Food Strategy*, NEW DEMOCRATIC PARTY CAN. (June 4, 2014), <http://www.ndp.ca/news/ndp-launches-pan-canadian-food-strategy> (highlighting the New Democratic Party’s “pan-Canadian” food strategy); Susan Walker, *Why Canada May Be Heading into a Food Security Crisis*, TORONTO STAR (Oct. 12, 2014), http://www.thestar.com/news/insight/2014/10/12/canada_may_be_heading_into_a_food_security_crisis.html.

92. Prime Minister Trudeau publicly released mandate letters sent to each Minister, outlining areas of work each Minister is expected to engage in. The mandate letter to the Minister of Agriculture and Agri-Food instructs him to “[d]evelop a food policy that promotes healthy living and safe food by putting healthier, high-quality food, produced by Canadian ranchers and farmers, on the tables of families across the country.” Mandate Letter from Justin Trudeau, Prime Minister, Can., to Lawrence MacAulay, Minister of Agriculture and Agri-Food, <http://pm.gc.ca/eng/minister-agriculture-and-agri-food-mandate-letter>.

Crises of accountability at the state and international level pose enormous challenges for fully realizing the right to food, particularly with respect to adopting the State obligations to respect and protect the right to food. We highlight five of these accountability crises here: the lack of participatory rights-based governance structures, the criminalization of social protest and repression of peasant activism, the rampant and unchecked power of transnational corporations, the unfair trade rules that govern our food system, and a lack of policy coherence.

The first accountability challenge derives from the great disconnect that exists between the demands of citizens and the path States take domestically and in the international arena with respect to our food systems. International human rights are rooted in democratic principles and require the participation of rights-holders in developing policies that impact them. However, today there is a deep crisis of citizen participation in policymaking around food systems, leading to policies that most often fail to meet the demands or needs of rights-holders. The persistent lack of recognition of the legal right to food by States and international organizations further hinders building participatory governance for food systems. While the right to food has been enshrined in international law since the 1948 adoption of the UDHR, and then further elaborated in the ICESCR and the Voluntary Guidelines, the right to food often remains unrecognized with very few States offering full legal protection for the right. The number of States that recognize the right to food is growing, but it does not come close to the number of States that have created legal protections for civil and political rights, such as the rights to assembly or free speech. It is often not possible to build public policy on the right to food without first having legal recognition of the right to food, as in many cases legal rights guide policy development.⁹³

Lack of adoption of a rights-based approach to development in bilateral cooperation is another key cause for concern, as donor States often fail to align their programs with existing national right to food strategies.⁹⁴ At the international level, many institutions, including the World Bank, the International Monetary Fund, and the World Trade Organization, often elect not to take a rights-based approach or address issues concerning food systems

93. KNUTH & VIDAR, *supra* note 35, at 12. A lack of legal protection also often inhibits other avenues of enforcing the right to food; for example, courts may be unable to exercise their jurisdiction to address and remedy violations of the right to food. *Id.*

94. This could constitute violations of a State's extra-territorial human rights obligations. *See generally* MAASTRICHT PRINCIPLES ON THE EXTRATERRITORIAL OBLIGATIONS OF STATES IN THE AREA OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (2012), http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUId%5D=23.

in a manner consistent with the right to food. In many cases, their policy decisions are directly at odds with the rights-based approach.⁹⁵ A clear example of how the World Bank's policies are at odds with the right to food can be seen in the impacts of the privatization of Burundi's coffee industry and the World Bank's role in this process.⁹⁶ Coffee is Burundi's primary export and serves as a livelihood for over 50% of the population. Burundi is the third-poorest state in the world and is highly dependent on foreign aid, particularly aid from the World Bank. In 2005, the World Bank recommended that Burundi privatize its coffee industry and, in 2008 or 2009, conditioned all future aid on this privatization.⁹⁷ Human rights groups, local populations, and two Special Rapporteurs have raised concerns regarding the impacts of this privatization on the ability of local populations to access food and maintain their livelihood.⁹⁸ However, the World Bank has denied that the privatization has or will have the impact alleged by the human rights groups, and furthermore has denied that it has human rights obligations.⁹⁹ Without some recognition of their responsibility to ensure the enjoyment of human rights, little space is created in international institutions to promote the right to food or a rights-based approach more broadly, and to ensure opportunity for civil society participation in policymaking.

The second accountability challenge stems from the persistent cases of harassment and repression of peasants and right to food activists over the last decade. These activists—defending peasants' rights, the rights of individuals and communities around land conflicts and evictions, labor rights, and consumer rights—have faced difficulties in accessing justice or exercising

95. See, e.g., Oliver De Schutter (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur on the Right to Food on his Mission to the World Trade Org.*, at paras. 33–34. U.N. Doc. A/HRC/10/5/Add.2 (Feb. 4, 2009) [hereinafter De Schutter, *Mission to WTO*] (discussing the impact of WTO policies on the right to food).

96. See Communications Report of Special Procedures, at 71, U.N. Doc. A/HRC/22/67 (Feb. 20, 2013) (providing more information on this case). See also Letter from Olivier De Schutter & Cephias Lumina, Office of the United Nations High Comm'r for Human Rights [OHCHR], to Jim Yong Kim, President, World Bank (Aug. 10, 2012), [https://spdb.ohchr.org/hrdb/22nd/public_-_AL_Other_\(W.Bank\)_10.08.12_\(7.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public_-_AL_Other_(W.Bank)_10.08.12_(7.2012).pdf); Letter from Anne-Marie Leroy, Senior Vice President & Group General Counsel, World Bank, to Olivier De Schutter & Cephias Lumina, OHCHR (Jan. 16, 2013) [hereinafter Leroy, Jan. 2013 Letter], [https://spdb.ohchr.org/hrdb/22nd/World_Bank_16.01.13_\(7.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/World_Bank_16.01.13_(7.2012).pdf); Letter from Anne-Marie Leroy, Senior Vice President & Group General Counsel, World Bank, & Makhtar Diop, Vice President, Africa Region, World Bank, to Olivier De Schutter & Cephias Lumina, OHCHR (Oct. 9, 2012) [hereinafter Leroy, Oct. 2012 Letter].

97. See Communications Report of Special Procedures, *supra* note 96 (“[T]he World Bank has been the driving force behind the privatization process.”).

98. E.g., Leroy, Jan. 2013 Letter, *supra* note 96; Leroy, Oct. 2012 Letter, *supra* note 96.

99. Leroy, Jan. 2013 Letter, *supra* note 96; Leroy, Oct. 2012 Letter, *supra* note 96.

their civil and political rights. These difficulties have manifested in numerous ways. The criminalization of food rights defenders has seen many imprisoned for their work, while increased militarization by States has led to more violence perpetrated by States against individuals. In many countries, the State has also failed to protect rights defenders from the violence perpetrated by third parties, turning a blind eye to violations. Even further, legal systems are often opaque, unresponsive, and difficult to navigate, making it a challenge, if not impossible, for rights defenders to seek remedies for, or prevent, human rights violations against themselves and those whose rights they seek to defend.¹⁰⁰

A number of organizations have sought to raise global awareness of the challenges faced by rights defenders. For example, in Pakistan the Asian Human Rights Commission has widely reported on the murder of two fisherfolk activists by former military officials and local politicians in the course of disagreements over the occupation of land.¹⁰¹ In Sri Lanka, the Secretary General of the World Forum of Fisher People and the National Fisheries Solidarity Movement, Wijetunga Appuhamilage Herman Kumara, received death threats after he helped organize fisherfolk to protest rising fuel prices, but local police did not take steps to investigate his complaints. Groups abroad have widely followed the death threats against Kumara, to raise public awareness and shame the government of Sri Lanka into acting.¹⁰² FIAN has also documented a number of cases of repression of rights defenders, including that of the Las Pavas community in Columbia, which has been fighting since 1997 to formalize their possession of land used for subsistence agriculture.¹⁰³ Local police evicted the community from their land in 2009 at the request of two palm oil producing companies. The Las Pavas community has faced repeated criminalization, harassment, forced evictions, attacks by paramilitary groups, and the destruction of their crops and food. In response, the families organized through the Buenos Aires Peasant Association to seek legal remedies. Unlike many similarly-treated

100. See generally OBSERVATORY FOR THE PROT. OF HUMAN RIGHTS DEFS., WE ARE NOT AFRAID: LAND RIGHTS DEFENDERS: ATTACKED FOR CONFRONTING UNBRIDLED DEVELOPMENT (2014), https://www.fidh.org/IMG/pdf/obs_2014-uk-web2.pdf.

