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# A Gender Based Approach to the Right to Food

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## Abstract

The right to food is widely recognized in International Human Rights Law and it is considered one the main parameters for “an adequate standard of living”. Despite this, women correspond to 70% of the world’s hungry, being disproportionately affected by food insecurity. Using a legal methodic approach, one of the causes found for the gender-hunger problem relates to the failure of the international system to address it. The existence of a gap in International Human Rights Law when it comes to a concrete universally binding women’s right to food promotes the absence of worldwide gendered policies that address hunger in way that would make a difference for women, globally. Even when laws exist, their implementation might be blocked due to privateness of households in International Law and the food violences that happen inside them, making women eat last, less and more poorly than men. The same happens with property rights, a relevant element of food security. Women’s land rights are protected internationally and nationally, but gender biases and traditional values play a more significant role than the law itself in most of the rural communities where women are disproportionally food insecure, not allowing women to own or use land.

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## List of Abbreviations

CEDAW	The Convention on the Elimination of all Forms of Discrimination Against Women
ECOSOC	The United Nations Economic and Social Council
FAO	Food and Agriculture Organization of the United Nations
GC	General Comment
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
UDHR	The Universal Declaration of Human Rights

## 1 Introduction

It has been six years since the world committed itself to end hunger, all forms of malnutrition, and food insecurity.<sup>1</sup> However, as the 2020 UN Report *The State of Food Security and Nutrition in the World 2020* showed, hunger is rising.<sup>2</sup> We are back where we were a decade ago, and, tragically, more off-track to achieve the goal of “Zero Hunger” by 2030 than we have ever been in the past decade. The world is more prosperous than it has ever been, but more people are hungrier by the day.<sup>3</sup> Malnutrition, in its dual form of obesity and under-nutrition, continues to be one of the greatest global health concerns causing millions to die.<sup>4</sup> Just in 2019, around 688 million people were undernourished, which corresponds to 8.9 percent of the global population<sup>5</sup> and each year, from 2015 on, the number of people that face periods of acute hunger increases with more than 100 million.<sup>6</sup>

However, in the majority of cases of deaths related to famine since World War II, food has been available in the area.<sup>7</sup> People have died not from wanting food, but from wanting the entitlement to eat it.<sup>8</sup> The groups that are the most food and nutrition insecure compromise peasant farmers, small landholders, landless workers, fisherfolk, hunters and gatherers.<sup>9</sup> And women and girls are a transversal category to all of them.

Women’s vulnerability is evident in the hunger crisis. It has been evident since the global food production crisis in 2008, when the decrease in cereal production made

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<sup>1</sup> Food and Agriculture Organization of United Nations and others, *The State of Food Security and Nutrition in the World 2020: Transforming food systems for affordable healthy diets* (FAO, IFAD, UNICEF, WFP and WHO 2020) <<http://www.fao.org/documents/card/en/c/ca9692en>> accessed 26 February 2021.

<sup>2</sup> *ibid* 33.

<sup>3</sup> George Kent, *Freedom from Want | the Human Right to Adequate Food* (Georgetown University Press Washington 2005).

<sup>4</sup> World Health Organization, ‘The Double Burden of Malnutrition: Policy Brief’ (World Health Organization 2016) WHO/NMH/NHD/17.3.

<sup>5</sup> Food and Agriculture Organization of the United Nations, *The State of Food and Agriculture 2019: Moving Forward on Food Loss and Waste Reduction*. (2019) 6.

<sup>6</sup> Food and Agriculture Organization and others, *The State of Food Security and Nutrition in the World 2019: Safeguarding against Economic Slowdowns and Downturns* (2019) 30; Food and Agriculture Organization of United Nations and others (n 1) 33; Hélène Botreau and Marc J Cohen, ‘Gender Inequalities and Food Insecurity: Ten Years after the Food Price Crisis, Why Are Women Farmers Still Food-Insecure?’ 60, 42.

<sup>7</sup> Rajeev C Patel, ‘Food Sovereignty: Power, Gender, and the Right to Food’ (2012) 9 PLoS Medicine 4, 1.

<sup>8</sup> Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford University Press 1981).

<sup>9</sup> Human Rights Council (HRC), ‘Preliminary Study of the Human Rights Council Advisory Committee on Discrimination in the Context of the Right to Food’ (2010) UN Doc A/HRC/13/32.

agricultural prices rise, having a domino effect across food markets prices.<sup>10</sup> It was evident then when women<sup>11</sup> were overrepresented as victims of the right to food, facing more violations regarding to this right than men in 2008.<sup>12</sup> And it is still evident now when women account for 70% of the world's hungry<sup>13</sup>, while paradoxically, cultivating half of the world's food.<sup>14</sup> And it will still be evident, once more, when they are the most affected by climate change and new threats that it brings to food security and health.<sup>15</sup> Even if the food crisis of the past three years is not a production crisis, as it was back in 2008, it is still a crisis that is and will make disproportionately women food vulnerable. Women are food vulnerable irrespective of whether the food stresses are linked to production, as it was in 2008, or whether they are linked to prices and access to markets,<sup>16</sup> because they are poorer than men.<sup>17</sup>

It does not matter whether the problem lies in the stages of food production and consumption, the gender gap in accessing food is unavoidable and intrinsic to the hunger problem. According to the Food and Agriculture Organization of the United Nations (FAO): “Women are slightly more likely to be food insecure than men in every region of the world”<sup>18</sup>. At the global level, their levels of suffering from food insecurity in severe levels are higher than men's levels.<sup>19</sup> This gender gap in accessing food is undoubtedly based on structural violences, deep buried in our societies and social systems, making women invisible in decision-making processes and making them not being seen as individual rights-holders. It is hard to envisage a discussion about hunger without

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<sup>10</sup> ‘Regards Croisés : L’Afrique de l’Ouest a-t-elle les moyens de répondre à la prochaine crise alimentaire ? - Inter-réseaux’ (<https://www.inter-reseaux.org/>) <<https://www.inter-reseaux.org/en/publication/n76-dix-ans-apres-2008-lafrique-de-louest-est-elle-mieux-preparee-face-aux-crisis-alimentaires/regards-croises-lafrique-de-louest-a-t-elle-les-moyens-de-repondre-a-la-prochaine-crise-alimentaire/>> accessed 28 May 2021.

<sup>11</sup> Olivier de Schutter, *Gender Equality and Food Security: Women's Empowerment as a Tool against Hunger* (Asian Development Bank 2013) 12; Sophia Murphy and Christina M Schiavoni, ‘Ten Years After The World Food Crisis: Taking Up The Challenge Of The Right To Food’ [2017] *The World Food Crisis: The Way Out* 12, 22.

<sup>12</sup> UN Millennium Project, *Halving Hunger: It Can Be Done* (2005) fig 1.1.

<sup>13</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on the Right to Food’ (2015) UN Doc A/HRC/31/51 para 4.

<sup>14</sup> UN Human Rights Council, ‘Study of the Human Rights Council Advisory Committee on Discrimination in the Context of the Right to Food’ (2011) UN Doc A/HRC/16/40 para 29.

<sup>15</sup> Climate can affect health via exposition to vector-borne diseases and heat stress. See: Bruce M Campbell and others, ‘Reducing Risks to Food Security from Climate Change’ (2016) 11 *Global Food Security* 34, 37.

<sup>16</sup> ‘Regards Croisés : L’Afrique de l’Ouest a-t-elle les moyens de répondre à la prochaine crise alimentaire ? - Inter-réseaux’ (n 10).

<sup>17</sup> Schutter (n 11) 12; Botreau and Cohen (n 6) 43.

<sup>18</sup> Food and Agriculture Organization of United Nations and others, *The State of Food Security and Nutrition in the World 2017: Building Resilience for Food and Food Security* (FAO 2017) 11.

<sup>19</sup> Food and Agriculture Organization of United Nations and others (n 1) 33.

connecting it to women's disempowerment.<sup>20</sup> Such gender disparity when it comes to the right to food, brings to light the existent discrimination women face regarding not only to this right, through their entire lives, but also regarding access to land and property<sup>21</sup>, and how those two variables might be connected.

It is therefore very clear, that despite the protection that women and girls receive through a wide range of international human rights instruments<sup>22</sup> and international policies, it is not enough. Governments are simply not complying with their international obligations to protect women from discrimination,<sup>23</sup> and policies worldwide are not being able to put food on women's plates.

Hunger is majorly female<sup>24</sup> and gender inequality is its major cause and effect, in a vicious cycle.<sup>25</sup> The Food and Agriculture Organization itself has stated, "More often than not, the face of malnutrition is female."<sup>26</sup> The only way for the world to achieve its ambitious goal of Zero Hunger is to stop turning a blind eye to structural violences and gender discrimination women face regarding their right to food. As the World Food Programme Executive Director, Josette Sheeran, has rightfully said "Breaking the cycle of hunger and poverty at its roots begins with women".<sup>27</sup>

## 1.1 Research Question and Limitations

The main purpose of this thesis is to highlight the gap between the formal legal provisions of the international human right to food and the realities that women around the world face in their day to day lives. It intends to show that the problem around women

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<sup>20</sup> Patel (n 7) 2.

<sup>21</sup> Food and Agriculture Organization of United Nations, *Women in Agriculture: Closing the Gender Gap for Development* (FAO 2011) 6.

<sup>22</sup> World Food Programme, 'WFP Gender Policy: Promoting Gender Equality and the Empowerment of Women in Addressing Food and Nutrition Challenges' (2009) 3.

<sup>23</sup> UN Human Rights Council (n 5) para 31.

<sup>24</sup> Food and Agriculture Organization of United Nations, 'Gender and Nutrition' 2.

<sup>25</sup> Priscilla Claeys and others, *Gender, Nutrition and the Human Right to Adequate Food: Toward an Inclusive Framework* (Routledge 2016).

<sup>26</sup> Food and Agriculture Organization of United Nations, 'Gender and Nutrition' (n 24).

<sup>27</sup> World Food Programme (n 22) 3.



and food is a problem of entitlement, since there is enough food for women, but it is not accessible and available to them.

The underlying reason for engaging with this thesis is to understand “*Why women are so disproportionately food insecure?*” And this thesis wishes to contribute to this discussion by analyzing the international human rights law aspect of this question.

