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Section II
Progress on the Right to Food
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The right to food: Progress and pitfalls

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Over the course of the past decade the human right to adequate food has definitively emerged as a normative response to widespread food insecurity, global food crises, and to the related phenomenon of agricultural "land grabbing." This article considers both the progress and pitfalls in using the "right to food" framework to meet the paramount challenge of ensuring equitable and sustainable access to sufficient, nutritious food for all.

The right to food under international human rights law

The right to food, as codified under international human rights law, calls on states to ensure that all people are free from hunger and that they have physical and economic access at all times to sufficient, nutritious food that is sustainably produced. As part of their duty to *respect* the right to food, states must refrain from measures that prevent existing access to food. The duty to *protect* requires states "to ensure that enterprises or individuals do not deprive individuals of

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¹ As codified under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and as interpreted by the U.N. Committee on Economic, Social and Cultural Rights (ESCR Committee), this framework calls on states to immediately ensure that all people are free from hunger and to progressively ensure:

[&]quot;The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights."

U.N. Economic & Social Council, Comm. on Econ., Soc. & Cultural Rights, *General Comment No. 12: The Right to Adequate Food*, paragraph 8, U.N. Doc. E/C.12/1999/511 (1999).

their access to adequate food." And the duty to *fulfill* the right to food is a positive obligation that the UN Committee on Economic, Social and Cultural Rights (ESCR Committee) has interpreted to include the duty to *facilitate* and to *provide*. The duty to facilitate implies that "the state must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security." Where "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."

Progress

As a result of the work of the ESCR Committee⁵ and of successive U.N. Special Rapporteurs on the right to food, among others, the normative content of the right to food enjoys far greater clarity today than when the right was first codified. In recent years—and due in part to the efforts of civil society groups—we have also witnessed tremendous progress in recognizing the right to food as a legal entitlement, including through its inclusion in constitutions, legislation and institutional frameworks around the world (Wittman, this issue). The global phenomenon of agricultural "land grabbing" is also motivating calls for states to improve the governance of tenure of land, fisheries and forests with a view to protecting communities who are being denied agency over land and resources essential to their survival. More fundamentally, there is now far greater recognition that the right to adequate food—with its emphasis on states' obligations and on the need to ensure that food is physically and economically accessible, sustainably produced, and nutritionally adequate for all—provides a valuable framework to help guide action on these issues, today and moving forward (FAO, 2014).

Challenges and pitfalls

Despite much progress legitimizing the right to food and securing this right as a legal entitlement, large swaths of the global population remain food insecure (FAO et al., 2014).

² *Id.*, at paragraph 15.

 $^{^3}$ Id.

⁴ Id

⁵ See, for example, the ESCR Committee's General Comment No. 12 on the right to adequate food, *supra* note 1. ⁶ See, for example, the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), which were endorsed by the Committee on World Food Security in 2012 and which call on states to "improve the governance of tenure of land, fisheries and forests," "with an emphasis on vulnerable and marginalized populations" and with the "goals of food security and progressive realization of the right to adequate food." VGGT, paragraph 1.1, *available at* http://www.fao.org/docrep/016/i2801e/i2801e.pdf.

Ensuring the availability, accessibility, and adequacy of food for all—and translating normative commitments into concrete action—remains a matter of a great urgency. It is also rife with challenge.

Some of these challenges stem from current conditions in the global economy: Financial downturns and rising food prices are putting food beyond the economic reach of the poor (FAO et al., 2014). Corporate and financial actors continue to exert immense influence over the production, pricing, and distribution of food (ETC Group, 2013; Clapp and Mooney, this issue), while small-scale farmers and agricultural laborers remain among the most food insecure—a fact that brings to light the deep imbalance of power in a fundamentally flawed food system (Narula, 2010). Moreover, climate change patterns are expected to devastate agricultural production, while the dominant modes of food production and distribution are themselves contributing to environmental harms (Vermuelen, Campbell & Ingram, 2012).

The International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes the right to adequate food, does not enjoy universal ratification. In particular, the lack of ratification by the United States, and its general recalcitrance toward economic and social rights (Lewis, 2009; Piccard, 2010), presents a significant obstacle for bringing a powerful actor into line—an actor whose agricultural, trade, and fiscal policies have deep impacts on the right to food, both within (IHRC, 2013) and outside the United States (Schanbacher, 2010, p. Xiii, 36).