101. E.g., *Pakistan: A Year of Unjust and Impunity for the Murderer of Two Fisherfolk Activists*, ASIAN HUM. RTS. COMM'N, (Mar. 28, 2012), <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-074-2012/?searchterm=pakistan%20fisherfolk>.

102. See, e.g., Henry Saragih, *La Via Campesina Letter in Solidarity with Herman Kumara*, LA VIA CAMPESINA (Mar. 6, 2012, 2:29 PM), http://viacampesina.org/en/index.php?option=com_content&view=%20article&id=1188:viacampesina-to-the-ministerial-meeting-qit-is-time-to-end-the-wtoq&catid=24:10-years-ofwto-is-enough&Itemid=35.

103. *Colombia – Las Pavas*, FIAN INTL., <http://www.fian.org/what-we-do/case-work/colombia-las-pavas/> (last visited May 29, 2016).

communities, the community of Las Pavas has recently achieved success at the Columbian Constitutional Court, which found that the actions leading to the forcible eviction of the families were illegal.¹⁰⁴ FIAN has also documented a number of other abuses of human rights defenders, including abuses in Honduras¹⁰⁵ and Ecuador.¹⁰⁶ Without protecting human rights defenders, it will be extremely challenging for civil society to push for adoption of the right to food where it hasn't been adopted or to require enforcement where it has.

The third accountability challenge can be seen in the rampant and unchecked power of transnational corporations, coupled with the persistent abuses of corporate power in the agribusiness industry.¹⁰⁷ Governments and international organizations have failed to address the impacts of concentration, consolidation, and labor rights violations in the agribusiness industry.¹⁰⁸ Specifically, they have failed to establish a multilateral framework regulating the activities of commodity buyers, processors, and retailers in the global food supply chain. While advancements have been made in theoretically linking the right to food to such areas as the regulation of transnational corporations, the regulation of the agricultural industry up

104. *Id.*

105. In describing the case of the Bajo Aguan in Honduras, FIAN writes:

Several peasant communities living in the Bajo Aguán valley on the Atlantic coast of Honduras are witnessing an alarming situation of violence, repression and killings, especially after the coup d'état in June 2009. From September 2009 through 2012, 56 people have been murdered in the conflict, and the conclusions of the Public Hearing that took place in Bajo Aguán in May 2012, proclaimed this agrarian conflict the most serious situation in terms of violence against peasants in Central America in the last 15 years. FIAN International has been following the rural conflicts in the area since 2000.

See *Honduras – Bajo Aguan*, FIAN INTERNATIONAL, <http://www.fian.org/what-we-do/case-work/honduras-bajo-aguan/> (last visited Apr. 12, 2016) (providing more information on the Bajo Aguan in Honduras).

106. *Noticias Recientes*, FIAN ECUADOR, <http://www.fianecuador.org.ec/> (last visited Apr. 12, 2016).

107. Olivier De Schutter (Special Rapporteur on the Right to Food), *Interim Report on the Right to Food*, at paras. 41–42, U.N. Doc. A/66/262 (Aug. 4, 2011). Corporate consolidation in the food system is well-documented, and many observers have noted that there has been increasing corporate capture of food system governance arenas in recent years.

108. *Cf. id.* at para. 11 (explaining States' international "duty to respect, protect and fulfil the right to adequate food" and the role agribusiness can play in realizing the right to food); Olivier De Schutter (Special Rapporteur on the Right to Food), *Final Report: The Transformative Potential of the Right to Food*, § D(3), U.N. Doc. A/HRC/25/57 annex (Jan. 24, 2014) [hereinafter De Schutter, *Transformative Potential*] (recommending that States "use competition law in order to combat excessive concentration in the agribusiness sector").

and down the value chain, and land use policy, very little success has been achieved in translating these ideas into practice.¹⁰⁹

In the future, efforts will be needed to ensure that right to food policies do not simply cover the obligation to *fulfill* the right to food, but also address the regulation of third parties. An interesting development in this regard is the recent initiative of the Human Rights Council to develop a new international instrument imposing human rights obligations on transnational corporations.¹¹⁰ This instrument could be a first step towards fundamentally reshaping the global governance of food through legal reform at the international level in an effort to actively facilitate the implementation of the right to food.

The fourth accountability challenge plagues the current trade system. The global food crises of 2007–2008 highlighted the consequences of decades of an exclusive focus on increasing food productivity and encouraging trade and financial deregulation. These crises clarified the urgency of the need for structural changes in the global food system.¹¹¹ New trade rules that support the transition toward more sustainable agricultural practices must be designed to mitigate the impacts of climate change, enable States to limit excessive reliance on international trade, and rebuild their capacity to produce the food needed to meet consumption needs, with an emphasis on meeting the needs of small-scale farmers. To achieve this, States, among others, will need to maintain flexibilities and instruments, such

109. Human rights experts have recommended the use of competition law to limit excessive concentration and excessive buyer power in the agrifood sector, but the absence of any progress on this front is highly discouraging. Olivier De Schutter (Special Rapporteur on the Right to Food), *Agribusiness and the Right to Food*, at paras. 37–42, U.N. Doc. A/HRC/13/33 (Dec. 22, 2009) [hereinafter De Schutter, *Agribusiness*]. Regulatory reform is also needed to curb the negative impacts of agrofuels on the right to food, but no international agreement has been produced on this very divisive issue. De Schutter, *Building Resilience*, *supra* note 7, at paras. 25–34.

110. Over 500 civil society organizations formed an alliance to demand the adoption of this resolution. See *The Treaty on TNC's and the Struggle to Stop Corporate Impunity*, TRANSNATIONAL INST. (Oct. 21, 2015), <https://www.tni.org/en/article/the-treaty-on-tncs-and-the-struggle-to-stop-corporate-impunity> (giving a background to the adoption of resolution 26/9). The Human Rights Council recently adopted a resolution to “establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights; whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.” Human Rights Council Res. 26/9, U.N. Doc. A/HRC/RES/26/9, at 2 (July 14, 2014).

111. See Carmen G. Gonzalez, *International Economic Law and the Right to Food*, in RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW, *supra* note 7, at 165 (discussing historic and contemporary economic practices that contribute to food insecurity); Olivier De Schutter (Special Rapporteur on the Right to Food), *Crisis Into Opportunity: Reinforcing Multilateralism*, at paras. 8, 9, 41, U.N. Doc. A/HRC/12/31 (July 21, 2009) (discussing the need for multinational efforts to enforce a right to food in order to combat the global food crisis).

as supply management schemes, to insulate domestic markets from international market volatility. On this front, however, little progress has been made and the outcomes of the tenth Ministerial Conference of the World Trade Organisation (WTO) that was held in Nairobi in December 2015 are disappointing. The Nairobi Ministerial Declaration¹¹² contains no permanent solution on food stockholding¹¹³ and no decision on special safeguard mechanisms for developing countries,¹¹⁴ while granting developed countries a deadline extension for eliminating their export subsidies.

A final crisis stems from a lack of policy coherence at all levels. Very few States attempt to coordinate their policies and programs to address extreme hunger, malnutrition, or non-communicable diseases with their policies and programs regarding trade, finance, development, and agriculture. And even fewer States have put in place systematic mechanisms to assess how well their policies support the realization of human rights and protect against human rights violations. As a result, there is a persistent disconnect between economic, trade, financial, health, social protection, and investment policies and the right to food. Indeed, programs and policies in one area often undercut the possibility of success in others. For example, Bangladesh has dozens of laws, policies, social protection schemes, and programs that address aspects of the food system and access to adequate food.¹¹⁵ Yet these laws are not coordinated, or planned as part of a greater strategy. Similar coherency challenges exist in Malaysia, where the health sector is faced with growing cases of non-communicable diseases caused by poor diets of highly processed foods, many of which the government subsidizes.¹¹⁶ In addition, the government adopts agricultural policies not aimed at growing the healthy foods the health sector seeks to promote, while

112. World Trade Organization, Ministerial Declaration of 19 December 2015, WTO Doc. WT/MIN(15)/DEC, https://www.wto.org/english/thewto_e/minist_e/mc10_e/nairobipackage_e.htm.

113. World Trade Organization, Ministerial Declaration of 19 December 2015, Public Stockholding for Food Security Purposes, WTO Doc. WT/MIN(15)/W/44-WT/L/979, https://www.wto.org/english/thewto_e/minist_e/mc10_e/nairobipackage_e.htm (offering no more than an intent to find a solution, while ignoring the issue of access to food for poor consumers and price support to subsistence farmers).

114. World Trade Organization, Ministerial Declaration of 19 December 2015, Special Safeguard Mechanism for Developing Country Members, WTO Doc. WT/MIN(15)/43-WT/L/978, https://www.wto.org/english/thewto_e/minist_e/mc10_e/nairobipackage_e.htm (providing that developing countries will “have the right to have recourse” to a special safeguard mechanism “as envisaged under paragraph 7 of the Hong Kong Ministerial Declaration” but that the decision is not final, since further negotiations on the issue are planned in the Committee on Agriculture).