More concretely the thesis will explore the following questions:

- 1) How does International Human Rights Law protect the right to food and the principle of non-discrimination?
- 2) What is the special protection women enjoy as part of the right to food?
- 3) How does the privateness of households and lack of property rights influence women’s food insecurity?

In order to answer the questions, this thesis will follow the subsequent structure. First, it will analyze in depth the legal framework of the right to food in International Human Rights Law as well as the elaboration of its normative content. The goal is to explore how Human Rights Law deals with the question of the right to food. Then it will analyze the principle of non-discrimination, including discrimination in regards to economic, social and cultural rights. The third chapter is the main core of this thesis, where the concepts previously explored will be combined with the gender variable, adopting “a gender-based approach to the right to food”. In order to do that, women’s food insecurity will be explained in detail, as will some of its reasons. Further, it will be argued that there is not a universal provision that states women’s rights to food in International Human Rights Law, upon close analysis of the relevant treaties. And as of consensus of the literature cited, the two main and most important systemic issues that contribute to women’s food insecurity will be scrutinized: the privateness of households and of what happens inside them, as well as women’s lack of property rights. With certainty, there are many more reasons for women’s food insecurity, but this thesis will only explore these two issues as they are the two most important ones identified in literature.

The focus of this thesis will only be on Human Rights Law and how it manages to address causes of women’s food insecurity. It does not aim to explore the efficacy of the States implementation of International Human Rights Law when it comes to the right

to food and women, neither does it aim to have all the answers for women's food insecurity. It also does not aim to provide recommendations or solutions, simply to bring awareness to the problem of women's lack of entitlement to eat and how it is enabled by the current legal framework.

## 1.2 Methodology

A legal dogmatic method will be applied in order to answer the above asked research questions. The material which will be used in this thesis will follow the sources of international law as set up in the International Court of Justice's statute art.38. The International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and The Universal Declaration of Human Rights (UDHR) will be used as primary sources for the analysis. Further, General Recommendations and Comments, declarations, and resolutions stemming from above mentioned convention's committees or working groups will be applied as interpretative guidance. General Comments and Recommendations are expert interpretations made by each of the Treaties committees, and their aim is to clarify the treaty bodies' own understanding of the rights and obligations stated in treaties or covenants.<sup>28</sup> They are considered authoritative interpretations of the conventions and have great importance.

Additionally, academic literature regarding the international law stemming from these conventions, the topic of food insecurity and women will also be referenced, along with literature from the field of gender studies regarding the subject. Reports and studies published by international organizations such as the UN, the FAO, and the World Bank will also be included in the examination of the subject. Furthermore, in the last Chapter of this thesis anthropological studies done around the world throughout the years will be used to show the extent of the discrimination women face when it comes to their right to food, the connection between food and the privateness of households as well as their lack of property rights.

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<sup>28</sup> Wenche Barth Eide and Uwe Kratcht, *Food and Human Rights in Development - Volume I*, vol I (1st edition, Intersentia 2005) 105.

## 2 The Right to adequate food in International Law and the Principle of Non-discrimination

The right to food is a human right that protects the right of all human beings to live in dignity, free from hunger,<sup>29</sup> food insecurity<sup>30</sup> and malnutrition.<sup>31</sup> It has been defined by the Special Rapporteur as: “the 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”.<sup>32</sup>

The birth of right to food is considered to be Franklin Roosevelt’s famous “Four Freedoms”<sup>33</sup> speech in 1941, by the majority of the descriptions of the right to food history.<sup>34</sup> The speech looked forward to a world founded upon four essential human freedoms: freedom of expression; freedom of worship; freedom from want; and freedom from fear.<sup>35</sup> The speech defined the idea of an indivisible and global system of civil and political, economic and social rights.<sup>36</sup> Freedom from want encompasses today what is the human right to adequate food. Access to adequate food is not simply a humanitarian ideal but is also a human right<sup>37</sup> with corresponding legal obligations outlined in international and regional legal frameworks.<sup>38</sup> The right to food includes several other rights in itself. It includes the rights of vulnerable and discriminated groups to have access

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<sup>29</sup> Jean Ziegler, ‘What Is the Right to Food? | Right to Food’ (2012) <<http://www.righttofood.org/work-of-jean-ziegler-at-the-un/what-is-the-right-to-food/>> accessed 5 July 2021.

<sup>30</sup> The concept of “food security” will be explored in a subsection below.

<sup>31</sup> Frison Christine and Priscilla Claeys, ‘The Right to Food in International Law’ (2014) 1617.

<sup>32</sup> Jean Ziegler, ‘Report of the Special Rapporteur on the Right to Food, Jean Ziegler’ para 17 <<http://digitallibrary.un.org/record/616943>> accessed 2 March 2021.

<sup>33</sup> Asbjørn Eide, ‘The Human Right to Adequate Food and Freedom from Hunger’, *The Right to Food in Theory and Practice* (Food and Agriculture Organization of the United Nations 1998) 1; Kent (n 3).

<sup>34</sup> Christine and Claeys (n 31).

<sup>35</sup> Franklin D. Roosevelt Presidential Library and Museum, ‘FDR and the Four Freedoms Speech - FDR Presidential Library & Museum’ <<https://www.fdrlibrary.org/four-freedoms>> accessed 2 March 2021.

<sup>36</sup> Franklin D. Roosevelt Presidential Library and Museum, ‘FDR and the Four Freedoms Speech - FDR Presidential Library & Museum’ <<https://www.fdrlibrary.org/four-freedoms>> accessed 2 March 2021.

<sup>37</sup> The legal framework of this right will be explored in the detailed below.

<sup>38</sup> Preetha Palasuberniam, ‘Freedoms of Access to Food Exploring the Right to Adequate Food through the Capabilities Approach’ (European Master’s Degree in Human Rights and Democratisation 2017) 5.

to land, seeds, credit, technology, local markets in rural areas, and a sufficient income.<sup>39</sup> Ultimately, the right to food is the right to “be able to feed oneself with dignity”.<sup>40</sup>

## 2.1 The right to food and legal framework

The right to adequate food is a complex right that is widely recognized in international law.<sup>41</sup> In the Universal Declaration of Human Rights, it is stated as part of the right to an adequate standard of life, in Article 25: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.<sup>42</sup>

The right to food is also recognized in Article 11 of the 1976 International Covenant on Economic, Social and Cultural Rights (ICESCR), whose drafting the Food and Agriculture Organization of the United Nations (FAO) actively participated in.<sup>43</sup> Number two of the Article is of exceptional importance since it addresses the negative right to freedom from hunger. Article 11 states:

- “1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through

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<sup>39</sup> Human Rights Council (HRC), ‘Preliminary Study of the Human Rights Council Advisory Committee on Discrimination in the Context of the Right to Food’ (n 9) para 5.

<sup>40</sup> *ibid.*

<sup>41</sup> Eide and Kratcht (n 28) 99; Christine Chinkin and Shelley Wright, ‘The Hunger Trap: Women, Food, and Self-Determination’ (1993) 14 *Michigan Journal of International Law* 262, 287.

<sup>42</sup> ‘Universal Declaration of Human Rights’ (1948) UNGA Res 217 A(III) (UDHR) Article 25.

<sup>43</sup> Asbjørn Eide and United Nations University (eds), *Food as a Human Right* (United Nations University 1984).

international co-operation, the measures, including specific programs, 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-exporting countries, to ensure an equitable distribution of world food supplies in relation to need".<sup>44</sup>

As it is defined, despite the progressive realization of the right to food, article 11(2) above sets a minimum core<sup>45</sup> of the right to food as *the fundamental right of everyone to be free from hunger*. In paragraphs 1 and 2, article 11 refers separately to two separate concepts: the right to an adequate standard of living and the right to freedom from hunger. The standards are not the same. Just ensuring freedom from hunger, by providing a minimum standard of food might not constitute an adequate standard of living.<sup>46</sup> The concept "and adequate standards of living" has not been defined and different people in different societal contexts may have diverse views on what exactly an adequate standard of living means. On the opposite, "an adequate supply of food" has been defined. And it has been defined as "enough food to facilitate a normal active existence rather than a minimum calorific package which does no more than prevent death by starvation".<sup>47</sup>

Additionally, and important to the present analysis, both the the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the 1989 Convention on the Rights of the Child (CRC), mention the right to food. The CRC

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<sup>44</sup> 'International Covenant on Economic, Social and Cultural Rights' (1966) General Assembly resolution 2200A (XXI) <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>> accessed 2 March 2021.

<sup>45</sup> Minimum core obligations help with prioritization when the resources are scarce so that states may still comply with their human rights obligations. They address the problem of how to prioritize compliance with human rights obligations by setting a minimum standard that applies to all states, notwithstanding of differences among them. The content of a minimum core obligation is itself complex is to be determined by a process that involves a lot considerations. For more information about the subject and how to access what obligations might be minimum core ones, please read: Professor John Tasioulas, 'Minimum Core Obligations: Human Rights in the Here and Now' 44.

<sup>46</sup> Chinkin and Wright (n 41).

<sup>47</sup> Philip Alston, 'International Law and the Right to Food', *Food as a human right* (The United Nations University 1984) 167.

mentions food and nutrition rights in its Articles 24(1) and 24(2)(c), in the context of the “right of the child to the enjoyment of the highest attainable standard of health” linking the right to food, health and nutrition together. Nutrition is again mentioned in Article 27(3). As for CEDAW, it mentions the right to “adequate nutrition during pregnancy and lactation” in Article 12(2). Both these conventions will be explored further below.

This right is also recognized in other international Conventions,<sup>48</sup> regional instruments,<sup>49</sup> and at the national level.<sup>50</sup> As with any human right, the right to food can only be realized and enforced as a right if it is legally protected. Despite this, the rule of law continues to be evasive in many countries throughout the world. While we can see an improvement when it comes to the recognition of the right to food as a constitutional right at the national level<sup>51</sup>, for this legislation to be successful it is important for governments to focus on an implementation process that involves all stakeholders. Not only governments, but also judges, lawyers and civil society.<sup>52</sup>

## 2.2 Difference between food security and food sovereignty

As it is also indispensable to this analysis, one needs to distinguish between the right to food from the two concepts of “food security” and “food sovereignty”.