Other challenges arise around implementing states' human rights obligations: Human rights law does not have the power to implement its normative terms, resulting in widespread impunity for violations of the right to food. Indeed an essential problem with the human rights framework is that it necessarily relies on the willingness of the state to implement reforms. Such an approach assumes a self-executing, trickledown quality of the law wherein top-down processes can effectively navigate entrenched power dynamics (Narula, 2013). The problem raised by this assumption is not specific to the right to food; it reflects a general shortcoming of the human rights framework wherein the state is both the target as well as the guarantor of the reforms promoted (Steiner, 1991). But the state and its ruling elite are not neutral agents of social change. To the contrary, state actors and domestic elites often stand to benefit from rights-violating policies and practices (Narula, 2013).

Problems enforcing rights guarantees on the domestic plane are further compounded by global power dynamics. States' human rights obligations often come into conflict with their investment, trade, or debt-servicing obligations. These conflicts are often resolved in a manner that favors the interests of powerful economic actors and of the domestic elite (Narula, 2006). To date, human rights advocates have also given primacy to ensuring the justiciability of the right to food within domestic legal frameworks, over challenging the rules of global economic governance that undermine the right to food in deeply structural ways.

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⁷ For a socio-legal review of domestic efforts to adjudicate economic, social and cultural rights, see Langford, 2009. ⁸ Ulrich Hoffman, for example, notes that "A major challenge is to modify at [the] international level a number of key market and market structures that act as a disincentive to the transition to truly sustainable agricultural practices at [the] national level, both in developed and developing countries. This concerns, first of all, the significant

And then there are challenges that are inherent to the framework itself: Under the ICESCR, States Parties are obligated to take steps to progressively achieve the full realization of the right to food for those under their jurisdiction. Implicit in this state-centric approach is the rationale that the right to food (among other human rights) is solely the by-product of relationships between governments and the individuals they govern, rather than relationships between global actors and individuals worldwide whose rights are affected by their actions (Narula, 2006). Under current conditions of economic globalization, the policies and practices of international financial institutions, transnational corporations (TNCs), and foreign states all have a significant impact on the right to food, yet the human rights responsibilities and obligations of these actors are not given equal consideration under international law (Narula, 2006).

The language of rights is also vulnerable to co-option. For example, the need to ensure food security and the related right to food can and has been co-opted in order to justify large-scale agricultural land transfers, often in the name of boosting food production (Borras & Franco, 2010). Yet these so-called agricultural investments are often carried out in a manner that undermines the food security and land rights of host communities—including small-scale producers and indigenous peoples, among others (CHRGJ, 2010; Shepard & Mittal, 2009)—using large-scale industrial farming practices that are harmful to the environment and that are inherently unsustainable (Czarnezki, 2011, p. 263-264).

The international human rights framework also does not give sufficient consideration to demand side issues. For example, the negative impacts of an increased demand for meat (and industrial livestock production), of biofuel production, and of food loss and food waste are now well-documented. ¹⁰ In more general terms, the consumption patterns and demands of the transnational elite, particularly those in high-consumption countries, impose significant hardships on both the environment and on the rights of those routinely marginalized in the global economy. The human rights framework, however, does not have a means of taking on demand side issues or addressing the consumer as a paramount actor in shaping food and land use policies.

And finally, the anthropocentric nature of human rights ironically limits the potential of the rights framework to serve human needs. ¹¹ The sustainable fulfillment of the right to food is, after all, predicate on our relationship with, and balance within, the ecosystem in which we live. The human rights framework, however, gives primacy to the rights of one species, creating an

subsidization of agricultural production in developed countries and their exports to developing countries." (Hoffmann, 2013, p. 13).

⁹ ICESCR, Art. 2(1). Though the ICESCR contains no jurisdictional clause, the ESCR Committee has taken a jurisdictional approach in defining ICESCR obligations (Narula, 2006).

¹⁰ An increased demand for biofuels and for more resource-intensive food by consumers in emerging market countries, for example, have been cited as drivers of so-called "land grabs" in the Global South (Narula, 2013, p. 109). See also De Schutter 2014.

¹¹ For a discussion of anthropocentrism in the context of environmental law, see Emmenegger and Tschentsher (1994).

imbalance as a starting point.¹² To the extent that the human rights framework does value non-human life and the natural world, it does so in instrumental rather than intrinsic terms.¹³

Moving forward

Movement on several fronts is needed in order to secure the normative and operative relevance of the right to food as a tool to help ensure sustainable and equitable access to food for all. To begin, governments the world over must be held to account by their own citizens for violations of the right to food. Despite increasing prominence of the right to food in policy frameworks, constitutions, and in intergovernmental fora, civil society at large has yet to fully embrace the right to food as part of its human rights culture and vernacular, and as a yardstick against which to measure states' performance.

