
Comments on CFS Voluntary Guidelines on Food systems and Nutrition

Preliminary Version of the Zero Draft

Presented by the International Development Law Organization to
the Committee on Food Security Secretariat

19 March 2019

General Comments

1. A comprehensive human rights-based approach

The draft Voluntary Guidelines (VG) would benefit from an explicit foundation in international human rights law. There is a reference to the progressive realization of the right to adequate food in paragraph 8 of the draft, but this legal obligation is not explained or explored or referenced further in the draft.

The human rights-based approach provides a coherent and comprehensive framework for government and civil society analysis, advocacy and action. It provides a common language for engaging multiple stakeholders in diverse government sectors and civil society organizations.

The legal foundation of the right to food – and States' obligations – have been extensively explored by both FAO¹ and OHCHR.² Most important is the principle that 'All human rights are universal, indivisible and interdependent and interrelated.'³ Thus, the reference to the right to adequate food implicates the full range of civil, political, economic, social and cultural rights. In this sense, the foundation and legitimacy of the VG would be strengthened with a reference also the right to health.

As an example of the scope of guidance available, authoritative guidance on business and human rights from the United Nations Human Rights Council identifies the legal obligations of States and the responsibilities of the private sector, and which apply equally in the context of food and nutrition (see also below).⁴

As a further example, the draft VG refer to the importance of leadership and governance – these references would be enhanced with a reference to the civil and political rights which are essential in a democratic society in which equitable and sustainable food policy can be designed and implemented.

The value and importance of the human rights-based approach for the VG is explored in the remainder of this commentary.

2. SDG 16 is a cross-cutting goal for all the SDGs, including SDG2 and SDG3

SDG 16 is to 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.' SDG 16 is both an enabler and an outcome of sustainable development. The achievement of SDG 16 will also contribute to the SDG food, nutrition health goals.

¹ <http://www.fao.org/right-to-food/en/>

² <https://www.ohchr.org/En/Issues/ESCR/Pages/food.aspx>

³ *Vienna Declaration and Programme of Action* OHCHR, 1993

<https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

⁴ United Nations. 'Guiding Principles on Business and Human Rights' endorsed by the Human Rights Council in resolution 17/4 of 16 June 2011.

https://www.ohchr.org/documents/publications/GuidingprinciplesBusinessshr_eN.pdf

For example, promotion of the rule of law and ensure equal justice for all (target 16.3) encompasses basic principles of legality, such as the equal and systematic application of legal rules. The draft VG contain references to regulatory and fiscal responses which, to be effective, must be applied consistently across the food and nutrition sector. This requires a legal environment in which the law applies equally to all parties: no one is above the law. Lack of government corruption and good governance are essential to the effective implementation of national food systems and nutrition policies.

Similarly, the principles of inclusive participation and representation in decision making (target 16.7) are also central to ensuring that public institutions including food agencies are responsive and effective.

Finally, when governments and other stakeholders fail to meet their legal responsibilities, there must be an accessible legal remedy to hold them to account. Civil society must have recourse to an independent judiciary with the capacity to make enforceable determinations.⁵ The following example illustrates this issue:

In 2016, a Colombian civil society organization, Educate Consumers (Educar Consumidores), launched a television and radio campaign that revealed the quantities of sugar in a number of sugary drinks. A Colombian sugary drink manufacturer commenced proceedings alleging 'false advertising' with the Superintendency of Industry and Commerce, which monitors consumer rights in Colombia. The Superintendency ordered Educate Consumers to cease the campaign in all media and to seek prior review by the Superintendency of any further material relating to sugary drinks.

The Colombian Constitution permits a person to petition any judge to protect his or her constitutional rights using a special writ known as a tutela. Educate Consumers and another civil society organization filed tutelas seeking a review of the decision of the Superintendency. They argued that the decision interfered with their rights to freedom of expression and to receive information about the health risks of sugary drinks. The Constitutional Court held that the freedom of expression guaranteed in the Constitution extended to giving consumers information about the food they consumed. The Court held that the announcements broadcast by Educate Consumers were information rather than advertising, and so could not be subject to prior restraint by the Superintendency. The Court also held that the Superintendency had violated consumers' rights both to receive information and to inform others.⁶

The draft VG can therefore benefit from the inclusion of a reference to SDG 16 and the importance of the principles of the rule of law, participation and representation of all stakeholders, and accessible legal remedies when laws or rights are infringed.

3. Legal status of the Voluntary Guidelines

Page 5 paragraph 14.

The Voluntary Guidelines will be non-binding and should be interpreted and applied consistently with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.