In the 1996 World Food Summit, food security was defined as “Food security exists when all people, at all times, have physical and economic access to sufficient, safe and

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<sup>48</sup> Such as the Convention on the Rights of Persons with Disabilities (Art. 25(f) and 28(1)).

<sup>49</sup> The right to food is protected in Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights in Article 12, known as the Protocol of San Salvador (1988); the African Charter on the Rights and Welfare of the Child, in Article 14 (1990) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa in Article 15 (2003).

<sup>50</sup> According to FAO, as of 2010, 56 constitutions protected the right to food, either implicitly or explicitly as a justiciable right. See: Lidiya Knuth and Margret Vidar, ‘Constitutional and Legal Protection of the Right to Food around the World’ (Food and Agriculture Organization of the United Nations 2010) 22.

<sup>51</sup> In 2003, a FAO study had declared: “very few countries have taken the legislative steps regarding the right to food beyond simple constitutional provisions”. In 2010, as mentioned, only 56 constitutions provided legal protection to this right. The situation is however better than it seems just from simply counting the numbers of explicit mentions of the right to food in constitutions. This has to do with the direct applicability of international treaties. Because of it the right to food is directly applicable in at least other 51 countries, reaching a total of 106 countries, and making the situation better than one would at first assume. See: FAO, *The State of Food Insecurity in the World 2003: Monitoring Progress towards the World Food Summit and Millennium Development Goals* (FAO 2003); Knuth and Vidar (n 50) 22; Food and Agriculture Organization of United Nations, ‘Right to Adequate Food in Constitutions’ (2019) 1.

<sup>52</sup> Knuth and Vidar (n 50) 22.

nutritious food to meet their dietary needs and food preferences for an active and healthy life.”<sup>53</sup> There are four main dimensions of the term food security that can be identified from this definition: availability, accessibility, utilization, and stability.<sup>54</sup>

Food availability addresses the “supply side”<sup>55</sup> of food security and is determined by the levels of food production, the quantity of food kept in shops and businesses and the net trade of food. It refers to the physical availability of food, if people can have physical adequate food ready at their disposal.<sup>56</sup>

Food accessibility has to do with economic and physical factors. It has to do with making sure households are actually able to acquire the food.<sup>57</sup> Food is accessible when all households and all individuals within those households have sufficient resources to obtain appropriate foods for a nutritious, diverse diet.<sup>58</sup> The methods through which people obtain food can vary from production, purchase to donation.<sup>59</sup> What matters is that people are able to obtain the food. Policies focused on incomes, spending habits and market prices have been created as a result of concerns about insufficient food access, so that food security objectives can be met.<sup>60</sup>

Food utilization has to do with the whole process of consuming food and turning it into energy through its nutrients, starting from food preparation. It refers to the ability of the human body to eat and digest food.<sup>61</sup> Individuals have sufficient energy and nutrient intake when they have good eating behavior, a diverse nutritious diet and equal intra-household distribution of food.

The stability dimension does not mean anything by itself but has a direct correlation to how stable the other three dimensions are throughout time. Someone is considered to be food insecure if, from time to time, they have inadequate access to food, risking a decline of their nutritional status, or if periodically food is not available for

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<sup>53</sup> World Food Summit, ‘Rome Declaration and Plan of Action’ (1996) para 1 <<http://www.fao.org/3/w3613e/w3613e00.htm>> accessed 2 March 2021.

<sup>54</sup> Food and Agriculture Organization of United Nations, ‘An Introduction to the Basic Concepts of Food Security’.

<sup>55</sup> Rainer Gross and others, ‘The Four Dimensions of Food and Nutrition Security: Definitions and Concepts’ 17, 5; Food and Agriculture Organization of United Nations, ‘An Introduction to the Basic Concepts of Food Security’ (n 54).

<sup>56</sup> Gross and others (n 55) 5; Food and Agriculture Organization of United Nations, ‘An Introduction to the Basic Concepts of Food Security’ (n 54).

<sup>57</sup> Food and Agriculture Organization of United Nations, ‘An Introduction to the Basic Concepts of Food Security’ (n 54).

<sup>58</sup> Gross and others (n 55).

<sup>59</sup> *ibid.*

<sup>60</sup> Food and Agriculture Organization of United Nations, ‘An Introduction to the Basic Concepts of Food Security’ (n 54).

<sup>61</sup> Gross and others (n 55) 5.

them.<sup>62</sup> Several factors can have an impact on people's food security status, including adverse weather conditions, political instability, unemployment, or the rise in food prices.

The term "food security" is most widely used in global debates about hunger and nutrition, development organizations, UN agencies<sup>63</sup>, and governments around the world.<sup>64</sup>

"Food sovereignty" was a concept originally created in 1996 by La Vía Campesina, or the International Peasant's Movement, a transnational social movement of peasant and indigenous organizations. They were responsible for bringing, for the first time, food sovereignty into public debate.<sup>65</sup> The most representative definition of "food sovereignty" in this century was provided in the 2007 Declaration of Nyéléni<sup>66</sup> as "the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems".<sup>67</sup> It is defined as a right because the organizers of the World Forum for Food Sovereignty believed that the United Nations should adapt the right to food to include autonomy. They believed that one should have a say in their relationship with food.<sup>68</sup> People should have a saying on how the food is produced, acquired, and distributed, as well as other processes of agriculture and food markets. The organizers of the World Forum for Food Sovereignty believed that the right to food should put the people that produce, distribute and consume the food at the heart of food systems and policies, instead of the demands made by markets and businesses.<sup>69</sup>

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<sup>62</sup> Food and Agriculture Organization of United Nations, 'An Introduction to the Basic Concepts of Food Security' (n 54).

<sup>63</sup> As an example "The State of Food Security and Nutrition in the World" is an annual flagship report jointly prepared by FAO, IFAD, UNICEF, WFP and WHO to inform on progress towards ending hunger, achieving food security and improving nutrition. For more information about 2020 Report visit: 'The State of Food Security and Nutrition in the World (SOFI) Report 2020 | World Food Programme' <<https://www.wfp.org/publications/state-food-security-and-nutrition-world-sofi-report-2020>> accessed 1 June 2021.

<sup>64</sup> Christine and Claeys (n 31) 1619.

<sup>65</sup> Vía Campesina, 'The Right to Produce and Access to Land. Food Sovereignty: A Future without Hunger' (1996).

<sup>66</sup> This Declaration was the result of the World Forum for Food Sovereignty in 2007, when a group composed of Friends of the Earth International, Via Campesina, the World March of Women, ROPPA, WFF and WFFP came together with 500 delegates from the five continents and met in Mali in February 2007. All sectors of society that had an interest in agricultural and food issues were represented in the World Forum for Food Sovereignty. The event was an opportunity to reaffirm the right to food sovereignty and it endeavored to create an international process whose aim was to achieve recognition of the right to food sovereignty.

<sup>67</sup> World Forum for Food Sovereignty, 'Declaration of Nyéléni' (2007) para 3.

<sup>68</sup> 'Food Security vs. Food Sovereignty – NYU Gallatin Global Fellowship in Human Rights Blog' <[https://wp.nyu.edu/gallatin\\_human\\_rights\\_fellows/2018/09/26/food-security-vs-food-sovereignty/](https://wp.nyu.edu/gallatin_human_rights_fellows/2018/09/26/food-security-vs-food-sovereignty/)> accessed 3 March 2021.

<sup>69</sup> World Forum for Food Sovereignty (n 67) para 3.



Food sovereignty more fully embodies the right to food because it adds a human dimension to food security.<sup>70</sup> This is why “food sovereignty” is generally described as a rights-based concept. It includes not only the right to food but also associated rights, such as right to produce food, the right to land, the right to resources and the right to live with dignity.<sup>71</sup> This concept has become a major subject of the international agricultural debate, including within the United Nations bodies. “Food sovereignty” was the main theme of the NGO forum in June 2002, held in parallel to the FAO World Food Summit 2002.<sup>72</sup> Additionally, a large number of actors, including governments, have integrated this concept into their terminology and have contributed to its development.<sup>73</sup>

## 2.3 Normative Elaboration of the Right to Food

Following its international recognition, the right to food underwent a period of extreme conceptual elaboration.<sup>74</sup> In order to advance the right to adequate food as a human right, there have been efforts, over the last quarter of a century, to give this right a sufficiently precise meaning. Only with a precise meaning could the identification of the state’s obligations become clearer, both in legal and in development areas.<sup>75</sup> This legal transformation ranged from 1976<sup>76</sup>, when the International Covenant on Economic Social and Cultural Rights entered into force, to 2004 with the adoption of the “Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security”.

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<sup>70</sup> ‘Food Security vs. Food Sovereignty – NYU Gallatin Global Fellowship in Human Rights Blog’ (n 68).

<sup>71</sup> Priscilla Claeys, ‘The Creation of New Rights by the Food Sovereignty Movement: The Challenge of Institutionalizing Subversion’ (2012) 46 *Sociology* 844.

<sup>72</sup> ‘Food Sovereignty: Via Campesina’ (*Via Campesina English*, 15 January 2003) <<https://viacampesina.org/en/food-sovereignty/>> accessed 3 March 2021.

<sup>73</sup> Christine and Claeys (n 31) 1619.

<sup>74</sup> Kent (n 3) 50.

<sup>75</sup> Eide and Kracht (n 28) 67.

<sup>76</sup> The first proclamation that freedom from hunger was a fundamental right actually happened before 1974. It happened on March 14<sup>th</sup>, 1963 when there was a Special Assembly on Man’s Right to Freedom from Hunger, in Rome, where a Manifesto was issued. However, the idea was not elaborated. See: Kent (n 3) 50; ‘Unasylva - No. 69 - Freedom from Hunger Campaign’ <<http://www.fao.org/3/f3200e/f3200e01.htm>> accessed 24 February 2021.

During those years, numerous conferences and non-binding international declarations and resolutions took place and helped shaping the emerging international consensus on norms regarding to the right to food.<sup>77</sup> In 1974, as a response to the world food crisis, FAO organized the World Food Conference, and it issued the Universal Declaration on the Eradication of Hunger and Malnutrition. The Declaration stated that “every man, women and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties”<sup>78</sup> The Declaration also recommended the creation of a Committee on World Food Security under FAO.<sup>79</sup> That declaration was later endorsed by the United Nations General Assembly in Resolution 3348 of December 17, 1974.