In this regard, the right to food (and related economic and social rights) must become part of the human rights culture of powerful states in the Global North, including the United States and Canada, which continue to give primacy to civil and political rights (Orend, 2006; Lewis, 2009). This involves supporting and nurturing domestic efforts to "bring human rights home" and recast pressing domestic socio-economic concerns in human rights terms (Albisa, 2009) (as well as supporting related calls for universal ratification of the ICESCR).

Second, we must close accountability gaps under international law and clarify the human rights responsibilities and obligations of global economic actors. This includes continuing the important the work of articulating states' extraterritorial human rights obligations that takes into account the obligations of states to individuals outside their territory or jurisdiction (Langford et al., 2012), ¹⁴ including their responsibilities to regulate the foreign activities of domestically-based TNCs (Narula, 2012). Efforts to assign direct human rights responsibilities to non-state actors such as TNCs and other business enterprises, and to international financial institutions like the World Bank, must also move forward. ¹⁵

Third, and with the responsibilities and obligations of global economic actors in mind, much more needs to be done to end regime conflicts and ensure policy coherence between states' human rights obligations and their trade, investment, and debt-servicing obligations (Gonzalez, 2014; Yeshanew, 2014). Here, human rights advocates have a key role to play in underscoring

¹² As articulated in the Universal Declaration of the Rights of Mother Earth, "in an interdependent living community it is not possible to recognize the rights of only human beings without causing an imbalance within Mother Earth… to guarantee human rights it is necessary to recognize and defend the rights of Mother Earth and all beings in her...." The Declaration was adopted in 2010 in Bolivia at the World People's Conference on Climate Change and the Rights of Mother Earth. For more on the Declaration, see http://therightsofnature.org/universal-declaration/.
¹³ Put differently, the human rights framework values non-human life and the natural world primarily to the extent that they service human needs.

¹⁴ In this regard, see the *Maastricht Principles on Extraterritorial Obligations of States* and work of the "ETO Consortium" at http://www.etoconsortium.org/.

¹⁵ See, for example, initiatives to support the development of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights: www.treatymovement.com.

and promoting the responsibility of states and multi-lateral institutions to respect and protect the right to food (Lambek, 2014; Narula, 2006), including by ensuring that the rules of global economic governance neither conflict with nor trump states' paramount obligation to ensure human rights.

Fourth, and in order to support states' duties to facilitate the right to food, we need to fundamentally reevaluate an increasingly discredited philosophy: that large-scale industrialized agricultural production can ensure the food security needs of the planet in a sustainable and equitable way. The World Bank-led productivist paradigm essentially reduces the right to food to a production problem (as opposed to an access problem) and offers agricultural investment (through large-scale land transfers and industrialized agricultural production) as the primary solution (McMichael, this issue). Such an approach additionally assumes that the environmental risks and rights violations inherent in large-scale land transfers are necessary to service agricultural productivity and efficiency goals (Narula, 2013). These assumptions, and the policy prescriptions that flow therefrom, have already proved deeply problematic for rural communities in host countries.

Rather than proceeding with business as usual, we must instead support agrarian policies that favor agro-ecological practices and small-scale farming, including policies that redistribute land in favor of smallholder farmers (De Schutter, 2010a; De Schutter, 2010b; Rosset & Martinez-Torres, 2013). Such reforms will not only support environmental goals, but will also help ensure global food security for the simple reason a majority of those who are hungry today depend on small-scale agriculture. They are hungry because they do not receive a fair price for their crops and because they are cultivating plots of land that are too small, which makes them net food buyers (De Schutter, 2010a). These reforms also provide important opportunities to support the empowerment of women. Although women make up the majority of small farmers, they own less than 1 percent of land and face severe constraints in accessing credit and other resources (De Schutter, 2012). ¹⁸

Fifth, the language of human rights must be deployed and supplemented in a manner that *strengthens*, rather than undermines, people's access to and utilization of resources and means to ensure their livelihoods, including food security. In this regard, the food sovereignty and peasants' rights movements have emerged as formidable responses to the deficiencies in (and

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¹⁶ On this point, Philip McMichael—in the context of discussing food sovereignty as a strategic countermovement—points to "a continuing crisis accompanying the long-twentieth century food regime and its competitive assault on farming systems across the world. This assault, in the name of free trade, development and food security, has imposed a model of 'agriculture without farmers' in a world equating industrial efficiency with human progress." (McMichael, 2013, p.1).