⁵ See *Litigating the Realizing the Right to Food: Legal Strategies and Approaches* (IDLO, 2015) <https://www.idlo.int/publications/realizing-right-food-legal-strategies-and-approaches>

⁶ Magnusson, R. 'Legal capacities required for the prevention and control of noncommunicable diseases' in *Bulletin of the World Health Organization* 2018;97:108-117. doi: <http://dx.doi.org/10.2471/BLT.18.213777>

While it is not the express intention of the CFS to create guidelines which are legally binding, it is likely that the VG will serve as a global standard for measuring States' compliance with their existing legal obligations to respect, protect and promote the right to adequate food under international human rights treaties, including for example the International Covenant on Civil and Political Rights (art. 11), and the Convention on the Rights of the Child (art. 24).⁷

The UN human rights treaty bodies, which monitor States' compliance with the treaties, are taking an increasing interest in the steps taken by States to implement the right to food. In 2013, the Committee on the Rights of the Child, in General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), notes regarding art. 24 (b) of the Convention on 'the provision of adequate nutritious foods':

States are required to introduce into domestic law, implement and enforce internationally agreed standards concerning children's right to health, including the International Code on Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions, as well as the World Health Organization Framework Convention on Tobacco Control.

The Committee used UN guidance documents and other international treaties to determine States' obligations under the Convention on the Rights of the Child.

The CRC and other UN treaty bodies could make direct reference to the VG when assessing States' obligations and compliance. For example, the UN Committee on Economic, Social and Cultural Rights is also examining State obligations in respect of the right to food.

*In 2018 the United Nations Committee on Economic, Social and Cultural Rights recommended that Argentina '...(a)dopt a regulatory framework that expressly recognizes the right to food and steers public policies that ensure access to healthy, nutritious and sufficient food, especially for disadvantaged groups...' The Committee also recommended that Argentina '...(t)ake effective measures to discourage the consumption of unhealthy foods and beverages, including an increase in the tax on sugary beverages, strengthening of regulations under the Argentine Food Code with regard to front-of-pack food labelling that includes information on sugar content, and restrictions on the advertising of unhealthy foods and beverages, especially those directed towards children.'*⁸

4. Gender mainstreaming

The VG would benefit from broader awareness and more specific integration of gender sensitivity across the text. There is a reference to gender equality among the VG's guiding principles (paragraph 26 d), however, this is not further mainstreamed into concrete actions in Chapter III of the VG.

According to the ECOSOC Agreed Conclusions 1997/2, gender mainstreaming is defined as:

*[...] a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.*⁹

⁷ See generally <https://www.ohchr.org/EN/Issues/Food/Pages/Links.aspx>

⁸ United Nations. Committee on Economic, Social and Cultural Rights. Concluding observations of the fourth periodic report of Argentina. E/C.12/ARG/CO/4. United Nations Economic and Social Council: 2018

⁹ United Nations. Economic and Social Council. Agreed Conclusions 1997/2. Extract from the Report of the Economic and Social Council for 1997. A/52/3. 18 September 1997. <http://www.un.org/womenwatch/daw/csw/GMS.PDF>

It is thus not sufficient to refer to gender equality in general terms in the VG preamble, if this is not further translated into specific actions in the operative text.

The United Nations Global Strategy for Women's, Children's and Adolescent Health¹⁰, for instance, provides examples of evidence-based and gender-sensitive responses and recommendations, including on food and nutrition.

The FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security similarly embrace a gender sensitive approach, in particular Guideline 8.6, which states that,

*States should promote women's full and equal participation in the economy and, for this purpose, introduce, where it does not exist, and implement gender-sensitive legislation providing women with the right to inherit and possess land and other property. States should also provide women with secure and equal access to, control over, and benefits from productive resources, including credit, land, water and appropriate technologies.*¹¹

5. Participation – focus on consumers – no reference to broader civil society // focus on 'leadership' and governance

Missing from the HLPE 2017 report and the VG is an understanding of the role of civil society other than as food 'consumers.' In Figure 1 the only output identified for the 'consumers' is their behavior expressed through their diets.

The framework would benefit from an acknowledgement of the wide range of civil society actors actively engaged in determining food systems and nutrition policy.¹² In addition to civil society organizations with a principal mandate related to food, there are over 5000 UN-accredited civil society organizations with related mandates, e.g. relating to the rights and health of women, children, people with disabilities, older persons, workers, faith communities and indigenous people.¹³ These organizations can be mobilized to support action to advance the right to food in UN and other forums, and mobilize tens of thousands more civil society partners at regional and national levels.