115. OXFAM IN BANGLADESH, ADVOCACY PAPERS ON FOOD SECURITY AND NUTRITION (2014), http://oxfamblogs.org/bangladesh/wp-content/uploads/2014/09/Final_Advocacy-Papers-On-Food-Security-And-Nutrition-03-04-14.pdf.

116. De Schutter, *Mission to Malaysia*, *supra* note 27, at para. 74.

land that could be used to grow food crops for the people of Malaysia is converted to land for palm oil production, a largely export-oriented crop that tends to be mono-cropped with devastating impacts on soil fertility.¹¹⁷

The lack of policy coherence is compounded because States generally fail to use human rights impact assessments before adopting new trade agreements, laws, and policies or beginning projects, particularly large-scale infrastructure or development projects, such as the building of roads, dams, or mines, thereby failing to prevent human rights violations or to remedy them when they occur.¹¹⁸ Moving forward, in order to fully realize the right to food, States and international institutions will need participatory mechanisms to ensure the coherence of their policies, programs, and international trade and investment agreements with the requirements of the right to food. Equally important will be the establishment of coordination mechanisms across relevant ministries and sectors.

In recent decades, human rights experts and organizations have proposed regulatory tools to address the five challenges outlined above. If adopted and implemented, these tools could help tackle the wide range of potential human rights abuses that occur in the global food system.¹¹⁹ As outlined in the examples below, most of these regulatory tools respond to the States' obligations to respect and protect the right to food.

In the area of land governance—which is necessary for addressing food insecurity, particularly in the Global South¹²⁰—regulatory proposals have ranged from anti-eviction laws and improving the regulatory framework concerning expropriation to regulating land markets to prevent the impacts of speculation on land concentration and distress sales by indebted farmers.¹²¹ In the area of seeds, emphasis has been put on not allowing

117. *Id.* at para. 30.

118. See Olivier De Schutter (Special Rapporteur on the Right to Food), *Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements*, U.N. Doc. A/HRC/19/59/Add.5 (Dec. 19, 2011) [hereinafter De Schutter, *Guiding Principles*] (providing guidance to States on how to conduct human rights impact assessments of trade and investment agreements).

119. De Schutter, *Transformative Potential*, *supra* note 108, at paras. 26, 35.

120. A majority of the world's food-insecure live in rural areas. They are largely small-scale subsistence farmers in the Global South who depend on access to land to meet their food needs. *Who Are the Hungry?*, WORLD FOOD PROGRAMME, <https://www.wfp.org/hunger/who-are> (last visited Apr. 12, 2016); De Schutter, *Transformative Potential*, *supra* note 108, annex § A(1)(a)–(h). See LAMBEK, 10 YEARS OF THE RIGHT TO ADEQUATE FOOD GUIDELINES, *supra* note 5, at 3, 25–26 (explaining the small farms' role in feeding the world).

121. For example, negotiations at the CFS have led to the adoption of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, which promote secure tenure rights and equitable access to land, fisheries, and forests as a means of eradicating hunger and poverty, supporting sustainable development, and enhancing the environment. FAO, VOLUNTARY GUIDELINES, *supra* note 62, at iv, 1f.

patents on plants, on establishing research exemptions in legislation protecting plant breeders' rights, and on ensuring that seed regulations do not lead to excluding farmers' varieties.¹²² When it comes to fisheries, regulatory proposals have focused on strengthening access to fishery resources and on improving the incomes of small-scale fishing communities by regulating the industrial fishing sector to protect their access rights.¹²³ Some regulatory tools have also been advanced to support the transition to sustainable and local food systems. These include encouraging preferential sourcing from small-scale farmers, either through fiscal incentives or by making access to public procurement schemes conditional on the bidders' compliance with certain sourcing requirements, and establishing flexible and efficient producer marketing boards under government authority and with the strong participation of producers in their governance.¹²⁴ Finally, both the CFS and human rights experts have proposed various instruments to address foreign investments, particularly their impact on the Global South.¹²⁵

With the rapid development of contract farming and other business models linking food producers and private actors, human rights experts have also called for improved regulation and stricter enforcement of labor rights

122. De Schutter, *Transformative Potential*, *supra* note 108, § A(2)(b)–(c). *See also* Hans Morten Haugen, *The Right to Food, Farmers' Rights and Intellectual Property Rights: Can Competing Law Be Reconciled?*, in *RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW*, *supra* note 7, at 195 (discussing the relationships between intellectual property rights, the right to food, and farmers' rights).

123. De Schutter, *Transformative Potential*, *supra* note 108, para. 8, 27, annex § A(3); Olivier De Schutter (Special Rapporteur on the Right to Food), *Interim Rep. of the Special Rapporteur on the Right to Food: Global Fisheries*, at para. 60(d)(i)–(iii), U.N. Doc. A/67/268 (Aug. 8, 2012).

124. De Schutter, *Transformative Potential*, *supra* note 108, annex § B(3)(c)–(d). *See also* OLIVIER DE SCHUTTER, UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD, *THE POWER OF PROCUREMENT: PUBLIC PURCHASING IN THE SERVICE OF REALIZING THE RIGHT TO FOOD* (2014).

125. For example, in response to the rise of large-scale acquisitions of land in the Global South, sometimes referred to as land grabs, both during and after the financial, food, and energy crises of 2007–2009, a number of instruments were proposed to address investments in land. Olivier De Schutter (Special Rapporteur on the Right to Food), *Large-Scale Land Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge*, U.N. Doc. A/HRC/13/33/Add.2 annex (Dec. 28, 2009) [hereinafter De Schutter, *Land Acquisitions*]. Recently the CFS withdrew its support for the World Bank's Principles for Responsible Agricultural Investment and has instead initiated their own inter-state negotiations to develop principles that recognize the importance of small-scale producers to the right to food. However, fears remain that the negotiation process could be co-opted by more powerful forces, such as an alliance between northern states and the private sector that may move the focus of the new principles towards investors' rights and away from stabilizing food and agricultural systems. Philip McMichael, *The Right to Food and Politics of Knowledge*, 2 *CAN. FOOD STUD.* 52, 52, 55 (2015); Myriam Vander Stichele, *How Financialization Influences the Dynamics of the Food Supply Chain*, 2 *CAN. FOOD STUD.* 258, 259 (2015). However, as discussed later in this Part, the drafting of codes of conduct like the Principles and the Voluntary Guidelines have been criticized as “green washing” or condoning practices, which in and of themselves constitute human rights violations and should not be permitted.

to better protect the human rights of agricultural workers and those employed in the food chain.¹²⁶ Human rights advocates have highlighted the need to pay special attention to regulating key contract clauses, including those concerning price fixing, quality grading, and the conditions under which inputs are provided, and to monitor labor conditions in contract farming,¹²⁷ particularly for migrant workers.¹²⁸ Regulatory tools have also been proposed—and indeed have been adopted with mixed success in a number of states—to better protect women’s rights.¹²⁹

In the crucial area of ensuring adequate nutrition, human rights experts have insisted on the importance of regulating food product marketing to reduce marketing of foods high in saturated fats, trans-fatty acids, sodium, and sugar (high fat/salt/sugar foods) to children.¹³⁰ The use of other regulatory tools, such as imposing taxes on soft drinks and high fat/sugar/salt foods, has proven conducive to the realization of the right to food. These taxes allow States to subsidize access to fruits and vegetables and finance educational campaigns on healthy diets, while limiting the attractiveness of

126. De Schutter, *Transformative Potential*, *supra* note 108, annex §§ B(5), D(3) (recommending the creation of an international framework regulating transnational corporations and other business enterprises involved in the global food supply). There are currently over 20 million people at work in the food system in the United States—planting, harvesting, processing, packing, shipping, stocking, selling, preparing, and serving food. This is about one in five private sector jobs in the United States. In the United States, there have been a number of recent efforts to improve the labor standards of those employed in the food system. The most notable among these is the Fight for Fifteen, a national call among fast food workers for a raise in minimum wage to \$15 a hour. *See, e.g., About Us*, FIGHT FOR \$15, <http://fightfor15.org/about-us/> (last visited May 29, 2016); FOOD CHAIN WORKERS ALLIANCE, *THE HANDS THAT FEED US: CHALLENGES AND OPPORTUNITIES FOR WORKERS ALONG THE FOOD CHAIN* 1, 77–78 (2012), <http://foodchainworkers.org/wp-content/uploads/2012/06/Hands-That-Feed-Us-Report.pdf> (calling on consumers to refuse to tolerate current standards and to raise the minimum wage).

