



## Section II

### Progress on the Right to Food

#### *Special Issue: Mapping the Global Food Landscape*

## **The right to food: Reflecting on the past and future possibilities—Synthesis Paper**

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As scholars and activists met in Waterloo, Canada in September 2014 to discuss progress and obstacles in adopting the right to food, similar discussions were being held by the Food and Agriculture Organization of the United Nations (FAO), and among civil society organizations (CSOs), non-governmental organizations (NGOs) and social movements around the globe. These parallel discussions marked an important milestone as well as political moment in the history of the right to food: the tenth anniversary of the *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security*.<sup>1</sup> Together, the various discussions provide an important opportunity to assess the right to food, not only for how it has been implemented as a legal doctrine by states and international institutions, but more broadly for how the right to food has and could be used as a frame for collective action and as an analytical tool to understand our food systems. Indeed, while the right to food is at its core a legal doctrine, it has been used and framed in a number of respects as a broader concept and tool by actors over the years.

In this paper, I highlight and reflect upon the contributions of Smita Narula, Priscilla Claeys and Philip McMichael to this special issue, as well as key elements of the conversation that took place in Waterloo. I begin by exploring some of the many faces of the right to food by

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<sup>1</sup> The *Voluntary Guidelines*, which offer states a guide to adopting the right to food domestically, were unanimously adopted by the member states of the UN Committee on World Food Security (CFS) a decade ago, after a participatory negotiation process that engaged CSOs and NGOs. For more information on the CSOs, NGOs and social movements' evaluation of progress and obstacles in implementing the right to food, on the occasion of the ten year anniversary of the *Voluntary Guidelines* see Lambek, 2014.

examining and contextualizing examples of the failures and successes of the right to food as a concept or tool. I then look forward, addressing the topic of new rights elaboration, which was a recurrent topic of conversation in Waterloo, and how the experience of the right to food may (or may not) be of assistance to actors in search of more just, sustainable, and equitable food systems.

## Failures of the right to food: A legal doctrine without acceptance

Perhaps the biggest failure of the right to food has been as a legal tool to change the behavior of states. In the past decade, there has been considerable success on paper at implementing the right to food domestically, through the passing of framework laws (e.g. Ecuador, Venezuela, and Zanzibar), constitutional provisions (e.g. South Africa, Kenya, Brazil) and national policies (e.g. Uganda, Brazil), as well as through recognition and enforcement by courts (e.g. India, Guatemala, the Court of Justice of the Economic Community of West African States) (Lambek, 2014; see also Wittman in this issue). It is worth noting that legal frameworks, and in particular constitutional recognition, are important tools for creating legal rights that individuals can use to require accountability from states, and to secure court verdicts requiring state compliance with obligations or to remedy violations. However, these advancements have to date largely not influenced state behaviour or translated to experiences of reduced food insecurity on the ground for individuals and communities (Lambek, 2014). Furthermore, even with the number of countries growing, it is still a minority of states that recognize and enforce the right to food. Canada, for example, 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 itself).<sup>2</sup>

The right to food as a legal doctrine has also largely failed to shape international law and legal processes. Despite major efforts by CSOs, NGOs and social movements, key players including the World Bank, World Trade Organization (WTO) and even the (nominally sympathetic) FAO have failed to take a rights-based approach in their operations. The Committee on World Food Security (CFS), following its 2009 reform, has been the exception, serving as an important political space for advancing the right to food as a legal doctrine as well as showcasing a more inclusive and participatory governance model (see McKeon and Duncan,

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<sup>2</sup> The Canadian Supreme Court has rhetorically left open the possibility that one day the *Charter* 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*, 2002, at paras. 82-83). So while the *Charter* prevents against discrimination on the basis of enumerated grounds (which notably do not include social conditions), it does not require the state to provide food, facilitate the ability of people to meet their food needs, or address poverty more broadly. The government of Prime Minister Stephen Harper has also taken 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 UN Special Rapporteur on the right to food (see Food Secure Canada et al., 2012), and its attempt to block the adoption of the human right to food as a guiding norm of the reformed UN Committee for World Food Security (CFS) (see Margulis, 2015).

this issue). Indeed the CFS has emerged as a site of progressive global food governance, and a forum for challenging the dominant narratives regarding tackling food insecurity. For example, the CFS withdrew its support for the World Bank's *Principles for Responsible Agricultural Investment*, and instead initiated inter-state negotiations for new principles that would recognize the importance of small-scale producers and the right to food. Nevertheless, as argued by McMichael in his article, fears remain that the CFS's process may be co-opted by more powerful forces, such as an alliance among Northern states and the private sector bloc at the CFS, to move the focus of the new principles away from stabilizing local food and agricultural systems towards investor rights (see also Vander Stichele in this issue). Moreover, despite its success, the CFS still remains a small player among international institutions. The CFS is unable to capture and alter trade law and policy, and is often left only to fill the governance spaces not taken by the World Bank and WTO (Murphy, McKeon and Margulis, this issue).