The human rights-based approach leads to an understanding of rights-holders not only as food consumers but also as active partners in the design and implementation of food policies. However, to participate as active partners civil society needs the political space and freedoms to organize and advocate. The VG would be strengthened with a reference to the active participation of civil society in the determination of food policies, and hence the importance of all human rights, including civil and political rights, in advancing the right to adequate food.

Similarly, the HLPE report and the draft VG note the importance of 'leadership' as a driver of food policy (paragraph 14). However, in democratic societies political leadership is ultimately dependent on civil society support. Governments will have to make hard political choices when legislating to improve food systems and nutrition. There is likely to be considerable resistance from vested interests. Strong

¹⁰ http://www.everywomaneverychild.org/wp-content/uploads/2017/10/EWEC_GSUpdate_Full_EN_2017_web-1.pdf

¹¹ <http://www.fao.org/right-to-food/resources/resources-detail/en/c/44965/>

¹² See e.g. the wide participation of civil society organizations in the CFS Civil Society Mechanism <http://www.csm4cfs.org/the-csm/>

¹³ See

<https://esango.un.org/civilsociety/displayConsultativeStatusSearch.do?method=search&sessionCheck=false>
This database does not include civil society organizations in relation with WHO.

civil society support for government action is essential to achieve the optimal outcomes for food systems and nutrition policy in most contexts. Again, freedoms of expression and association must be assured if civil society is to be able to mobilize in support of needed reforms.

Finally, civil society support is also essential in the implementation of policies, e.g. recommendations on diets. This is mostly likely if a wide range of civil society organization has been consulted in the development of the policies.

For example, in Mexico, people in lower socio-economic groups consume more sugar-sweetened beverages (SSB) per capita than richer people. They also suffer a higher burden of obesity and related illnesses. When the Mexican government introduced a SSB tax in 2013, opponents charged that it was 'regressive' because it affected poorer people more than richer people. However, because the government and community organizations had conducted an active community education campaign, the public health benefits of the tax were better understood and opposition to the tax was limited.



The VG should thus provide guidance to States on the engagement of civil society as active partners in the process of determining and implementing policies on food systems and nutrition.

6. Reference to other sources of United Nations guidance on food systems and nutrition.

The VG should make reference to related sources of authoritative guidance, including but not limited to:

- FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security¹⁴

The Voluntary Guidelines were adopted by the FAO Council in November 2004. They set out the basis of the right to adequate food in international law, noting States obligations. They provide a solid reference for understanding the human rights-based approach in the context of national food security. However, they need to be read alongside the more recent guidance noted below.

- UN Third High Level Political Declaration on NCDs (2018)¹⁵

The Political Declaration refers to the responsibility of the private sector in producing and promoting food products consistent with a healthy diet (para. 44(d)) and reducing exposure of children to marketing of unhealthy foods and beverages (para.44(e)).

- UN Global Strategy on Women's, Children's and Adolescents' Health (2016-2030)¹⁶

¹⁴ <http://www.fao.org/right-to-food/resources/resources-detail/en/c/44965/>

¹⁵ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/2

¹⁶ <https://www.who.int/life-course/partners/global-strategy/en/>

The United Nations Global Strategy for Women’s, Children’s and Adolescent Health contains extensive references to food and nutrition and is explicitly rights-based.¹⁷ The Strategy tasks the ‘agriculture and nutrition sector’ with the following key policies and interventions:

- Enhance food security, especially in communities with a high poverty and mortality burden
- Protect, promote and support optimal nutrition, including legislation on marketing of breast milk substitutes and of foods high in saturated fats, trans-fatty acids, sugars, or salt

In 2017, the United Nations High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents Health noted ‘inadequate nutrition’ as a determinant of health, and recommended that ‘All States should ensure that national accountability mechanisms (for example, courts, parliamentary oversight, patients’ rights bodies, national human rights institutions, and health sector reviews) are appropriately mandated and resourced to uphold human rights to health and through health. Their findings should be regularly and publicly reported by States.’¹⁸

- UN Guiding Principles on business and human rights¹⁹

The Guiding Principles on Business and Human Rights were endorsed by the Human Rights Council in resolution 17/4 of 16 June 2011. They note that although the private sector does not have legal obligations to respect human rights under international law (as these treaties are agreed to by States), the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. States have a duty to clarify the expectation that enterprises will respect human rights. States should also ensure adequate monitoring accountability mechanisms to effectively oversee enterprises’ activities.