127. FOOD CHAIN WORKERS ALLIANCE, *supra* note 126, at 51, 61. *See also* De Schutter, *Agribusiness*, *supra* note 109, at para. 45 (describing what model contracts should look like).

128. Addressing the role of migrant labor in food systems has increasingly come to the attention of both labor unions and human rights activists. *See, e.g.,* De Schutter, *Mission to Malaysia*, *supra* note 27, at paras. 53–59 (discussing the challenges facing migrant workers in Malaysia); *see also* Olivier De Schutter (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur on the Right to Food on his Mission to Canada*, at para. 22, U.N. Doc. A/HRC/22/50/Add.1 (Dec. 24, 2012) (discussing the challenges facing migrant workers in Canada).

129. Olivier De Schutter (Special Rapporteur on the Right to Food), *Women’s Rights and the Right to Food*, at para. 50, U.N. Doc. A/HRC/22/50 (Dec. 24, 2012); FAO, *THE STATE OF FOOD AND AGRICULTURE: WOMEN IN AGRICULTURE* 51 (2011), <http://www.fao.org/docrep/013/i2050e/i2050e.pdf>.

130. *See, e.g., Civil Society States its Position on the 2nd International Conference on Nutrition*, FIAN INT’L (Nov. 14, 2011), http://www.fian.org/library/publication/civil_society_states_its_position_on_the_2nd_international_conference_on_nutrition/ (discussing a document arising from the Second International Conference on Nutrition).

unhealthy food products.¹³¹ Human rights experts have demanded that States review existing systems of agricultural subsidies, to account for the public health impacts of current allocations, and to reorient public support towards the provision of locally-sourced, nutritious foods.¹³² Finally, experts have pointed to the importance of transposing the International Code of Marketing of Breast-milk Substitutes and the World Health Organization recommendations on marketing breastmilk substitutes, foods, and non-alcoholic beverages to children into domestic legislation, and of ensuring their effective enforcement.¹³³

More controversial mechanisms have also been discussed to regulate access to land, particularly in the context of land grabs.¹³⁴ The regulatory attempts related to land grabs have been controversial because of the fear that any land grab itself is a violation of the emerging human right to land, and that such a code of conduct or regulation simply acts to “green wash” what is an otherwise undesirable outcome.¹³⁵ However, in recent years a number of bodies ranging from the World Bank to the Special Rapporteur on the Right to Food and the CFS have developed regulatory tools for land grabs, with the CFS model being notable for the participatory way in which its terms were negotiated.¹³⁶

131. Mexico, for example, has introduced a tax on sugar-sweetened beverages, in an attempt to combat obesity. See Sarah Boseley, *Mexico Enacts Soda Tax in Effort to Combat World's Highest Obesity Rate*, GUARDIAN (Jan. 16, 2014), <http://www.theguardian.com/world/2014/jan/16/mexico-soda-tax-sugar-obesity-health> (examining Mexico's new law attempting to curb sugar consumption). A number of jurisdictions in the United States have also contemplated taxes on sodas, and even Congress has discussed the idea. See Mark Bittman, *Introducing the National Soda Tax*, N.Y. TIMES (July 29, 2014), http://www.nytimes.com/2014/07/30/opinion/mark-bittman-introducing-the-national-soda-tax.html?_r=0 (discussing the introduction of a national tax in the United States on sugar-sweetened beverages). See also Olivier De Schutter (Special Rapporteur on the Right to Food), *Rep. of the Special Rapporteur on the Right to Food*, at para. 39, U.N. Doc. A/HRC/19/59 (Dec. 26, 2011).

132. De Schutter, *Transformative Potential*, *supra* note 108, annex § C(5).

133. *Id.*

134. See FAO, VOLUNTARY GUIDELINES *supra* note 62 (establishing voluntary guidelines to improve governance of tenure of land, fisheries, and forests).

135. See Saturnino Borrás Jr. & Jennifer Franco, *From Threat to Opportunity? Problems with the Idea of a “Code of Conduct” for Land-Grabbing*, 13 YALE HUM. RTS. & DEV. L.J. 507 (2010); Saturnino M. Borrás & Jennifer C. Franco, *From Threat to Opportunity? Problems with Codes of Conduct for Land Grabbing*, in RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW, *supra* note 7, at 147.

136. FAO ET AL., PRINCIPLES FOR RESPONSIBLE AGRICULTURAL INVESTMENT THAT RESPECTS RIGHTS, LIVELIHOODS AND RESOURCES 3 (2010), http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles_Extended.pdf; De Schutter, *Land Acquisitions*, *supra* note 125; COMM. ON WORLD FOOD SECURITY, PRINCIPLES FOR RESPONSIBLE INVESTMENT IN AGRICULTURE AND FOOD SYSTEMS 5, 17 (2014) [hereinafter COMM. ON WORLD FOOD SECURITY, PRINCIPLES FOR RESPONSIBLE INVESTMENT], http://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS_Principles_Oct_2014_EN.pdf.

Finally, human rights experts have elaborated on the kinds of mechanisms that States should put in place to ensure coherence of their food, agriculture, fisheries, rural development, public health, environmental, energy, financial, trade, and international development policies with the requirements of the right to food, such as human rights impact assessments.¹³⁷ Such assessments are promising, but their effectiveness in aligning national policies and programs with the requirements of human rights will depend on their active implementation by States and on the active participation of civil society in the process.

Adopting human rights regulatory tools could assist in ensuring the rights of people to meet their own food needs by addressing the State obligations to respect and protect the right to food. At their best, the tools outlined above assist in pushing the State to not hinder access or allow third parties to hinder access to food. The tools seek to encourage the State to support the means by which people access food, whether through purchase or production. However, the majority of these tools still do not address the lack of participation and democratic accountability that we have outlined as one of the main accountability crises associated with the right to food. Furthermore, without the participation and the support of civil society and social movements, these tools are unlikely to be adopted because they challenge the power relations within the food system. In the following Part of this Article, we outline alternative models being developed at the local, national, and international levels, which seek to address the lack of participation and democratic control that has plagued our food systems to date.

III. ASSESSMENT OF EFFORTS TO ESTABLISH ALTERNATIVE MODELS OF FOOD SYSTEMS GOVERNANCE AT THE LOCAL, NATIONAL, AND GLOBAL LEVELS

Over the past two decades, while the right to food has seen an increase in public attention, a variety of new approaches and governing principles for food systems have been developed and sometimes implemented. In many ways, these new models arise out of or seek to respond to the accountability crises outlined above, or have been successful because they exist outside of the realm of these crises—or at least have done so to date. In this Part, we outline key new developments. First, we explore efforts to implement food sovereignty in a number of local, national, and regional contexts, under the

137. For example, the former United Nations Special Rapporteur on the Right to Food has elaborated principles for human rights impact assessments for trade and investment agreements. *See, e.g.*, De Schutter, *Guiding Principles*, *supra* note 118.

impetus of agrarian movements. Second, we look at alternative food networks and food policy councils, which have transformed the ways in which civil society can participate in the governance of local food systems. Third, we explore efforts to institutionalize space for civil society in food system governance at the global level, specifically at CFS. Fourth, we discuss the creation of new human rights for those who produce food through ongoing negotiations on a UN Declaration on the Rights of Peasants and other people working in rural areas at the Human Rights Council.

These new approaches and principles, while different, have at least two characteristics in common: (1) they all seek to increase participation of rights-holders, particularly social movements and civil society members, in decisionmaking; and (2) they have largely been driven from the ground up. Many also strongly emphasize the ecological transition and the right to produce locally and not simply the right to be fed. We view these developments as reactions to the accountability crises discussed above, as well as to the perceived limits of the right to food approach. In this Part, we discuss the possible implications of these alternative approaches when implementing the right to food in the future. Our focus is on how to reinforce civil society participation in food governance, and on how to make the right to food more responsive to the demands and experiences of rights-holders. We therefore look at these alternatives as potentially inspiring methods for implementing the right to food from the bottom up.

A. National Implementation of Food Sovereignty

The fact that legitimate and well-informed decisionmaking is increasingly associated with ensuring the adequate participation of peasant and other social movements in the elaboration of the policies, programs, and legal frameworks that may affect their lives is a direct legacy of the transnational food sovereignty movement.¹³⁸ This movement, which recently celebrated its 20th anniversary,¹³⁹ has claimed the “right [of peoples] to

138. See generally PRISCILLA CLAEYS, HUMAN RIGHTS AND THE FOOD SOVEREIGNTY MOVEMENT: RECLAIMING CONTROL 4 (2015) [hereinafter CLAEYS, HUMAN RIGHTS AND THE FOOD SOVEREIGNTY MOVEMENT] (discussing the food sovereignty movement and democratic participation).