It may be relevant to ask whether these failures are a problem with the right to food legal doctrine itself, or whether they are driven by powerful forces deeply resistant to the radical transformation that would be necessary to achieve the right to food (at least as it is currently understood by CSOs, NGOs, scholars and the UN Special Rapporteurs on the right to food). When looking at wider developments around the globe, it is clear that the rights-based approach has gained more traction in movements for other economic rights, such as the right to adequate housing.<sup>3</sup> While upholding the right to adequate housing requires structural change, the degree of change needed is likely less than in the food system (and certainly there are fewer powerful opponents strongly interested in and pushing for an incompatible system). This would suggest that rights-based approaches can be more or less difficult to adopt in part in relation to how subversive they may be to the dominant narratives they must compete with, and who is invested in the status quo.

On the other hand, the failures of the right to food as a legal tool or human rights instrument could also be attributed to the fact that the right to food has largely failed to capture the collective imagination of communities. Although the right to food offers a powerful alternative to the current system—one that is centered on rights holders and places obligations on the state—it has for the most part not formed the basis of national campaigns for more equitable, just, and sustainable food systems nor shaped social movements' demands to governments. This confirms the observation by Claeys in her article of the lack of a political constituency for the right to food. The lack of widespread public support is also linked to weak implementation rates of the right to food, as governments are unlikely to adopt or protect legal rights that do not underpin the demands of the electorate.<sup>4</sup>

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<sup>3</sup> For example, the housing movement in Canada has taken a rights-based approach, whereas the food movement has not. Recently, the movement engaged in public interest litigation in an attempt to enforce the right to housing. Lawyers for the Applicant are currently seeking leave to appeal at the Supreme Court of Canada after a loss at the Ontario Court of Appeal. An important dissent by Justice Feldman at the Court of Appeal offers some hope that the *Charter* could protect a right to housing in Canada (*Tanudjaja v. Canada*, 2014).

<sup>4</sup> In Malawi, Uganda, and Mozambique draft right to food laws have been pending before parliaments for years, without being adopted. These laws were drafted with the support of the FAO, government representatives and some

## Success as a theoretical tool and uniting force

If the right to food as a legal doctrine has had limited success, what then have been the successes of the right to food? And in what form have these occurred? Two areas of success were highlighted in the discussions at Waterloo.

First, the right to food provides a useful theoretical framework for analyzing failures in the food system, particularly with respect to how policies, legal frameworks and practices of states, policy makers and global economic actors have impacted on the food security of the most marginalized. As observed by Narula, an extremely powerful component of the right to food as a normative framework is its insistence that actions are taken as a means of strengthening people's access and utilization of resources. This requires a focus on the most marginalized and vulnerable in society and on addressing systemic discrimination. Importantly, it also requires thinking not just about the provision of food to the poor, but examining who is hungry, why they are hungry and how the actions or inactions of more powerful forces impact their access to adequate food. This is a powerful analytical approach, in part because it departs from the conventional approach of providing so-called band-aid solutions or of addressing the symptoms of failed food systems (i.e. inadequate diets, malnutrition and hunger), and instead seeks to address the systemic reasons why people do not have adequate food to begin with.

Of course, there are well-recognized limits on the right to food as a theoretical framework. The human rights approach—which is historically a state-centric model—has limits both in terms of its scope and demands (as the state is both prime rights violator and guarantor). Although legal norms may be changing in this respect, the right to food (and other rights), as currently theorized, do not enforce obligations on third parties, such as transnational corporations, which have long been associated with rights violations. Further, as highlighted by Narula, the right to food lacks a direct relation to consumers, particularly those in wealthier states, failing to capture the impacts of their choices as consumers on their local food system and on populations in other countries or to address how they might take action. The right to food does not place any obligations on individuals. It also does not address the fact that choices—such as what to eat or how to fuel a car—can impact such issues as land use or mining policies in other countries. However, despite the limitations of the doctrine and the fact that the right to food as a normative and theoretical framework has largely been utilized only by progressive social activists and academics, it continues to be relevant, at a minimum for its subversive quality, as a basis for diagnosing the ills of the food system, and for shaping demands from states and international organizations.