Within the United Nations, a large number of developments on the right to food took place from 1974 onwards. In 1979, the U.N. Economic and Social Council (ECOSOC) began monitoring the right to food. In 1983, Asbjørn Eide was named Special Rapporteur on the Right to Food, and ECOSOC commissioned a report on food as a human right, which began the process of adding clarifications to this right.<sup>80</sup> He proposed that state obligations for implementing the right to food should be arranged in the “tripartite classification” of state obligations created by Henry Shue.<sup>81</sup> The three levels of state intervention are: at the level of *respecting* the right, at the level of *protecting* the right, and, finally, at the level of assisting in *fulfilling* it.<sup>82</sup>

In November 1984, the World Food Assembly met in Rome. Its main purpose was to note that the goal of the previous 1974 World Food Conference of “within a decade no child will go to bed hungry”<sup>83</sup> had not been fulfilled. It was stated, “the hungry millions are being denied the most basic human right – the right to food”. In the following year, at the UN level, the Committee on Economic, Social, and Cultural Rights (CESCR), which is composed of independent experts all elected by states parties, was established with the aim to receive country reports and monitor progress on implementing the ICESCR, making it possible to enforce the Convention in the state parties, including its Article 11.

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<sup>77</sup> Kent (n 3) 50.

<sup>78</sup> ‘Universal Declaration on the Eradication of Hunger and Malnutrition’ (1974) UNGA Res 3348.

<sup>79</sup> *ibid* 12; Eide and Kracht (n 28) 70.

<sup>80</sup> Christine and Claeys (n 31) 1620.

<sup>81</sup> The named ‘tripartite classification’ of state obligations, “to respect”, “to protect”, “to fulfil”, was first created by Henry Shue, in his book “Basic Rights”. See: Henry Shue, *Basic Rights: Subsistence, Affluence and U.S Foreign Policy* (Princeton University Press 1980).

<sup>82</sup> Eide and United Nations University (n 43).

<sup>83</sup> ‘Report of the World Food Conference, Rome, 5-16 November 1974’ (UN, 1975) 10 <<http://digitallibrary.un.org/record/701143>> accessed 3 March 2021.

Other developments also happened in NGO field, with a lot of them being established in the early 1980s.<sup>84</sup> One example is the foundation of Food First Information and Action Network (FIAN) in 1982, whose members fundamentally contributed to the conceptual debates about the right to food that took place at the UN. To this day, the organization claims that this right has to be interpreted and implemented as the *right to feed oneself*.<sup>85</sup>

The Second World Conference on Human Rights held in Vienna in 1993 could not go unmentioned. It addressed many aspects of economic, social and cultural rights, as well as civil and political rights, even if it did not treat any of them in specific with depth.<sup>86</sup> What it did, was unequivocally establish that “all human rights are universal, indivisible, interdependent and interrelated”<sup>87</sup> and that those rights should be treated equally and with the same emphasis. It reaffirmed the indivisible nature of human rights and rejected the idea of a rank order approach to their realization.<sup>88</sup>

Developments were also made regarding to right to nutrition and nutritious food. An International Conference on Nutrition, organized by the FAO and the World Health Organization was held in Rome in December 1992, which resulted in the World Declaration on Nutrition. The present nations agreed that “access to nutritionally adequate food is a right of each individual. We recognize that globally there is enough food for all, and that inequitable access is the main problem”.<sup>89</sup> The conference also endorsed the nutrition goals of ending famine and the deaths related to it, as well as ending starvation and diseases related nutritional deficiency in communities affected by disasters.<sup>90</sup> Children’s nutrition and its importance were also included in the public sphere. In May 1996, the World Health Assembly passed a resolution on Infant and Young Child Nutrition, addressing the importance of breast-feeding.<sup>91</sup>

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<sup>84</sup> Other examples in the realm of Economic, Social and Cultural rights include: the establishment of Habitat International Coalition (HIC) in 1987; the Centre on Housing Rights and Evictions (COHRE) in 1992, and the Center for Economic and Social Rights (CESR) in 1993.

<sup>85</sup> Rolf Künemann and others, *The Right to Food: A Resource Manual for NGO’s* (American Association for the Advancement of Science, Science and Human Rights Programme 2004) 4.

<sup>86</sup> Eide and Kratcht (n 28) 82.

<sup>87</sup> The World Conference on Human Rights, ‘Vienna Declaration and Programme of Action’ (1993) para 5 Part I.

<sup>88</sup> Anne C Bellows, María Daniela Núñez Burbano Lara and Roseane do Socorro Gonçalves Viana, ‘Chapter 1: The Evolving Nature of the Human Rights System and the Development of the Right to Adequate Food and Nutrition Concept’, *Gender, Nutrition, and the Human Right to Adequate Food* (Routledge 2016) 1.

<sup>89</sup> International Conference on Nutrition, ‘World Declaration and Plan of Action for Nutrition’ (1992) para 1.

<sup>90</sup> *ibid* 19.

<sup>91</sup> World Health Assembly, ‘Resolution on Infant and Young Child Nutrition’ (1996) WHA49.15.

In November 1996, the World Food Summit gathered in Rome, reaffirming the “the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger”<sup>92</sup>. It was in this Summit that governments around the world requested a more concrete and operational content for the right to food, due to the pressure they were feeling from civil society organizations. As a consequence, objective 7.4 was established<sup>93</sup> and several different initiatives took place to comply with it, especially at the UN level. There were supportive resolutions issued from the Commission on Human Rights<sup>94</sup> and Expert Consultations held in Rome, Geneva and Bonn on the human right to adequate food.<sup>95</sup>

Finally, in 1999, the Committee on Economic Social and Cultural rights released the landmark “General Comment 12”<sup>96</sup>, which provided a better understanding of the right to food and whose content will be analyzed below. All these legal efforts were given further impulse at the Millennium Summit of the United Nations in 2000, and some years ago by the Sustainable Development Goals. Both milestones were and are led by goal I: to eradicate extreme poverty and hunger.

## 2.4 General Comment 12

As stated above, General Comment No.12 (GC12) was adopted in 1999 by the Committee on Economic, Social and Cultural Rights (CESCR). GC12 was a landmark document since it helped to define the normative content of the right to food, its core, and how states could implement the right to food within their borders.

In its paragraph 6, it defines right to food as: “The *right to adequate food* is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.” This definition clearly draws inspiration from the commonly used definition of “food

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<sup>92</sup> World Food Summit (n 53) Preamble.

<sup>93</sup> *ibid* 65.

<sup>94</sup> Such as Resolution 1997/8, ESCOR Supp. (No. 3) at 58, U.N. Doc. E/CN.4/1997/8

<sup>95</sup> Commission on Human Rights, ‘The Right to Food Report on the Third Expert Consultation on the Right to Food’ (2001) UN Doc E/CN.4/2001/148 para 1 <<http://digitallibrary.un.org/record/436531>> accessed 4 March 2021.

<sup>96</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 12: The Right to Adequate Food (Art. 11)’ (1999) UN Doc E/C.12/1999/5.

security” expressed above.<sup>97</sup> This paragraph also emphasizes that “The *right to adequate food* shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.” In other words, simply delivering pre-packaged meals, or meals without the necessary nutrients for survival, cannot fulfill the right. It could be used as a short-term approach to an emergency, but not on the long term, since it would be incompatible with human dignity.<sup>98</sup>

In its paragraph 8, it helped to define the core content of the right to food, which can be described by three key concepts – *adequacy*, *availability* and *accessibility*.<sup>99</sup> These terms are built on the four dimensions of food security discussed above.

If on one hand, adequacy refers to the quality, nutritional and cultural value of the food consumed, on the other hand, accessibility and availability address the means by which food is acquired.

*Adequacy* means that the food must satisfy dietary needs. Adequate food is highly subjective, since dietary needs change from person to person. Several factors have to be taken into account into deciding an individual’s dietary needs such as the their age, their living conditions, their religion, their health, their occupation, their sex, and other relevant factors that play a role in their life. This means that the food that is adequate for a baby is likely not adequate for an adult man. Adequate food might mean different things for a Christian and a Jewish, where religion may dictate what foods can be and cannot be eaten. Adequate food should also be culturally acceptable<sup>100</sup> and safe for human consumption. It should be free from hostile substances, such as contaminants resulting from industrial processes, including residues from hormones and pesticides.<sup>101</sup> The diet as a whole should contain a mixture of nutrients that capacitate for mental and physical growth throughout all stages of life.<sup>102</sup>

*Availability* requires that, food should either be available from natural resources, such as through land agriculture, animal farming, fishing and hunting, or food should be available through sales in markets and shops where demand exist for them.<sup>103</sup>

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<sup>97</sup> supra 28.

<sup>98</sup> Kent (n 3) 54.

<sup>99</sup> Christine and Claeys (n 31) 1621.

<sup>100</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 12: The Right to Adequate Food (Art. 11)’ (n 96) para 11.

<sup>101</sup> *ibid* 10.

<sup>102</sup> *ibid* 9.

<sup>103</sup> *ibid* 12.

*Accessibility* requires both physical and economic access to food to be guaranteed.<sup>104</sup> Economic accessibility means that food should be affordable. Individuals should be able to afford enough food for an adequate diet without it threatening the satisfaction of any other basic need, such as rent or medicine. Physical accessibility means that food should be accessible to everyone. This includes those that are physically vulnerable, such as children or persons with disabilities, those who are sick, the elderly, or for those who it might be difficult to go out and get food.<sup>105</sup>

GC12 also contributed to an improved understanding of the “tripartite classification” developed first by Henry Shue and then by Asbjørn Eide especially for the right to food. This classification differentiates states obligations in three levels: to *respect*, *protect* and *fulfill* the right to food.<sup>106</sup>

The obligation to *respect* requires states not to interfere with the means by which people acquire food,<sup>107</sup> be it through agriculture, farming, fishing, or purchase, and respect the resources owned by the individual.<sup>108</sup>

The obligation to *protect* the right to food requires states to adopt measures against other subjects.<sup>109</sup> States have to ensure that businesses, corporations or other persons do not deprive individuals of their access to adequate food. States have to regulate non-state actors and create entities to monitor and investigate third parties. They have to, as one of their major duties, provide all of their people with security against threats and with functional institutions where those whose rights were violated or threatened can seek remedies.<sup>110</sup>

The obligation to *fulfill* the right to food has two different elements: facilitate and provide. The facilitation element requires states to ease the means by which the right to food can be enjoyed. The State has to “improve measures of production, conservation and distribution of food, by making full use of technical and scientific knowledge and by developing or reforming systems”<sup>111</sup>. States should create the necessary business

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<sup>104</sup> *ibid* 13.