139. This transnational movement is best seen as a constellation of networks and coalitions such as La Via Campesina, the World Forum of Fishers People, the World Forum of Fish Harvesters & Fish Workers, the World Alliance of Mobile Indigenous People, the Mouvement International de la Jeunesse Agricole et Rurale Catholique, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations, the International Indian Treaty Council, Habitat International Coalition, the World March of Women, and the International Federation of Rural Adult Catholic Movements. See generally Priscilla Claeys, *Food Sovereignty and the Recognition of New Rights for*

define their own food and agriculture systems”—as emphasized in the Nyéléni Declaration—as one of its central demands.¹⁴⁰ Unlike the right to food, which has largely been elaborated by academics, lawyers, and non-governmental organizations, as well as various arms of the United Nations, food sovereignty has been continually defined and redefined from the ground up, by the very constituents who demand it.¹⁴¹ Food sovereignty, understood as democratic control of the food system,¹⁴² continues to be a key objective of the transnational food sovereignty movement. But in recent years, particularly since the global food crisis of 2007–2008, the movement has made a conscious effort to not only demand structural change but also to advance solutions.¹⁴³

At the national, regional, and sub-national levels, peasant movements have pushed and helped elaborate food sovereignty policies and legislation, and even achieved constitutional recognition of food sovereignty in the national context.¹⁴⁴ Constitutional recognition of food sovereignty has been achieved in a number of states, notably Ecuador (2008), Bolivia (2009) and Nepal (2015).¹⁴⁵ Other states, such as Mali, Senegal, and Nicaragua, have

Peasants at the UN: A Critical Overview of La Via Campesina's Rights Claims over the Last 20 Years, 12 GLOBALIZATIONS 452 (2014) (providing a history of rights based claims from the food sovereignty movement).

140. *Declaration of Nyéléni*, NYELENI (Feb. 27, 2007), <http://nyeleni.org/IMG/pdf/DeclNyeleni-en.pdf> (defining the right to food sovereignty as “the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods”).

141. La Via Campesina and its partners elaborated and adopted the definition of the right to food sovereignty noted above at the Food Sovereignty Forum in Nyéléni, Mali in February 2007. The Forum was attended by more than 500 representatives, from more than 80 states, representing organizations of peasants, family farmers, artisanal fisherfolk, indigenous peoples, landless peoples, rural workers, migrants, pastoralists, forest communities, women, youth, consumers, and environmental and urban movements. PRISCILLA CLAEYS, FIAN INT'L, RIGHTS TO SOVEREIGNTY OVER NATURAL RESOURCES, DEVELOPMENT AND FOOD SOVEREIGNTY 4 n.12 (2015), http://www.fian.org/fileadmin/media/media_publications2015/Publications_November2015/PeasantsRights_Sovereignty_NaturalResources.pdf.

142. MICHAEL WINDFUHR & JENNIE JONSÉN, FIAN INT'L, FOOD SOVEREIGNTY: TOWARDS DEMOCRACY IN LOCALIZED FOOD SYSTEMS 17 (2005).

143. See Priscilla Claeys, *The Creation of New Rights by the Food Sovereignty Movement: The Challenge of Institutionalizing Subversion*, 46 SOCIOLOGY 844, 852 (2012) (discussing the trajectory and dimensions of the food sovereignty movement).

144. See Hannah Wittman, *From Protest to Policy: The Challenges of Institutionalizing Food Sovereignty*, 2 CAN. FOOD STUD. 174, 180 (2015) (containing a table with information about different states and the food sovereignty legislation each State has enacted).

145. Priscilla Claeys, *Food Sovereignty and the Recognition of New Rights for Peasants at the UN: A Critical Overview of La Via Campesina's Rights Claims over the Last 20 Years*, 12 GLOBALIZATIONS 452, 457 (2015). The Constitution of Nepal recognizes both the right to food and the right to food sovereignty together. Article 36 reads: “Right to food: (1) Each citizen shall have the right to food. (2) Every citizen shall have the right to be protected from a state of starvation, resulting from lack

passed food sovereignty laws and policies following the advocacy work of peasant organizations.¹⁴⁶ The Dominican Republic, Peru, and El Salvador are discussing similar proposals.¹⁴⁷ Also, at the local level, some municipalities have adopted food sovereignty policies. For example, the town of Blue Hill, Maine, in the United States passed a food sovereignty ordinance in April 2011. The ordinance exempts local food producers and processors from state licensing and inspection as long as they sell their products directly to consumers for personal consumption.¹⁴⁸ Another nine towns in Maine have adopted similar legislation.¹⁴⁹

Food sovereignty policies tend to be difficult to analyze because they are very new and encompass a very broad range of diverse policies. These policies aim at favoring less industrial, more family-based farming practices, boosting national food production for food security (often in the context of a self-sufficiency strategy), and promoting agriculture as the motor of the economy. This means that agriculture should not only feed the national population but also should contribute to economic growth. Some policies also seek to provide access to land to the poor and landless, and to limit the invasion of transgenic seeds while protecting traditional or peasant knowledge. Most policies seek to encourage citizen participation in the elaboration of food and agriculture policies.¹⁵⁰

In Bolivia, for example, Article 31 of Law Number 338 stipulates that Economic Peasant Organizations and Economic Community Organizations

of food stuffs. (3) Every citizen shall have the right to food sovereignty as provided for in law.” CONSTITUTION OF NEPAL, Sept. 20, 2015, art. 36, <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/100061/119815/F-1676948026/NPL100061%20Eng.pdf>.

146. See Saulo Araújo & Wendy Godek, *Opportunities and Challenges for Food Sovereignty Policies in Latin America: The Case of Nicaragua*, in *RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW*, *supra* note 7, at 53 (exploring the origins of the Nicaraguan Law of Food and Nutritional Sovereignty and Security and its institutional framework, putting emphasis on the role of the peasant in conceiving and adopting the law).

147. WENDY GODEK, *THE COMPLEXITY OF FOOD SOVEREIGNTY POLICYMAKING: THE CASE OF NICARAGUA’S LAW 693*, at 1 (2013) (paper prepared for the international conference, Food Sovereignty, a Critical Dialogue, at Yale University, Sept. 14–15, 2013), http://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/ICAS/63_Godek_2013.pdf.

148. Nathan Bellinger & Michael Fakhri, *The Intersection Between Food Sovereignty and Law*, *NAT. RESOURCES & ENV’T*, Fall 2013, at 45, 46.

149. *Id.* at 46; CHRISTINA SCHIAVONI, *COMPETING SOVEREIGNTIES IN THE POLITICAL CONSTRUCTION OF FOOD SOVEREIGNTY 2* (2014), (paper prepared for the international conference, Food Sovereignty, a Critical Dialogue, at the Hague, the Netherlands, Jan. 24, 2014), http://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/ICAS/90_Schiavoni.pdf.

150. CLAEYS, *HUMAN RIGHTS AND THE FOOD SOVEREIGNTY MOVEMENT*, *supra* note 138, at 13.

“have the right to participate in the elaboration of public policies aimed at strengthening sustainable family farming.”¹⁵¹ It is important to note, however, that food sovereignty policies, as they have been elaborated in the few state examples that exist, do not necessarily imply a departure from industrial farming and large-scale agriculture, nor from agro-export-based development. Rather, they often are meant to increase State control over agriculture and natural resources, as in Bolivia and Ecuador.¹⁵²

These policies have faced important implementation challenges, and have resulted in little structural change so far with respect to altering the legal and policy frameworks underpinning most food systems. The reason for this is that, although their elaboration process is quite distinct, food sovereignty policies face the same obstacles as national strategies for the right to food or right to food framework laws, as discussed above.¹⁵³ Despite all of this, food sovereignty remains deeply rooted in the demands of social movements and the implementation of food sovereignty represents attempts to change food systems from the ground up.

B. Alternative Food Networks and Food Policy Councils

The last two decades have seen a considerable rise in innovations in food system governance at the local level. These innovations have been incredibly diverse, but here we highlight two trends: (1) alternative food networks and (2) food policy councils. The first trend has seen participants work outside governance structures to engage in alternative food networks, changing their own patterns of production or consumption. Many alternative food networks have adopted practices grounded in agroecology, peasant farming, or direct linkages between consumers and producers. Alternative food networks have undergone rapid developments in Europe and North America,¹⁵⁴ where they

151. *Id.* at 31.