¹⁷ A 2010 World Bank study of agricultural land investments found that many investments have "failed to live up to expectations and, instead of generating sustainable benefits, contributed to asset loss and left local people worse off than they would have been without the investment." (Deininger et al., 2010, p. 71).

¹⁸ For more on the linkages between gender discrimination and the right to food, see http://www.srfood.org/en/gender.

sometimes co-option of) the human rights frame. ¹⁹ These movements have, to date, worked to supplement rather than supplant the right to food framework. ²⁰ Proponents of the right to food, too, have laid considerable groundwork to connect peasants' rights and equitable land distribution with the right to food. ²¹ It remains to be seen whether these alliances will bear fruit and deliver meaningful policy reforms that give agenda-setting power to communities most affected by our global food system.

Finally, the roles and responsibilities of consumers—i.e., the demand side of world food system—must be brought into the mix. Here, much work needs to be done to connect the dots for the general public between consumption patterns and consumer demand on the one hand, and the dispossession of rural communities and exploitation of agricultural workers on the other. In addition, much more can and should be done to foster meaningful alliances between food (or I should say "foodie") movements in the Global North and food sovereignty struggles in the Global South. More fundamentally, even as we call for a paradigm shift from states and other global actors, we must be willing to make that shift ourselves. Specifically, we must begin to question, problematize, and alter our own consumption patterns.²²

To conclude, much progress has been made over the past decade to cement the right to food as both a legal entitlement and as a normative response to food-related crises. But as detailed above, ensuring the right to food is not a self-fulfilling prophecy; rather, it is rife with challenges. With concerted action on multiple fronts, the right to food framework does have the potential to support a major rethink of how we communicate and act on broad questions of hunger, food production, and land distribution, so long as the framework and its proponents can push beyond international human rights law's normative and practical constraints. And so long as we, as consumers, are ready to finally bring ourselves into the conversation.

Questions for future research:

• What kinds of strategies have proven most effective at generating political will and ensuring that states take steps to implement their right to food obligations? What are the

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¹⁹ As a policy paradigm, food sovereignty stands in distinction from "food security" and the "right to food," both of which are seen to have distinct and much narrower meanings (Windfuhr & Jonsén, 2005, p. 23). Peter Rosset argues that "[o]nly food sovereignty based on genuine agrarian reform, and the defense of land and territory against land graphing, offers a real alternative to the multiples crises we are facing." (Rosset, 2011, p. 28).

Priscilla Claeys, for example, explores how La Via Campesina, a transnational agrarian movement, "has worked towards institutionalizing new categories of rights, such as the 'right to food sovereignty' and the 'rights of peasants', thereby contributing to the creation of new human rights standards at the United Nations." (Claeys, 2014, p.1)

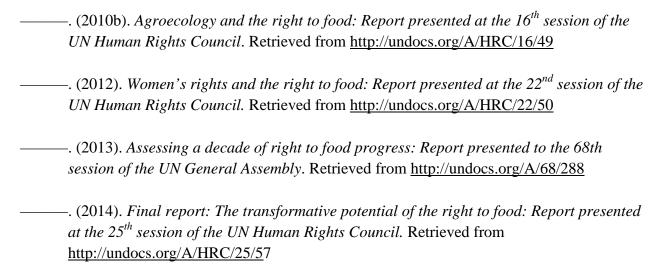
²¹ See, for example, the work of the non-governmental organization FIAN International (http://www.fian.org/what-we-do/issues/) and that of the former U.N. Special Rapporteur on the right to food, Olivier De Schutter, on the subject of land and peasants' rights: http://www.srfood.org/en/land-rights.

²² Lorenzo Cotula, in the context of discussing biofuel promotion policies, poignantly notes that "shifting energy sources in high-consumption countries is seen as politically more palatable than reducing consumption levels." (Cotula, 2012, p. 669).

- social, political and economic conditions in which these strategies resonate?
- In what specific ways does a state's right to food obligations inform its trade, agricultural, fiscal, environmental, public health and social welfare policies? And what policy reforms are needed at the international level to help ensure a state's authority and ability to regulate in these arenas?
- What kinds of research and advocacy tools are needed to help illuminate the social and ecological consequences of our consumer culture and our food consumption patterns? And how can we foster more meaningful alliances between consumer-led food movements in the Global North and peasant-led food sovereignty movements in the Global South?

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