International law in this area is evolving: in 2018 the United Nations circulated the first draft of a treaty on business and human rights, with implications for transnational tobacco, alcohol, food and beverage corporations.²⁰

- WHO Set of Recommendations on the Marketing of Food and Non-alcoholic Beverages to Children.²¹

The Recommendations call for global action to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt. The Recommendations were endorsed by the World Health Assembly in 2010 in resolution WHA63.14.

- UN Guiding Principles on Extreme Poverty and Human Rights²²

¹⁷ <https://www.who.int/life-course/partners/global-strategy/globalstrategyreport2016-2030-lowres.pdf>

¹⁸ WHO. Report of the High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents: Leading the realization of human rights to health and through health. World Health Organization: 2017.

¹⁹ United Nations. ‘Guiding Principles on Business and Human Rights’
https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf

²⁰ United Nations. Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights: Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. Zero draft 16 July 2018. United Nations Human Rights Council.

<https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf>; Zorob M. New business and human rights treaty takes shape. Business and Human Rights Resource Centre.
<https://www.business-humanrights.org/en/blog-new-business-and-human-rights-treaty-takes-shape>

²¹ <https://www.who.int/dietphysicalactivity/publications/recsmarketing/en/>

²² <https://www.ohchr.org/en/issues/poverty/pages/dgpintroduction.aspx>

The United Nations Human Rights Council adopted the Guiding Principles at its 21st session in September 2012. The UN Guiding Principles note the following State obligations regarding the right to adequate food and nutrition in paragraph 76. This paragraph is noted here in full to demonstrate the depth and breadth of the guidance provided by the Human Rights Council on the issue of extreme poverty, food, nutrition and human rights.

States should:

- (a) Establish disaggregated mapping systems to identify groups and households particularly vulnerable to food and nutrition insecurity and the reasons for that vulnerability, and take corrective measures, to be implemented both immediately and progressively, to provide access to adequate food;*
- (b) Adopt a national strategy to ensure food and nutrition security for all, based on human rights principles. Access to adequate food for persons living in poverty should be accorded priority and take into account the interdependence of access to productive and monetary resources and adequate nutrition;*
- (c) Put in place adequate early-warning mechanisms to prevent or mitigate the effects of natural or human-caused disasters, including on persons living in poverty in remote and marginalized areas, and take appropriate emergency preparedness measures;*
- (d) Ensure adequate access to productive resources, including land, forests and fisheries, in order for persons living in poverty to produce food for themselves and their families;*
- (e) Implement effective land distribution and agrarian reform programmes, especially in areas in which land concentration threatens access to livelihoods for rural communities, and adopt preventive measures to avoid land and water grabbing;*
- (f) Revise and repeal discriminatory laws and related administrative practices that impede the recognition of ownership or tenure rights of land and resources by groups or individuals living in poverty, in particular women;*
- (g) Adopt measures to eradicate any kind of discriminatory practices regarding food distribution within the household or community, especially with regard to gender, for example by channeling food production support through women;*
- (h) Consider, to protect those who are unable to provide for themselves, establishing and maintaining food safety nets linked to other complementary interventions that promote food security in the medium and longer terms. There is also a need to ensure that social assistance policies and programmes take into account the true costs of a nutritious and culturally adequate diet;*
- (i) Ensure effective distribution mechanisms that recognize market shortcomings to make adequate food physically and economically accessible to persons living in poverty, in a culturally acceptable way and without negatively affecting small farmers, indigenous peoples, forest dwellers, pastoralists or local subsistence fishing communities and women. This should include a review of overall systems for food pricing; A/HRC/21/39 17*
- (j) Strive to ensure that all trade and investment policies, including those specific to food and agriculture, are conducive to fostering food and nutrition security for all, and take international collective action to address widespread food and nutrition insecurity and rising food prices. Strategies that support rural development based on human rights, promote sustainable food production and equitable distribution, and reduce volatility in commodity markets affecting food prices must be a priority for States at both the national and international levels.²³*

²³ <https://www.ohchr.org/en/issues/poverty/pages/dgpintroduction.aspx>

7. Environmental sustainability and climate change

The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food note (Guideline 8E)

States should consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems to ensure the possibility for increased, sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil, and promote the sustainable management of fisheries and forestry.

The HLPE report notes that ‘Food systems need to adapt to climate change and can make a significant contribution to its mitigation... *Climate-smart and nutrition-sensitive* approaches that can maintain necessary levels of nutritious food production while minimizing the environmental effects of agriculture must be scaled up.’²⁴ FAO has estimated that the livestock sector alone contributes to 14.5% of human-induced global greenhouse gas emissions.²⁵

The VG should make reference to the importance of environmental sustainability, including limiting greenhouse gases in the food sector with specific recommendations to reduce global greenhouse gases to facilitate the achievement of SDG 13.