<sup>105</sup> Christine and Claeys (n 31) 1621.

<sup>106</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 12: The Right to Adequate Food (Art. 11)’ (n 96) para 15.

<sup>107</sup> Claeys (n 71) 1621.

<sup>108</sup> United Nations Economic and Social Council (ECOSOC), ‘The Right to Adequate Food and to Be Free from Hunger: Updated Study on the Right to Food, Submitted by Mr. Asbjørn Eide in Accordance with Sub-Commission Decision 1998/106’ (UN, 1999) UN Doc E/CN.4/Sub.2/1999/12 para 52a <<http://digitallibrary.un.org/record/277522>> accessed 4 March 2021.

<sup>109</sup> *ibid* 52d.

<sup>110</sup> Kent (n 3) 105.

<sup>111</sup> United Nations Economic and Social Council (ECOSOC) (n 108) para 52c.

opportunities and the necessary monetary and transport systems that would help people create food for themselves. They have to be proactive and build the institutions and activities that make it easier for people to access the resources they need to invest in small-scale farming and agriculture so they can cultivate and grow their own food. The element of providing requires States to fulfil the rights “of those who otherwise cannot enjoy their economic, social and cultural rights”<sup>112</sup>, the rights of those are unable to meet their food needs by their own methods. This obligation increases when urbanization becomes the norm and more people “fall through the cracks” of the system. Some ways to fulfill this obligation include food stamps, social security schemes or food aid delivery.

In its paragraph 6, GC12 mentions the notion of “progressive realization” of the right to food. This concept seeks to take into account the potentially expensive implications of some of the state obligations, especially when it comes to the obligation to protect and the obligation to fulfil. While states can take time to realize fully their international obligations on the right to food, they have to take the steps to fully realize the right to food *to the maximum of available resources*. They have the core fundamental obligation to take the necessary actions to ease and mitigate the burden of hunger, even in times of natural or other disasters.<sup>113</sup> If they lack the resources needed to do so, they have to seek international assistance. States must also prohibit and adopt measures to eradicate, discrimination in access to food and the related resources<sup>114</sup>, on the basis of age, race, sex, religion, language or any other status.<sup>115</sup>

## 2.5 Voluntary Guidelines

The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security<sup>116</sup> is a piece of soft law adopted in 2004 by the 187 Member States of the General Council of the FAO. They “represent

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<sup>112</sup> *ibid* 52d.

<sup>113</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 12: The Right to Adequate Food (Art. 11)’ (n 96) para 6.

<sup>114</sup> The principle of non-discrimination will be explored below.

<sup>115</sup> Christine and Claeys (n 31) 1622.

<sup>116</sup> Hereinafter: The Voluntary Guidelines.

the first attempt by governments to interpret an economic, social and cultural right and to recommend actions to be undertaken for its realization”.<sup>117</sup>

The Voluntary Guidelines provide extensive convincing and clear guidance as to how States can implement the right to adequate food.<sup>118</sup> With the adoption of this document, the Member States of the General Council of the FAO accepted and recognized the ‘tripartite classification’ of state obligations discussed above in relation to the right to food.<sup>119</sup> The Voluntary Guidelines cover a full range of actions that States must consider and act upon in order to create “an environment where people are able to feed themselves with dignity”.<sup>120</sup>

The main reasons why the Guidelines were and are so celebrated has to do with the transformation the right to food suffered with their adoption, and the fact that civil society greatly contributed to that process.<sup>121</sup> The process and content of the Voluntary Guidelines were discussed in an intergovernmental process, as opposite to General Comment 12.<sup>122</sup> International organizations and governments were, for the first time, fully engaged with this economic and social right.<sup>123</sup>

The right to food went from being a utopian principle, a right with just legal formal recognition, to being the reason for requesting concrete propositions and tangible action.<sup>124</sup> The Voluntary Guidelines are an additional, complete instrument to help combat hunger and poverty and to accelerate the achievement of the Sustainable Development Goals.

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<sup>117</sup> Food and Agriculture Organization of United Nations, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (2005) 2.

<sup>118</sup> Food and Agriculture Organization of United Nations, ‘Right to Adequate Food in Constitutions’ (n 51) 2.

<sup>119</sup> Human Rights Council (HRC), ‘Preliminary Study of the Human Rights Council Advisory Committee on Discrimination in the Context of the Right to Food’ (n 9) para 6.

<sup>120</sup> Food and Agriculture Organization of United Nations, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (n 117) 2.

<sup>121</sup> Wenche Barth Eide and Uwe Kratcht, *Food and Human Rights in Development: Evolving Issues and Emerging Applications*, vol II (Intersentia 2007) 427 <<https://intersentia.com/en/food-and-human-rights-in-development-volume-ii.html>> accessed 4 March 2021.

<sup>122</sup> *ibid.*

<sup>123</sup> Christine and Claeys (n 31) 1622.

<sup>124</sup> *ibid.*



## 2.6 Principles of equality and non-discrimination

The requirements of equality and non-discrimination have been at the center of international human rights law since its beginning.<sup>125</sup> Of all human rights, the right to equality is one of the most significant. After all, promoting “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”<sup>126</sup> is one of the fundamental purposes of the United Nations. The right of equality and is connected to the concepts of justice, liberty and freedom and manifested through the compliance with two essential principles of international law that are complementary. The first of these principles appears in the 1948 Universal Declaration of Human Rights as “all human beings being are born free and equal in dignity and rights”<sup>127</sup>; the second principle, the principle of nondiscrimination, has been reaffirmed in Article 1 of the Charter of the United Nations.<sup>128</sup> These principles are widely acknowledged as forming part of international customary law. Some Courts, both international<sup>129</sup> and domestic<sup>130</sup>, have even argued they are part of international *jus cogens* which are hierarchical superior and universally applicable laws binding to all.<sup>131</sup>

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<sup>125</sup> Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (3rd edition, Cambridge University Press 2019) 655.

<sup>126</sup> Article 1(3) of the UN Charter;

<sup>127</sup> ‘Universal Declaration of Human Rights’ (n 42) Article 1.

<sup>128</sup> This statement was actually made by Head of the Federal Political Department of Switzerland at the opening of World Conference to Combat Racism and Racial Discrimination on August 14, 1978.

<sup>129</sup> The Inter-American Court of Human Rights, for example, stated in its advisory opinion on the Juridical Condition and Rights of Undocumented Migrants: “Accordingly, this Court considers that the principle of equality before the law, equal protection before the law and non- discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws.” In *Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03 of 17 September 2003, requested by the United Mexican States*, Inter-American Court of Human Rights, Series A, No. 18, p. 113, paras. 99–101.

<sup>130</sup> In *RM v. the Attorney General* the High Court of Kenya also determined that nondiscrimination is a peremptory norm of general international law. See: *RM v. Attorney-General*, Civil Case No. 1351 2002 (O.S.), Judgment of 1 December 2006, High Court of Kenya at Nairobi, [2006] eKLR, at p. 18.

<sup>131</sup> For more information about *jus cogens* norms see: International Law Commission, ‘Report of the International Law Commission’ (2019) UN Doc A/74/10 ch V: Peremptory norms of general international law (*jus cogens*).

### 2.6.1. The Principle of Non-Discrimination in International Human Rights Law

Equality and nondiscrimination can be understood as affirmative and negative declarations of the same principle.<sup>132</sup> The Universal Declaration on Human Rights (UDHR) recognized in its Preamble the inherent dignity and “the equal and inalienable rights of all members of the family” as “the foundation of freedom, justice and peace in the world”. This ideal is also reflected in: “All human beings are born free and equal in dignity and rights” in Article 1<sup>133</sup>, and “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” in Article 2.<sup>134</sup> The UN Charter, in Article 8, also has affirmative mandates of equality. And both of these documents have non-discrimination provisions.

Discrimination was defined in General Comment No. 20 about Non-Discrimination in Economic, Social and Cultural Rights.<sup>135</sup> This document will be examined below as it is crucial for the theme of this thesis. It defined discrimination as “any distinction, exclusion, restriction of preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant Rights.”<sup>136</sup> Other documents refer a similar definition.<sup>137</sup> The addition of non-discrimination clauses to supplement the equality provisions in the Treaties is not meant to simply emphasize the *need* for equality, but is it, moreover, an exercise of extreme caution.<sup>138</sup> Mandates of equality may imply nondiscrimination, but these do not imply absolute equality without distinction. The law rarely applies to all

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<sup>132</sup> BG Ramcharan, ‘Equality and Nondiscrimination’, *Equality and Non-Discrimination under International Law: Volume II* (1st edition, Routledge 2017) 35.

<sup>133</sup> ‘Universal Declaration of Human Rights’ (n 42) Article 1.

<sup>134</sup> *ibid* Article 2.

<sup>135</sup> Hereinafter: GC 20

<sup>136</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights)’ (UN, 2009) UN Doc E/C.12/GC/20 para 7 <<http://digitallibrary.un.org/record/659980>> accessed 26 February 2021.

<sup>137</sup> For a similar definition see: Art. 1, ICERD; art. 1, CEDAW; and art. 2 of the Convention on the Rights of Persons with Disabilities (CRPD). The Human Rights Committee comes to a similar interpretation in its general comment No. 18, paragraphs 6 and 7. The Committee has adopted a similar position in previous general comments.