Second, and perhaps more importantly, the right to food has served as a uniting force for a variety of CSOs, NGOs and social movements working in the areas of poverty, urban housing, sustainable agriculture, climate change, nutrition, poverty alleviation, gender equality and the

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civil society, but social movements never supported (or instigated) them, and thus constituents placed little pressure on elected officials for their adoption (De Schutter, 2012).

rights of peasants, fisherfolk, and pastoralists. In her article, Claeys argues that the right to food and the human rights discourse more broadly has been effective at building alliances of social actors on the ground by providing useful diagnostic tools for what is wrong with the food system, what must be done and how to mobilize people. Claeys notes further that one of the key developments of the past decade is that right to food activists, recognizing the limits of the right to food approach, have reached out to work with other activists and social movement networks outside human rights circles.

The use of the right to food as a frame to build alliances is also now recognized by the food movement itself. This is evident, for example, in a statement from Laljil Desai from the World Alliance of Mobile and Indigenous Peoples and an active participant in the Civil Society Mechanism (CSM) at the CFS:

The right to adequate food and nutrition has served to connect seemingly disparate struggles and peoples in different parts of the world, turning what might otherwise be local issues into an interconnected global fight for human rights: by uniting fisherfolk in Uganda with pastoralists in India and “raising our voices for one another, we can put pressure on governments” and other actors to respect, protect and fulfill human rights (Callenius, Oenema, & Valente, 2014, p. 8).

At present there is a large and robust collection of NGOs, CSOs and social movements coordinating their efforts under the CSM of the CFS, as well as working together at other friendly international forums such as the UN Human Rights Council. Not only are these groups collaborating and coordinating, but they are also learning from one another through sharing experiences and strategies. While at times there have been internal political struggles, as would be expected with any effort to build advocacy coalitions, and the right to food itself is not always their major demand, these alliances have built solidarity over articulating their demands as rights (including demanding new rights as discussed below). In this way, the right to food has enabled new advocacy coalitions of global civil society (and states) and the articulation of political demands that go far beyond the right to food as a legal doctrine.

Reflections going forward: The possibility of new rights?

The discussions in Waterloo returned on multiple occasions to the possibility of elaborating new human rights. In recent years a number of advocacy coalitions and social movements have sought to create new rights related to the food system and food issues. At the domestic level, there have been efforts in Nicaragua, Mali, and Nepal to institutionalize food sovereignty—and to recognize a “right to food sovereignty”. At the international level, transnational peasants rights organizations such as La Via Campesina have been negotiating at the UN Human Rights Council

for a *Declaration on Rights of Peasants' and Other People Working in Rural Areas*, which encompasses a number of derivative rights related to food production such as the right to land and resources (seeds, water, etc.), as well as the right to set prices of agriculture goods on markets, and the right to access those markets. In her contribution to this volume, Claeys notes that these new rights are being pushed for and propelled by social movements, who are in turn controlling the process of their elaboration rather than the process being exclusively inter-state based. This marks an important break from past advocacy efforts at promoting the right to food, which have less frequently come from widespread grassroots support and mobilization.

The promise of “human rights” to achieve social change is appealing because rights cannot be derogated from, are non-alienable and demand action from government. They can be powerful tools—both rhetorically and in their implementation when adopted in a state with a strong rule of law—to provide a means for forcing state action and remedying violations. The experience of rights-based claims to food however, indicate that not only is it challenging to compel states to recognize rights but even the adoption of rights into laws and constitutions does not often directly translate into results. Understanding the challenges faced in implementing and enforcing the right to food (and also emerging rights such as the rights to land, water, food sovereignty, etc.), and indeed the limits of a rights-based framework, will be important for future rights-based claims as well as for continued efforts towards recognizing the right to food. The discussion by participants of the workshop reflected optimism for a rights-based approach to producing new norms and altering the political discourse on the one hand while remaining skeptical over the prospects of existing and new rights changing the behavior of states, multilateral institutions, and corporations on the other.

Big questions remain open for activists, social movements and academics: Is the rights-based frame and the right to food itself still relevant to the pursuit of more equitable, sustainable and just food systems? To what degree should efforts be focused on the long-established right to food versus on the elaboration of new rights, such as the right to land or peasants' rights more broadly, and could efforts be made on both fronts in tandem? How and in what ways can movements for new rights learn from past efforts to pursue the right to food? And how can various rights holders continue to work together and build further solidarity in claiming the right to food, as well as a variety of new rights, in an effort to change the direction of the current food system?

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