152. PATRICK CLARK, FOOD SOVEREIGNTY, POST-NEOLIBERALISM, CAMPESINO ORGANIZATIONS AND THE STATE IN ECUADOR 2–3 (2013) (paper prepared for the international conference, Food Sovereignty, a Critical Dialogue, at Yale University, Sept. 14–15, 2013), http://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/ICAS/34_Clark_2_013.pdf; JENNY COCKBURN, BOLIVIA’S FOOD SOVEREIGNTY & AGROBIODIVERSITY: UNDERMINING THE LOCAL TO STRENGTHEN THE STATE? 15 (2013) (paper prepared for the international conference, Food Sovereignty, a Critical Dialogue, at Yale University, Sept. 14–15, 2013), http://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/ICAS/59_Cockburn_2013.pdf.

153. Claeyns & Lambek, *In Search of Better Options*, in RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW, *supra* note 7, at 1, 12.

154. Henk Renting et al., *Understanding Alternative Food Networks: Exploring the Role of Short Food Supply Chains in Rural Development*, 35 ENV’T & PLAN. 393, 393–94, 408 (2003); Caryn N.

can be interpreted as efforts to “re-embed” food and agriculture.¹⁵⁵ These networks, which are generally characterized by such attributes as the spatial proximity between farmers and consumers, the existence of retail venues such as farmers markets or community supported agriculture, and a commitment to sustainable food production and consumption, have been extremely dynamic. They demonstrate the rising desire among certain smaller-scale food producers and certain consumers to reject—at least in part—the current food system through changing farming practices or by exercising economic decisionmaking to spend dollars differently. By focusing on consumption, these alternative networks provide participants with a direct, straightforward, and often meaningful way to respond to their disappointment with the current food system. However, alternative food networks face two key challenges.

First, these alternative networks have been critiqued for their scale. In order to produce lasting change, these networks need to go beyond an exclusive focus on the “local”¹⁵⁶ to address the structural constraints that limit their ability to scale up. These constraints include the unfair multilateral trade governance framework¹⁵⁷ and the lack of regulation of transnational agribusiness corporations we discussed above.¹⁵⁸ Indeed, existing initiatives still remain fragmented, incomplete, and limited in scope, with the risk that they may disappear in the face of adverse economic or political pressures. Strengthening these initiatives requires engaging in a dialogue with institutions and with the State, as well as paying attention to the “global.” Yet, many alternative food initiatives thrive in part because of their informal nature and because they enable a form of “subpolitical” action.¹⁵⁹ How public action can contribute to building a real alternative to neoliberal globalization remains unclear.¹⁶⁰

Second, alternative food networks need to move beyond “niche markets” for affluent consumers to address issues of affordability¹⁶¹ as well as the

Abrahams, *Globally Useful Conceptions of Alternative Food Networks in the Developing South: The Case of Johannesburg's Urban Food Supply System* 4–5 (U. of Edinburgh Inst. of Geography Online Paper Series: GEO-031, 2006).

155. KARL POLANYI, *THE GREAT TRANSFORMATION* (1957).

156. GREG SHARZER, *NO LOCAL: WHY SMALL-SCALE ALTERNATIVES WON'T CHANGE THE WORLD* 7–8 (2012).

157. De Schutter, *Mission to WTO*, *supra* note 95, at summary.

158. De Schutter, *Transformative Potential*, *supra* note 108, at para. 33.

159. ULRICH BECK, *POUVOIR ET CONTRE-POUVOIR A L'ERE DE LA MONDIALISATION* 89 (2003).

160. JEAN-LOUIS LAVILLE ET AL., *ACTION PUBLIQUE ET ECONOMIE SOLIDAIRE: UNE PERSPECTIVE INTERNATIONALE* 45 (2005).

161. ALLISON HOPE ALKON & JULIAN AGYEMAN, *CULTIVATING FOOD JUSTICE: RACE, CLASS, AND SUSTAINABILITY* 323–25 (2011).

structural causes of hunger. This entails defining up front the “right price of food”¹⁶² and which public policies and market mechanisms are required to overcome the “urban bias”¹⁶³ or to address poverty, discrimination, and structural violence. It also calls for exploring the conditions necessary for alternatives that seek to skip the middleman¹⁶⁴ to be able to do so in a way that allows the producer to capture a larger share of the surplus he or she produces, while allowing the consumer to access fresh, nutritious, and reasonably-priced foods.

Another promising development that may prove an important force for change in the next decade is the establishment of mostly local, but sometimes national, food policy councils, particularly in North America, that aim to reinforce citizen participation in food policymaking.¹⁶⁵ These food policy councils take a variety of forms, but they tend to engage civil servants, government officials (usually elected members of city councils or state or provincial legislatures), and civil society members who seek to build local food policy—usually at the municipal level, but also for larger political units—through a collaborative and participatory process. Established in 1991, the Toronto Food Policy Council is often viewed as a pioneer of food policy councils “with a long history working to ensure access to healthy, affordable, sustainable and culturally acceptable food.”¹⁶⁶ The Toronto Food Policy Council, which is based out of the city’s Health Department, works on issues of urban agriculture and poverty. It identifies emerging issues, facilitates linkages between the community and local government, and advises local government on food strategy and the implementation of programs.¹⁶⁷ Food policy councils have made important strides in bringing democracy and public participation on a small scale to aspects of the food

162. Johan F.M. Swinnen, *The Right Price of Food*, 29 DEV. POL’Y REV. 667, 668 (2011). Cf. Laura Venn et al., *Researching European ‘Alternative’ Food Networks: Some Methodological Considerations*, 38 AREA 248, 248 (2006) (discussing the disconnect between consumers and the industrialized food system).

163. Cf. Derek Byerlee & Gustavo Sain, *Food Pricing Policy in Developing Countries: Bias Against Agriculture or for Urban Consumers?*, 68 AM. J. AGRIC. ECON. 961, 961 (1986) (discussing agricultural pricing policies with disparate impacts on rural and urban people).

164. See generally Helen La Trobe, *Farmers’ Markets: Consuming Local Rural Produce*, 25 INT’L J. CONSUMER STUD. 181 (2001) (explaining the benefits of “circumventing the ‘middlemen’ in the food supply chain”).

165. See *CFSC List of Food Policy Councils in North America*, MARK WINNE, <http://www.markwinne.com/wp-content/uploads/2012/09/fp-councils-may-2012.pdf> (last visited May 29, 2016).

166. *About TFPC*, TORONTO FOOD POL’Y COUNCIL, <http://tfpc.to/about> (last visited Apr. 15, 2016).

167. *Id.*

system. By working at the local level they have been able to be responsive to local needs, to engage rights-holders, and to bring affected communities to the table.

However, there are considerable limits to localized responses. For example, the separation of powers and policy-jurisdictional divides in most States limit what localities can do. Without policy influence over such areas as trade and investment, agriculture, health, social protection, and labor—which tend to be the exclusive domain of the national or subnational government—it may not be possible to fully realize alternative local visions.¹⁶⁸

C. Progress in Creating Space for the Participation of Social Movements in Global Food Debates: Civil Society Participation in the Committee on World Food Security

Another set of key developments over the last 20 years has been, or is currently being, brought about by attempts to institutionalize space for rights-holders in food system governance fora. In this Part we explore civil society's progress in creating a role at the Committee on World Food Security (CFS) and the lessons learned for right to food activists.

International institutions historically and largely to this day have been extremely reluctant to provide space for rights-holders to participate in legal and policy development.¹⁶⁹ However, in recent years, the CFS has increasingly become a space for civil society organizing, and civil society has been successful at carving out a distinct right of participation.¹⁷⁰

The elaboration of the Voluntary Guidelines in the early 2000s benefitted from several contributions from civil society, mostly represented

168. JESSICA DUNCAN, GLOBAL GOOD SECURITY GOVERNANCE: CIVIL SOCIETY ENGAGEMENT IN THE REFORMED COMMITTEE ON WORLD FOOD SECURITY (2015). Similar critiques have been raised about the limitations of the CFS globally; the CFS has no jurisdiction over trade (the realm of the World Trade Organization) and is thus limited in its impact and policymaking scope.

169. See Olivier De Schutter, *The Reform of the Committee on World Food Security: The Quest for Coherence in Global Governance*, in RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES AND THE LAW, *supra* note 7, at 219 (discussing the reformation of the Committee on World Food Security and how it now recognizes that food security policies should be informed by the views of the victims of hunger).