<sup>138</sup> Ramcharan (n 132) 36.

situations and to all individuals and to all objects simultaneously and in the same terms and it may need to draw distinction among those factors. Equality only means treating those in the same position equally. Giving individuals in different unequal positions the same treatment is the opposite of equality. The nondiscrimination clauses are designed to make clear that certain factors – such as race, gender or religion – are not acceptable as grounds of distinction.<sup>139</sup> The law cannot use those factors to draw distinction in its treatment. The addition of non-discrimination clauses is, again, an exercise of extreme caution and its aim is to make clear that distinction only based on the difference of those grounds is discrimination, and, therefore, legally forbidden.<sup>140</sup>

Several other general human rights treaties directly express a consensus on the need to combat discrimination. They provide that states have to guarantee all rights without discrimination and include separate provisions that make clear the right of men and women to be treated equally and to receive equal protection before the law.<sup>141</sup>

Moreover, non-discrimination provisions can be subdivided into subordinate and autonomous norms.<sup>142</sup> Subordinate norms prohibit discrimination only in the enjoyment of their rights and freedoms otherwise set forth in the respective instrument, such as Article 2 of UDHR stated above. Article 7<sup>143</sup>, for example, of the same document goes further than that, as it is an autonomous norm. It is an independent clause that protects from discrimination in all fields, and not just the human rights listed in the documents they appear, extending its scope.<sup>144</sup> It also evidently mandates a positive obligation in this regard on Member States of the United Nations.

Article 26<sup>145</sup> of the International Covenant on Civil and Political Rights (ICCPR) is also an independent clause and of extreme importance. According to General Comment

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<sup>139</sup> *ibid.*

<sup>140</sup> *ibid.*

<sup>141</sup> The adoption of the International Convention on the Elimination of All Forms of Racial Discrimination in 21 December 1965, and the adoption of the Convention on the Elimination of All Forms of Discrimination against Women, in December 1979, are corollaries of this idea. Furthermore, analogous non-discrimination provisions exist under regional human rights instruments as well. Within the Council of Europe, both the European Convention on Human Rights (Article 14) and the European Social Charter in its Preamble, have non-discrimination clauses. The American Convention on Human Rights contains two provisions: Article 1(1) and Article 24, as does the African Charter on Human and Peoples' Rights in its Article 2 and 3.

<sup>142</sup> Daniel Moeckli, 'Equality and Non-Discrimination', *Equality and Non-Discrimination under International Law: Volume II* (Routledge) 57.

<sup>143</sup> Article 7 states: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

<sup>144</sup> Schutter (n 125) 658; Moeckli (n 142) 58; Ramcharan (n 132) 40.

<sup>145</sup> Article 26 ICCPR reads: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination

No. 18 this article is not simply duplicating the guarantee of non-discrimination already provided for in Article 2 of the ICCPR but it “provides in itself an autonomous right.”<sup>146</sup> It prohibits discrimination in any field regulated and protected by public authorities. It imposes obligations on State’s legislations and the application of that legislation.<sup>147</sup>

The text of the Article also suggests that this provision is also open-ended since the protection is against “any discrimination”. Despite this the Human Rights Committee has often found it difficult to fit a particular distinction within one of the listed grounds, whether if it is the specific ones, such as “sex”<sup>148</sup>, or “other status”.<sup>149</sup>

Article 26, even if it is not the most explicit in this regard, imposes four obligations on State Parties, both negative and positive.<sup>150</sup> States must guarantee equality before the law; guarantee the equal protection of the law; prohibit any discrimination and guarantee equal protection against discrimination to all persons. These four norms have been presented as corresponding to the different states of the principle of discrimination.

As for equal protection of the law, it was already explained that the law may, to some extent, treat differently individuals that are in different situations, even classifying people into different groups.<sup>151</sup> But, according to international jurisprudence that differentiation has to be justified<sup>152</sup>, which means it has to be “reasonable and objective”.<sup>153</sup> Applying different rules to men and women in army recruitment for instance, would be unjustified and direct discrimination. Additionally, the law might

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and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>146</sup> Human Rights Committee, ‘CCPR General Comment No. 18: Non-Discrimination’ (1989) para 12.

<sup>147</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (3rd edn, Cambridge University Press 2020) 78 <<https://www.cambridge.org/core/books/international-human-rights-law-and-practice/339F6FFAD746380EC915A76E7A018A4C>> accessed 1 May 2021.

<sup>148</sup> The Human Rights Committee has found that reference to “sex” can also include “sexual orientation” in *Toonen v. Australia*, CCPR/50/D/488/1992 (31 March 1994) para 8.7

<sup>149</sup> Other status can include nationality, age and marital status, as stated in the following cases: *Gueye v France*, CCPR/C/35/D/196/1985 (3 April 1989) para 9.4; *Schmitz-de-Jong v The Netherlands*, CCPR/C/72/D/855/1999 (16 July 2001); *Danning v The Netherlands*, CCPR/C/OP/2 (9 April 1987)

<sup>150</sup> Schutter (n 125) 669.

<sup>151</sup> Moeckli (n 142) 63.

<sup>152</sup> The criteria for distinguishing between justified and unjustified distinction has been clearly explained in the jurisprudence of the European Court of Human Rights, in its case *Belgian Linguistics Case*. The Court required that any difference in the treatment must both pursue a legitimate aim and be proportionate. This justification test has since been adopted by other human rights bodies. This includes the Human Rights Committee, for instance, in its case *Gillot v France*, U.N. Doc. CCPR/C/75/D/932/2000 (15 of July 2002). See: *Case Relating to Certain Aspects of the Laws on the Use Of Languages in Education in Belgium*, App no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64 (1968) para 10

<sup>153</sup> Human Rights Committee (n 146) para 13.

discriminate directly or indirectly.<sup>154</sup> Direct discrimination (or *de jure*) happens when the laws<sup>155</sup> exclude specific people from protection or equal treatment, intentionally. Indirect discrimination (or *de facto*) happens when the law states what looks like equal treatment or protection between similar groups, but upon its interpretation or implementation the treatment stated is showed to have a disproportionate impact in one of the groups.<sup>156</sup>

Non-discrimination entails state obligations of different types, to respect, protect and fulfill. States must introduce legislation that is comprehensive and that forbids discrimination in all sorts of fields, from education and healthcare, to housing and provisions of goods and services.<sup>157</sup>

However, an exclusive prohibitory approach is severely limited. It only focuses on discrimination as an isolated event that can be remedied through sanctioning the perpetrators that went against the law and giving a compensation to the victims. The truth is that discrimination does not often occur in isolated acts, because it is often the consequence of embedded patters of disadvantages and exclusion in societies.<sup>158</sup> In order to *really* fulfill the obligation to guarantee equal protection against discrimination to all persons, States must embrace change to their social and institutional structures. It is now well established in international law<sup>159</sup> that just having anti-discrimination legislation in place is not enough. States have the duty to take “positive action”<sup>160</sup>, they have an obligation to *promote, guarantee, and secure equality* by taking proactive steps towards the elimination of structural patters of disadvantages and redressing existing inequalities.<sup>161</sup>

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<sup>154</sup> In order to have a detailed explanation of the difference between direct and indirect discrimination mentioned terms see: Moeckli (n 142) 60.

<sup>155</sup> Policies and programs can discriminate directly and indirectly as well.

<sup>156</sup> Bantekas and Oette (n 147) 79.

<sup>157</sup> Moeckli (n 142) 66.

<sup>158</sup> *ibid* 67.

<sup>159</sup> Human Rights Committee (n 146) paras 5, 10. Convention on the Elimination of All forms of Discrimination Against Women (1979) Arts 3 and 5. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, Arts 2(1)(d), 2(2).

<sup>160</sup> Moeckli (n 142) 67.

<sup>161</sup> One example is electoral quotas for women. For more information on this topic see: Dr Joy McCann, 'Electoral Quotas for Women: An International Overview' [2013] Research Paper Series, 2013–14 27.

## 2.6.2 Discrimination in Economic, Social and Cultural Rights

For this analysis, both Article 2(2) and Article (3) of the ICESCR are particular important, since they both relate to discrimination specifically regarding economic, social and cultural rights and are “integrally related and mutually reinforcing”.<sup>162</sup>

Article 2(2) reads: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>163</sup> As opposed to the ICCPR, the ICESCR does not have a general non-discrimination clause, which may be invoked independently of any other substantive guarantee. General Comment No. 20<sup>164</sup> details this provision, and, as stated above, it defines discrimination in its paragraph 7.

GC 20 adds that discrimination must be addressed both formally and substantively. Only addressing formal discrimination will not ensure substantive equality as defined by article 2(2).<sup>165</sup> In order to eliminate discrimination in practice States need to pay the required attention to individuals that belong to groups that have suffered historical or persistence prejudice.<sup>166</sup> States *must* immediately adopt the appropriate measures in order to prevent, reduce and eliminate the conditions and attitudes that are causing or continuing either the substantive or *de facto* discrimination. As an example GC20 mentions the discrimination affecting a women and girls and people living in rural areas, and how States should ensure that all individuals have equal adequate access to sanitation, housing and water since having those basic rights would help to overcome the discrimination these groups are facing.

Additionally, in its paragraph 20<sup>167</sup>, GC 20 states that the notion of the prohibited discrimination on the grounds of “sex” has evolved from covering only psychological characteristics, to additionally cover gender prejudices, social construction of gender

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<sup>162</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)’ (2005) para 3.

<sup>163</sup> Emphasis added

<sup>164</sup> Hereinafter: GC 20

<sup>165</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights)’ (n 136) para 8.

<sup>166</sup> *ibid.*

<sup>167</sup> *ibid* 20.

stereotypes, and gender expected roles that create impediments to the fulfillment of economic, social and cultural rights<sup>168</sup>.

As for Article 3, it tackles equality between men and women in a very explicit clear way. Both have the equal right to the enjoyment of all economic, social and cultural rights set forth in the ICESCR. Again, it is stated that women should not be discriminated against. General Comment No. 16 explains this article. It recognizes that gender affects the way men and women enjoy their rights, since gender creates culture expectations about behaviors, personality traits, physical and intellectual capacities, based uniquely on the identity of people as male or female.<sup>169</sup> It reiterated women's "right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so."<sup>170</sup>

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<sup>168</sup> As an example, for sex discrimination, the same paragraph mentions not hiring a woman due to the reason that she might become pregnant.

<sup>169</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)' (n 162).

<sup>170</sup> *ibid* 28.