General Recommendations:

1. The VG should emphasize their explicit foundation in international human rights law.
2. The VG should include a reference to SDG 16 and the importance of the principles of the rule of law, participation and representation of all stakeholders, and accessible legal remedies when laws or rights are infringed.
3. The VG should show a broader awareness and ensure more specific integration of gender sensitivity across the text.
4. The VG should acknowledge the role of civil society actors in engaging with food systems and nutrition policy and provide guidance to States on the engagement of civil society as active partners in the process of determining and implementing policies on food systems and nutrition.
5. The VG should build upon other authoritative legal sources of guidance on food systems and nutrition.
6. The VG should make reference to the importance of environmental sustainability, including limiting greenhouse gases in the food sector with specific recommendations to reduce global greenhouse gases to facilitate the achievement of SDG 13.

Specific Comments

Chapter I: Introduction

1. Paragraph 7

Refer here to other authoritative sources of guidance for the VG, including the sources noted above.

²⁴ HLPE report 12 *Nutrition and Food Systems* <http://www.fao.org/3/a-i7846e.pdf>

²⁵ *Tackling climate change through livestock: a global assessment of emissions and mitigation opportunities* FAO, 2013 <http://www.fao.org/3/a-i3437e.pdf>

2. Paragraph 8

In addition to SDG 2, include a reference to SDG 3 and target 3.4 ‘by 2030 reduce by one-third premature mortality from non-communicable diseases (NCDs) through prevention and treatment, and promote mental health and wellbeing’. Risk factors include unhealthy diets.

3. Paragraph 14

Revise the description of the VG to remove the terms ‘voluntary’ and ‘non-binding’ as noted above.

Chapter II. Key concepts and guiding principles

As noted above, the Guiding Principles should include reference to

- The human rights-based approach to food systems and nutrition, including reference to the right to health.²⁶
- The central role of governments in respecting, protecting and fulfilling the right to food.
- The right to adequate food as guiding principle, noting that all human rights are universal, indivisible and interdependent and interrelated.
- The extraterritorial obligations of governments in the context of the right to food.²⁷
- The responsibilities of the business sector in the context of the right to food.
- The centrality of civil society participation in the development and implementation of food systems and nutrition policies.

Chapter III. The Voluntary Guidelines on food systems and nutrition

- Proposed scope of the VG (paragraph 27)

In light of the above analysis, the proposed scope of the VG should be expanded to include a comprehensive exploration of State obligations under international human rights law, and the opportunities to involve civil society not only as consumer but as equal stakeholders in the development and implementation food systems and nutrition policies.

Under the proposed framework, the VG should identify states as having legal obligations to take steps to ensure that supply chains, food environments and consumer behavior all contribute to the progressive realization of the right to adequate food.

The following comments related to the sections ‘policy related areas’ in each of the three constituent elements of food systems identified.

Part 1 – Food Supply Chains

Production systems – policy related areas

Women producers’ livelihoods

The draft states ‘Women tend to be less involved in commercial agriculture and more involved in informal activities which are often seen as an extension of their domestic responsibilities.’ It is not clear whether this is an observation or a normative statement. Rather than implicitly affirm the secondary nature of women in commercial agriculture, the VG should encourage States to explore

²⁶ <https://hrbportal.org/fag/what-is-a-human-rights-based-approach>

²⁷ As noted in the UN Guiding Principles on Extreme Poverty and Human Rights and the Maastricht Principles, above.

opportunities to build women’s capacity to engage more fully in this sector through education, grants and other programmes.

Processing and packaging

Food processing policies and regulations

The VG propose steps to *reduce* trans fat availability in the food chain. The 2017 World Health Assembly guidance is to ‘*eliminate* industrial trans-fats through the development of legislation action is needed to ban their use in the food chain’ (emphasis added)²⁸ The VG should be consistent with existing UN guidance on trans fats.

Promotion and advertising

Regulations for adverting and marketing – the VG should include reference to the Set of Recommendations on Marketing of Food and Nonalcoholic Beverages to Children, endorsed by the World Health Assembly (noted above).

Consumer behavior

Food and nutrition education and information

As noted above, the VG should envisage a broader role for civil society than as consumers and targets of SBCC. Nonetheless, the VG should affirm the role of civil society organizations in leading SBCC programmes in their communities.

²⁸ WHO Global NCD Action Plan 2013-2020 Appendix 3
https://www.who.int/ncds/governance/technical_annex.pdf?ua=1