170. See generally DUNCAN, *supra* note 168, at 6–7 (analyzing the reorganization, operation and capacity of the CFS during its early reform and the implication of civil participants therein); NORA MCKEON, FOOD SECURITY GOVERNANCE: EMPOWERING COMMUNITIES, REGULATING CORPORATIONS 7 (2015) (describing how communities around the world are protecting their access to resources and implementing improved methods of producing and accessing food).

by NGOs.¹⁷¹ When the FAO established the intergovernmental working group to draft the guidelines, international NGOs and civil society organizations established a human rights working group within the International Planning Committee for Food Sovereignty (IPC).¹⁷² The IPC is a network of civil society organizations comprised of farmers and fishermen organizations, development NGOs, and human rights organizations. Throughout the negotiations of the Voluntary Guidelines, the human rights working group, headed by FIAN International, met to elaborate common positions and distribute these to government representatives.¹⁷³

The process of negotiating the Voluntary Guidelines has had a lasting influence on civil society involvement in the FAO's policy elaboration work more broadly.¹⁷⁴ Many observers contend that the shared positive experience of the Voluntary Guidelines process and the valuable contributions of civil society representatives in FAO work have paved the way not only for the reform of the CFS, but also for the enlarged civil society participation that is

171. *International Code of Conduct on the Human Right to Adequate Food*, INST. AGRIC. TRADE POL'Y, http://www.iatp.org/files/International_Code_of_Conduct_on_the_Human_Rig.htm (last visited May 29, 2016). In fact, the very existence of the Voluntary Guidelines is the result of civil society advocacy. After the 1996 World Food Summit, three non-governmental organizations—FIAN, the World Alliance on Nutrition and Human Rights, and the Jacques Maritain Institute—started drafting a Code of Conduct on the human right to adequate food. The objective of the draft code, which was issued in September 1997 and endorsed by more than 800 NGOs, was to clarify the content of the right to adequate food and make it more operational. The draft Code of Conduct influenced the elaboration of General Comment No. 12 on the right to food. It was taken into account by the experts of the Committee on Economic, Social and Cultural Rights, who drafted and adopted it in 1999. It also paved the way for joint civil society advocacy around the right to food at the United Nations. It is in response to intense civil society advocacy that governments committed, at the World Food Summit: Five Years Later in 2002, to initiate an intergovernmental process to elaborate guidelines to progressively realize the right to food.

172. PRISCILLA CLAEYS, *HUMAN RIGHTS AND THE FOOD SOVEREIGNTY MOVEMENT: RECLAIMING CONTROL* (2015). The IPC was officially set up in 2003 to facilitate the participation of representatives of small-scale food producers and indigenous peoples organizations in the FAO regional conferences and technical committees, but its roots are found in efforts to coordinate NGOs and civil society organizations participating in the Forum on Food Security, held in parallel to the World Food Summit in Rome in 1996. Throughout the 2000s, the IPC has supported the participation of representatives of small food producer organizations in a number of FAO bodies, ranging from the FAO Conference, FAO Council, and Regional Conferences, to the Committee on Commodity Problems, the Committee on Fisheries, the Committee on Forestry, the Committee on Agriculture, the Committee on World Food Security, and the Commission on Genetic Resources for Food and Agriculture.

173. Michael Windfuhr, *Civil Society Groups Working on the Right to Adequate Food: A User's Guide to the Voluntary Guidelines*, SCN NEWS, Mid 2005, at 21, 25, <http://www.unscn.org/layout/modules/resources/files/scnnews30.pdf>.

174. Isabella Rae, Julian Thomas, & Margret Vidar, *History and Implications for FAO of the Guidelines on the Right to Adequate Food*, in 2 *FOOD AND HUMAN RIGHTS IN DEVELOPMENT: EVOLVING ISSUES AND EMERGING APPLICATIONS*, 457, 457–58 (Eide & Kracht eds., 2007) (discussing the FAO's evolving role and engagement regarding the promotion of the right to food).

a full part of this reform, as organized by the autonomous and self-organized Civil Society Mechanism (CSM).¹⁷⁵

In 2009, at the 35th session of the CFS, member governments agreed on a wide-ranging reform in an effort to make the renewed CFS the “foremost inclusive international, intergovernmental platform for . . . the elimination of hunger and ensuring food security and nutrition for all human beings.”¹⁷⁶ The vision of the reformed CFS is to “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.”¹⁷⁷

The most important aspect of the reform was the inclusion of other stakeholders—including civil society, the private sector, foundations, and research institutions—as full participants within the intersessional and annual activities of the CFS. The reform of the CFS resulted from eight months of negotiation between the Committee’s Bureau and an interim Contact Group, which was composed of civil society representatives.¹⁷⁸ Civil society’s participation ensured that their right to self-organize was officially recognized in the CFS reform document. Civil society organizations were called to “autonomously establish a global mechanism for food security and nutrition which will function as a facilitating body for [civil society organizations’ and non-governmental organizations’] consultation and participation in the CFS.”¹⁷⁹ In response, the IPC, Oxfam, and ActionAid collaborated to develop the CSM, which facilitates participation and inputs into the CFS and provides a space for dialogue among civil society actors.¹⁸⁰

175. Yet it is important to highlight that direct social movements’ participation in the negotiations of the Voluntary Guidelines was very limited, if not absent. Most of the civil society representatives who took the floor in the early 2000s were human rights experts. In this regard, things have changed considerably in the last decade. Civil society participation in recent negotiations of Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forests at the CFS, for example, took a radically distinct form, with the CSM prioritizing direct inputs from social movements’ representatives, using a quota system that considerably limits the ability of NGOs to take the floor in CFS plenaries.

176. Comm. on World Food Security, Reform of the Committee on World Food Security, at para. 4 (Oct. 14–17, 2009) [hereinafter Comm. on World Food Security, Reform of the Committee], http://www.fao.org/fileadmin/templates/cfs/Docs0910/ReformDoc/CFS_2009_2_Rev_2_E_K7197.pdf.

177. *Id.*

178. *Id.* at para. 2. The Voluntary Guidelines also saw the involvement of the Special Rapporteur on the Right to Food, a Special Procedure of the United Nations human rights system, which was established in 2000. Jean Ziegler and his team played a central role in the negotiations of the Voluntary Guidelines. His successor, Olivier De Schutter, played a key role in the reformed CFS and its response to the global food crises of 2007–2008, thanks to its participation in the CFS Advisory Group.

179. *Id.* at para. 16.

180. See Jessica Duncan & David Barling, *Renewal Through Participation in Global Food Security Governance: Implementing the International Food Security and Nutrition Civil Society Mechanism to the Committee on World Food Security*, 19 INT’L J. SOC’Y AGRIC. & FOOD 143, 144, 151 (2012).

The CSM recognizes 11 constituencies—smallholder family farmers, artisanal fisherfolk, herders and pastoralists, landless, urban poor, agricultural and food workers, women, youth, indigenous peoples, consumers, and NGOs—and 16 sub-regions. The CSM Coordination Committee is made up of 40 focal points selected to adequately represent the various constituencies and sub-regions.¹⁸¹ In recent years, the CSM has proven its ability to reinforce the direct participation of transnational peasant movements, national or regional organizations of smallholder farmers, and other rural constituencies in global governance debates.

The CFS, with the CSM's involvement, has played an important role in developing right to food policy on the global level. One important development from the CFS has been the negotiation and elaboration of the Global Strategic Framework for Food Security and Nutrition (GSF), endorsed in October 2012.¹⁸² The GSF, which attempts to bring coordination, coherence, and accountability to decisionmaking on food, nutrition, and agricultural issues, reaffirms the right to adequate food and attempts to incorporate a rights-based approach to food system governance.¹⁸³ Other important policymaking steps taken at the CFS, with some reference to the right to food and rights-based approach, have included the negotiation and the adoption of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,¹⁸⁴ the Principles for Responsible Agricultural Investment in Agriculture and Food Systems,¹⁸⁵ as well as the Framework for Action for Addressing Food and Nutrition Security in Protracted Crises.¹⁸⁶ The High Level Panel of Experts, which is the science-policy arm of the CFS and aims

181. CIVIL SOCIETY MECHANISM FOR THE COMMITTEE OF WORLD FOOD SECURITY, CIVIL SOCIETY CONSULTATION TO THE 36TH SESSION OF THE COMMITTEE ON WORLD FOOD SECURITY 12 (2010), <https://foodgovernance.files.wordpress.com/2011/02/cso-consultation-final.pdf>.

182. COMM. ON WORLD FOOD SECURITY, GLOBAL STRATEGIC FRAMEWORK FOR FOOD SECURITY & NUTRITION 5–6 (2013), http://www.fao.org/fileadmin/templates/cfs/Docs1213/gsf/GSF_Version_2_EN.pdf. See also FAO, THE HUMAN RIGHT TO ADEQUATE FOOD IN THE GLOBAL STRATEGIC FRAMEWORK FOR FOOD SECURITY AND NUTRITION: A GLOBAL CONSENSUS 4 (2013), <http://www.fao.org/docrep/019/i3546e/i3546e.pdf> [hereinafter FAO, THE HUMAN RIGHT TO ADEQUATE FOOD]; SVETLANA BOINCEAN ET AL., USING THE GLOBAL STRATEGIC FRAMEWORK FOR FOOD SECURITY AND NUTRITION TO PROMOTE AND DEFEND THE RIGHT TO ADEQUATE FOOD 7 (2013), http://www.fian.org/fileadmin/media/publications/GSF-Manual_en.pdf.