### 3 Women and the Right to food

At the global level women are more food insecure than men. Their levels of severe suffering from food insecurity are higher than men's levels.<sup>171</sup> Women are food-vulnerable whether the food stresses are linked to production, as it was in 2008, or whether they are linked to prices and access to markets. It is irrelevant whether the problem lies in the phases of food production and consumption, women are food-vulnerable.<sup>172</sup> Their food insecurity has to do with their lack of entitlement to eat. It has to do with the under-acknowledged barrier of structural violence and discrimination they face, not only inside the household, but outside as well. Women's food insecurity is, ultimately, an empowerment problem<sup>173</sup> that makes women are vulnerable in all of its dimensions, discussed in Chapter 2: availability, access, utilization and stability.<sup>174</sup>

Women are vulnerable in purchasing and having food available, especially now with the new threat of global warming.<sup>175</sup> If floods and droughts will have an impact on fisheries<sup>176</sup> and livestock production<sup>177</sup> how will food be available to women? If the global average cereal yields will decrease by 3-10%<sup>178</sup> for each degree of warming<sup>179</sup>, and people's purchasing power is expected to decline<sup>180</sup> how can we expect food to be

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<sup>171</sup> Food and Agriculture Organization of United Nations and others (n 1) 33.

<sup>172</sup> Botreau and Cohen (n 6) 42.s

<sup>173</sup> Chinkin and Wright (n 41).

<sup>174</sup> Botreau and Cohen (n 6) 42.s

<sup>175</sup> The impacts of climate change on crop yield can already be detected in observed data. See: David B Lobell, Wolfram Schlenker and Justin Costa-Roberts, 'Climate Trends and Global Crop Production Since 1980' (2011) 333 Science 616.

<sup>176</sup> Colin Creighton and others, 'Adapting Management of Marine Environments to a Changing Climate: A Checklist to Guide Reform and Assess Progress' (2016) 19 Ecosystems 187.

<sup>177</sup> Mario Herrero and others, 'Livestock and the Environment: What Have We Learned in the Past Decade?' (2015) 40 Annual Review of Environment and Resources 177.

<sup>178</sup> Africa, Middle East, South Asia to mainland South-East Asia, Indonesia and the Philippines are predicted to be the worst affected areas. This is likely to cause severe harm to harvest. For more detailed information about the effects of climate change in food security see: FAO (ed), *The State of Agricultural Commodity Markets 2018: Agricultural Trade, Climate Change and Food Security* (FAO 2018) 17; Aziz Elbehri and Food and Agriculture Organization of the United Nations, *Climate Change and Food Systems: Global Assessments and Implications for Food Security and Trade* (2015) <<http://www.fao.org/3/a-i4332e/index.html>> accessed 31 May 2021.

<sup>179</sup> FAO, *The State of Agricultural Commodity Markets 2018: Agricultural Trade, Climate Change and Food Security* (n 178) 20.

<sup>180</sup> People's purchasing power is expected to decline by nearly 12% in West Africa and 6.2% in India. For more details about the relationship between climate change and its effects on purchasing power see: Elbehri and Food and Agriculture Organization of the United Nations (n 178) 38.



physical available to all women, when they have less access to resources than men to facilitate the adaptation to climate change?<sup>181</sup>

Women are also vulnerable when it comes to accessibility. Even when food is available, they may lack the resources to access it through purchase or production.<sup>182</sup> Currently, on average women being paid approximately 20 per cent less than men. The difference in global estimates ranges from about 16 per cent, for hourly wages, to 22 per cent, for median monthly wages.<sup>183</sup> Consequentially women are also less likely to receive a pension, and their lifetime income is 31 to 75 percent reduced when compared to a man's lifetime income.<sup>184</sup> Because of this, they are usually poorer than men and their purchasing power to acquire food is, obviously, way more limited.<sup>185</sup> There is also a gender gap in land rights.<sup>186</sup> In fact, there are only 15 percent of women agricultural landholders around the world, when men correspond to the other 85 percent.<sup>187</sup> If land is often the most important household asset for supporting agricultural production<sup>188</sup>, how can women produce their own food if they do not have access to land? How can food be accessible for all women if they have less social capital, less land and discriminatory incomes?<sup>189</sup>

Additionally, food access, as mentioned in our Chapter 2, is ensured when all households and all individuals within those households have sufficient resources to obtain appropriate foods for a nutritious, diverse diet.<sup>190</sup> However, in many regions of the world, despite the increase of female-headed households<sup>191</sup>, they fare less well than male-headed households.<sup>192</sup> Their disproportionately poor economic status can be a result of the fact

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<sup>181</sup> Agnes Quisumbing and others, 'Gender and the Global Food-Price Crisis' (2011) 21 Development in Practice 488, 3.

<sup>182</sup> Botreau and Cohen (n 6) 43.

<sup>183</sup> International Labour Organization, 'Global Wage Report 2018/19 – What Lies behind Gender Pay Gaps' (ILO 2018) 21.

<sup>184</sup> UN Human Rights Council, 'Report of the Special Rapporteur on the Right to Food' (n 13) para 53.

<sup>185</sup> Schutter (n 11) 12; Botreau and Cohen (n 6) 43.

<sup>186</sup> Nowadays, despite legal protection, women in half of the countries in the world are unable to proclaim equal property and land rights. The problem is colossal and requires international action. One of the newest campaigns to bring awareness to this problem is "Stand For Her Land" founded by Habitat for Humanity, Huairou Commission, Landesa, Global Land Tool Network (GLTN) Partners and the World Bank. The website of the campaign details better its actions and goals: 'Home - Stand For Her Land Campaign' <<https://stand4herland.org/>> accessed 1 June 2021.

<sup>187</sup> 'The Gender Gap in Land Rights' 4, 2.

<sup>188</sup> *ibid* 1.

<sup>189</sup> Quisumbing and others (n 181) 488.

<sup>190</sup> Food and Agriculture Organization of United Nations, 'An Introduction to the Basic Concepts of Food Security' (n 54).

<sup>191</sup> Quisumbing and others (n 181) 488.

<sup>192</sup> In Indonesia for instance, children in households headed by women experience poverty at a rate as much as 34 per cent higher than those in male-headed households. See: United Nations Children's Fund

that there are lower economic opportunities for women<sup>193</sup> due to the systematic discrimination they face.<sup>194</sup> Widowed-headed households are in a special fragile position.<sup>195</sup> Even within households there can be discrimination regarding food consumption, where feeding and caregiving practices may favor boys over girls.<sup>196</sup> At the dinner table, women and girls are usually the ones who eat worse quality-foods, which has terrible consequences for their overall nutrition and health.<sup>197</sup> Females in the house eat less and last, if at all.<sup>198</sup> The next subchapter will detail the circumstances and consequences of these “anti-female”<sup>199</sup> preferences.

The vulnerability of women regarding utilization comes from the fact that their diet is usually not diverse and lacks the nutrients they require. Especially in female-headed households, due to the increased poverty they face, women, in order to adjust to their incapability to purchase high-quality foods, often shift to cheaper and less diverse diets.<sup>200</sup> In fact, a third of the world’s women of reproductive age suffer from anemia due

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(UNICEF), ‘The State of Children in Indonesia 2020’ (2020) 12. The same thing happens all over the world. See: Schutter (n 11) 12; Quisumbing and others (n 181) 488; Botreau and Cohen (n 6); FAO (ed), *The State of Food and Agriculture 2016: Climate Change, Agriculture and Food Security* (FAO 2016) Box 14.

<sup>193</sup> Work tends to be gender-related, whether it happens inside or outside the household. Since men are the ones that have a monopoly when it comes to high-value crops production and are the ones that can actually sell their produce in markets, women farmers, for instance, are left with no choice but to cultivate traditional produce that is not as lucrative. Inside households, some women are not even allowed to be farmers. Most rural women, due to gender norms, are expected to do planning household chores. This includes chores such as water and firewood collection, cooking, washing and milling, while men do most of the farming. See: FAO, *The State of Food and Agriculture 2016: Climate Change, Agriculture and Food Security* (n 192) 48; Christine Jost and others, ‘Understanding Gender Dimensions of Agriculture and Climate Change in Smallholder Farming Communities’ (2016) 8 *Climate and Development* 133, 138.

<sup>194</sup> Schutter (n 11) 12; Botreau and Cohen (n 6) 43.

<sup>195</sup> Widows on average are less financially secure than their married counterparts, experience a 22% income reduction and a 10% wealth loss in the first two years after losing a spouse. See: Jean Drèze and PV Srinivasan, ‘Widowhood and Poverty in Rural India: Some Inferences from Household Survey Data’ (1997) 54 *Journal of Development Economics* 217, 221; Jialu L Streeter, ‘Gender Differences in Widowhood in the Short-Run and Long-Run: Financial, Emotional, and Mental Wellbeing’ (2020) 17 *The Journal of the Economics of Ageing* 100258.

<sup>196</sup> Schutter (n 11) 12; Arpita Wadhwa, ‘Eating Last and the Least: Analyzing Gender in Global Hunger’ [2020] *E-International Relations* <<https://www.e-ir.info/2020/04/08/eating-last-and-the-least-analysing-gender-in-global-hunger/>> accessed 24 May 2021; Erin C Lentz, ‘Complicating Narratives of Women’s Food and Nutrition Insecurity: Domestic Violence in Rural Bangladesh’ (2018) 104 *World Development* 271, 278.

<sup>197</sup> Albert Sasson, ‘Food Security for Africa: An Urgent Global Challenge’ (2012) 1 *Agriculture & Food Security* 2, 1; Wadhwa (n 196); United Nations Children’s Fund (UNICEF), ‘Special Section - Girls and Women Need Stronger Support for Better Nutrition’, *The State of the World’s Children 2019: Children, Food and Nutrition, Growing Well in a Changing World* (2019).

<sup>198</sup> Schutter (n 11) 12; Wadhwa (n 196); Lentz (n 196) 278.

<sup>199</sup> Jean Drèze and Amartya Sen, *Hunger and Public Action* (Clarendon 1989) 262.