183. FAO, THE HUMAN RIGHT TO ADEQUATE FOOD, *supra* note 182, at 5–6.

184. FAO, VOLUNTARY GUIDELINES, *supra* note 62.

185. COMM. ON WORLD FOOD SECURITY, PRINCIPLES FOR RESPONSIBLE INVESTMENT, *supra* note 136.

186. COMM. ON WORLD FOOD SECURITY, FRAMEWORK FOR ACTION FOR FOOD SECURITY AND NUTRITION IN PROTRACTED CRISES (2015), <http://www.fao.org/3/a-mo194e.pdf>.

to improve the robustness of policymaking at the CFS, has also addressed the right to food in its work and advice to the CFS.¹⁸⁷

The achievements made during the first years of the reformed CFS tend to show that civil society participation not only reinforces the quality of policy design—thanks to adequately integrating the concerns and views of those affected—but also that it reinforces the legitimacy of the new norms set at the global level, thereby improving their political weight and enforceability, even if they are of a non-binding or voluntary nature.¹⁸⁸ In our view, despite its potential for improvement, the governance mechanism make-up of the reformed CFS and its attached self-governed CSM have established themselves as a kind of benchmark for global governance in the 21st century.

D. Negotiations on a Declaration on the Rights of Peasants and Other People Working in Rural Areas at the United Nations Human Rights Council

Civil society has also been actively involved in the creation of new international norms dealing with food and agriculture and the right to produce food in other United Nations bodies. Alliances between transnational agrarian movements and right to food activists have enabled civil society to initiate negotiations of a new legal instrument consolidating existing rights and recognizing new human rights for peasants and other people working in rural areas at the United Nations Human Rights Council. The transnational agrarian movement La Vía Campesina, in collaboration with human rights experts and supportive States, successfully demanded that a new legal instrument be created to increase the protection of the human rights of peasants, by demonstrating that there were gaps in international human rights law.¹⁸⁹ On September 27, 2012, the Human Rights Council adopted a resolution creating an open-ended intergovernmental working group with the mandate of negotiating a draft United Nations Declaration on the Rights of

187. See, e.g., THE HIGH LEVEL PANEL OF EXPERTS ON FOOD SECURITY & NUTRITION, FAO, SOCIAL PROTECTION FOR FOOD SECURITY (2012), <http://www.fao.org/3/a-me422e.pdf>.

188. Lorenza Paoloni & Antonio Onorati, *Regulations of Large-Scale Acquisitions of Land: The Case of the Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forest*, 7 LAW & DEV. REV. 369, 396–97 (2014).

189. FIAN INT'L, PEASANTS NEED MORE PROTECTION 1 (2012), http://www.fian.org/fileadmin/media/publications/Advocacy_note_-_Peasants_need_more_protection_files.pdf.

Peasants and Other People Working in Rural Areas.¹⁹⁰ Negotiations started in July 2013 and are expected to extend over the next few years. The human right to land and territory, or more generally a right to natural and productive resources, is central in the draft Declaration.

For many observers, the recognition of a new right to land would represent a significant positive move forward. Recognition would strengthen the ability of civil society to respond to the global land grab trend and to the increasing interference of international actors and policies in the local enjoyment of land.¹⁹¹ Indeed, although the international community has recognized the importance of access to resources for the right to food,¹⁹² a clear human rights perspective to land-related issues remains lacking, as the right to land and territory is at present recognized only for indigenous peoples or in relation to other human rights.¹⁹³ Other important new rights that the Declaration seeks to promote include the right to seeds,¹⁹⁴ the right to biodiversity,¹⁹⁵ and the right to remunerative prices.¹⁹⁶ Together these rights recognize the “past, present and future contributions of peasants and other people working in rural areas in all regions of the world to conserving and improving biodiversity and to ensuring food sovereignty.”¹⁹⁷ These rights further underscore that

peasants and other people working in rural areas should be provided with the means to promote and undertake environmentally sustainable practices of agricultural production which support and are in harmony with Mother Earth, including

190. Human Rights Council Res. 21/19, U.N. Doc. A/HRC/RES/21/19 (Oct. 11, 2012); Human Rights Council Advisory Comm., *Declaration on the Rights of Peasants and Other People Working in Rural Areas*, U.N. Doc. A/HRC/WG.15/1/2 (June 20, 2013) [hereinafter Human Rights Council, *Draft Declaration*].

191. See CRISTOPHE GOLAY, LEGAL REFLECTIONS ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS 18 (2013) (paper prepared for the first session of the working group on the rights of peasants, July 15–19, 2013), <http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPLeasants/Golay.pdf> (identifying the right to land as an important right for peasants and people in rural areas).

192. General Comment No. 12, *supra* note 13, at para. 15; Comm. on World Food Security, Reform of the Committee, *supra* note 176, at para. 4.

193. Rolf Künemann & Sofia Monsalve Suárez, *International Human Rights and Governing Land Grabbing: A View from Global Civil Society*, 10 GLOBALIZATIONS 123, 130 (2013); G.A. Res. 61/295, annex, Declaration on the Rights of Indigenous Peoples, at art. 26 (Sept. 13, 2007).

194. Human Rights Council, *Draft Declaration*, *supra* note 190, at art. 22.

195. *Id.* at art. 23.

196. *Id.* at art. 21.

197. *Id.* at pmb.

the biological and natural ability of ecosystems to adapt and regenerate through natural processes and cycles.¹⁹⁸

Another significant advance that could result from the Declaration is the recognition of a specific new category of rights-holders with its own vulnerabilities and history of discrimination. If normative developments of the right to food have always accounted for the fact that the majority of those whose right to food is violated live and work in rural areas, the Declaration could nevertheless contribute to giving more visibility to the specific plight of small-scale food producers, fishers, pastoralists, landless laborers, and agricultural workers, rural women and girls in particular. It could also compel States to act in a more consolidated and consistent way towards strengthening and better protecting the rights of peasants and other people working in rural areas.

CONCLUSION

In this Article, we presented important developments occurring in the right to food field in the last decade, with a focus on the strategies, policies, and legal frameworks adopted at the national level. We showed that some encouraging progress has been made with respect to the fulfill dimension of the right to food. At the same time, our assessment leads us to conclude that almost no attention has been paid to the respect and protect dimensions of the right to food in the national strategies, policies, and legal frameworks that we reviewed. This is extremely disheartening considering the accountability challenges in the way of the realization of the right to food for all.

We also argued that civil society actors have attempted to address these accountability challenges through the development of grassroots, locally grounded alternatives, and citizen-led governance models that place food sovereignty at the center. Small-scale farmers and peasants, organized at the transnational level, and committed citizens have played a key role in the emergence of these alternatives. What lessons can right to food activists and lawyers draw from these experiences? How should States build on these developments to reinforce their efforts to implement the right to food?

In our view, a key challenge to adopting and implementing right to food policies that are timely, relevant, and effective will be to ensure the integration of new voices and ideas. Many of the most transformative and promising efforts at producing systemic and positive change in the food system have come at the hands of people claiming alternative rights to the

198. *Id.*

right to food—such as the right to land, seeds, biodiversity, and the right to fair prices and a decent livelihood—grounded in the paradigm of food sovereignty. At the core of these alternatives, is increasing democratic control and participation in policymaking decisions about food and agriculture. Participation is also at the heart of the right to food, but the emerging alternative models give participation a new meaning. Indeed, these alternatives are grounded in the experiences of the people who advocate for them—the same people who developed them. As a result, they reflect a more robust relationship to food, land, and the means by which people desire to access food, and they better reflect the needs, experiences, and aspirations of rights-holders.

On the 20-year anniversary of the World Food Summit, it is important to take stock—to review the progress made with the right to food and the challenges faced; to think critically about what more just, sustainable, and equitable food systems look like; to ask where we want to go and how can we learn from each other; and to question who gets to answer these questions, who gets to move us forward, and who decides how we get there. In our view, the right to food approach would benefit greatly from further dialogue with the new governance models developed from the ground up, models that seek to advance more explicitly enumerated and identified rights for peasants and other people working in rural areas. In many cases, it remains to be seen if similar challenges to those faced by the right to food framework will halt or limit the progress of these alternative models. However, what remains clear is that advancements in the right to food will only be successful if they incorporate the voices, experiences, and desires of rights-holders as framed by themselves.