<sup>200</sup> Botreau and Cohen (n 6) 43; Jussara Maysa Campos and others, ‘Gênero, segurança alimentar e nutricional e vulnerabilidade: o Programa das Mulheres Mil em foco’ (2020) 25 *Ciência & Saúde Coletiva* 1529.

to iron-deficient diets and worldwide<sup>201</sup>. High percentages of women are anemic in chronically hungry parts of the world. The percentages are 48.2% in South and Southeast Asia and 57.1% in Africa<sup>202</sup> being anemia is a contributing or sole cause of 20–40% of maternal deaths.<sup>203</sup> Due to all of these factors, women are regularly hungry, less energetic and exhausted.<sup>204</sup>

As for stability, it has a direct correlation to how stable the other three dimensions are over time.<sup>205</sup> In many developing countries staples price volatility has persisted, with fresh spikes in 2016 and 2017, and prices have remained above the level of the early 2000s.<sup>206</sup> In the face of volatile prices, people shift their income from other necessities to maintain their access to food, and this means that stable prices are a crucial element of food security.<sup>207</sup> Since food prices are not stable, and have not been for a long time, and women are extremely vulnerable in the access, availability and utilization of food, the only possible conclusion is that they are vulnerable in the stability of food security as well.

The only answer for women, it seems, is keep on being hungry.

### 3.1 The failure of the international system to address women's hunger

The exposure in the above section makes us question why women are so much more affected than men when it comes to food in a world that is trying to solve global hunger ever since the World Food Conference in 1974. This question becomes even more

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<sup>201</sup> FAO (ed), *The State of Food Security and Nutrition in the World 2018: Building Climate Resilience for Food Security and Nutrition* (FAO 2018) fig 6.

<sup>202</sup> Wadhwa (n 196).

<sup>203</sup> Bernard J Brabin, Mohammad Hakimi and David Pelletier, 'An Analysis of Anemia and Pregnancy-Related Maternal Mortality' (2001) 131 *The Journal of Nutrition* 604S; D Suharno and others, 'Supplementation with Vitamin A and Iron for Nutritional Anaemia in Pregnant Women in West Java, Indonesia' (1993) 342 *The Lancet* 1325; FAO, *The State of Food Security and Nutrition in the World 2018: Building Climate Resilience for Food Security and Nutrition* (n 201).

<sup>204</sup> Botreau and Cohen (n 6) 43.

<sup>205</sup> Food and Agriculture Organization of United Nations, 'An Introduction to the Basic Concepts of Food Security' (n 54).

<sup>206</sup> Botreau and Cohen (n 6) 44.

<sup>207</sup> Murphy and Schiavoni (n 11) 22.

urgent to ask when we realize that the Resolution VIII on Food and Women by the World Food Conference<sup>208</sup> recognized, already in 1974, that the right to food had major implications for women in all societies.<sup>209</sup>

Then why are women still food insecure? The main reason is the failure of the international system, as a whole, to address women's hunger. The failure belongs to both international human rights law and international development policies. In international human rights law, women are invisible as right-holders when it comes to the right to adequate food, not only not receiving the specific protection they deserved due to their vulnerability, but without any protection being given to them. In fact, there is not a universal provision on women's right to adequate food and nutrition that applies to all women.<sup>210</sup>

Women's isolation in international human rights law as right-holders when it comes to the right to adequate food nutrition comes from two places. On one hand, it comes from women's invisibility when it comes to this right in the 1948 Universal Declaration of Human Rights and the legally binding ICESCR<sup>211</sup>. And on the other hand, it comes from the omission of women's right to food in the Convention of Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>212</sup> In fact, the only time women and their right to food is mentioned is when they are considered parents of infants, in Article 24(29)(e) in the 1989 Convention on the Rights of the Child (CRC).<sup>213</sup>

As for development policies, they choose to be blind to existing gender power dynamics inside, and outside the household,<sup>214</sup> in the places they are implemented, ignoring women's societal discrimination. Further, sometimes development policies themselves are the ones that totally exclude women from financial credit and agricultural support programs, falling victims of the gender stereotype that women are not farmers.<sup>215</sup>

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<sup>208</sup> 'Report of the World Food Conference, Rome, 5-16 November 1974' (n 83).

<sup>209</sup> Chinkin and Wright (n 41).

<sup>210</sup> Claeys and others (n 25) 101.

<sup>211</sup> This invisibility will be explored and related to their invisibility inside the households.

<sup>212</sup> Claeys and others (n 25).

<sup>213</sup> Despite this structural isolation, the UN has given important steps to remedy this absence, such as the study done in 2008 by Isabella Rae and published by the Food and Agriculture Organization. See: Isabella Rae and Food and Agriculture Organization of the United Nations, *Women and the Right to Food: International Law and State Practice* (Food and Agriculture Organization of the United Nations 2008) <[http://www.fao.org/righttofood/publi08/01\\_GENDERpublication.pdf](http://www.fao.org/righttofood/publi08/01_GENDERpublication.pdf)> accessed 15 April 2021.

<sup>214</sup> We will explore how women face discrimination regarding the right to food inside the household below, and outside the household when they are not given property rights.

<sup>215</sup> Carolyn E Sachs, *Routledge Handbook of Gender and Agriculture* (Routledge 2021) 104.

### 3.1.1 The lack of legal protection offered by the CEDAW, UDHR and ICESCR on women's right to food

The development of gender equality in any real sense is disturbingly recent in international human rights law and the acknowledgement of women's universal rights was extremely slow.<sup>216</sup> Universal women's rights initiatives began in 1946 with the establishment of the Commission on the Status of Women as one of the earliest UN Projects.<sup>217</sup> However, it took over thirty years before the UN General Assembly finally adopted Convention on the Elimination of All Forms of Discrimination Against Women as an international treaty in 1979.<sup>218</sup> Despite this, the CEDAW has been called: "the definitive international legal instrument requiring respect for and observance of the human rights of women; it is universal in reach, comprehensive in scope, and legally binding in character."<sup>219</sup> But even so, the Convention has several problems. It has vague policies on reservations<sup>220</sup>, it delegated limited authority to the Committee in its Article 38 and its parties have a pervasive cultural gender bias which have obstructed progress in women's rights under the Convention.<sup>221</sup> The most colossal problem of the CEDAW, in the view of this thesis, concerns the fact that, despite its intention to protect women

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<sup>216</sup> Sandra Fredman, *Discrimination Law* (2nd edition, Oxford University Press 2011) 39; Bellows, Lara and Viana (n 88) 25.

<sup>217</sup> The Commission was established by Economic and Social Council (ECOSOC) in 1946. See: UN Economic and Social Council (ECOSOC), 'Resolution 11(II) of 21 June 1946' (1946).

<sup>218</sup> Bellows, Lara and Viana (n 88) 25.

<sup>219</sup> Rebecca J. Cook, "Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women", 30 VA. J. INT'L L. 643 (1990)

<sup>220</sup> CEDAW has been ratified by 189 states, with many reservations. A considerable number of those reservations have to do with state accountability for the obligation to eliminate discrimination against women. The Committee on the Elimination of All Forms of Discrimination Against Women in two of the general recommendations and its statement on reservations has called on the States to re-examine their self-imposed limitations to full compliance with all the principles in the Convention by the entry of reservations. See: UN Committee on the Elimination of Discrimination against Women, 'CEDAW General Recommendation No. 4: Reservations' (1987) (Contained in Document A/42/38); UN Committee on the Elimination of Discrimination against Women, 'CEDAW General Recommendation No. 20: Reservations to the Convention' (1992); UN Committee on the Elimination of Discrimination against Women, 'Report of the Committee on the Elimination of Discrimination against Women (Eighteenth and Nineteenth Sessions)' (1998) UN Doc A/53/38/Rev1.

<sup>221</sup> Since article 5 of CEDAW mentions that State parties should take all measures necessary to erase the idea of women's inferiority, it materializes as ironic that one of the Convention's weaknesses is the gender bias of its own parties, and that that gender bias goes against what the Convention itself stands for. This opinion is also expressed by: Julie Minor, 'An Analysis of Structural Weaknesses in the Convention on the Elimination of All Forms of Discrimination Against Women' (2014) 24 Georgia Journal of International & Comparative Law 137, 7.

and their human rights, the drafters completely disregarded the inclusion of women's right to adequate food and nutrition.<sup>222</sup> Rights such as social security, education and employment are outlined in the section of economic, social and cultural rights (Articles 10-14). But the Convention does not integrate language that addresses women's right to adequate food and nutrition.<sup>223</sup>

"Food" and "nutrition" are mentioned in two places in the document. In the Preamble it is stated: "in situations of poverty women have the least access to *food*, health education, training and opportunities for employment and other needs", recognizing that women as a group is a heterogenous group.<sup>224</sup> However, the preamble is descriptive, introducing the subject matter of the treaty and explaining its background. It does not include the substance of the rights the parties are actually agreeing on.<sup>225</sup> Secondly, the second place where "food" is mentioned is Article 12.2. The article states that State parties have the obligation to women "in connection with pregnancy, confinement and the post- natal period, granting free services where necessary, *as well as adequate nutrition during pregnancy and lactation*"<sup>226</sup> While this article mentions the notion of a human right to adequate nutrition, it limits that right to women who are pregnant or breastfeeding. It is not presented as a universal human right.<sup>227</sup> Since it was written in 1979, this article is particularly attuned to women's biological capacity to be mothers. As a consequence, it only protects women's right to nutrition in a very specific and limited timeframe of some women's lives: when they have a maternal bond to a fetus or an infant.<sup>228</sup> Furthermore, it opens the door for nutrition policies to focus only on women when they are pregnant or lactating, or to focus on girls simply as future mothers, violating the totality of girls' and women's human rights over their life spans. Such policies create a narrow version of women and girls lives. Nutrition policies must support women's plans whether they are pregnant or not, and facilitate their own, their families', and their community's nutritional health. The singular attention to women's right to adequate food and nutrition in the context of women's reproduction capabilities collapses

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<sup>222</sup> Claeys and others (n 25).

<sup>223</sup> *ibid* 123.

<sup>224</sup> Poor women for instance experience discrimination differently and more acutely than their counterparts.

<sup>225</sup> Beate Rudolf and others, *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press 2012) 152.

<sup>226</sup> UN General Assembly, 'Convention on the Elimination of All Forms of Discrimination against Women' (1979), emphasis added.

<sup>227</sup> Claeys and others (n 25).

<sup>228</sup> *ibid*.

and, worse, *instrumentalizes* this right. It also instrumentalizes women's experiences as right holders in a patriarchal way.

General Recommendation 24 of Committee on the Elimination of Discrimination against Women<sup>229</sup> on Women's Health<sup>230</sup> helps filling the absence of a women's universal right to adequate food and nutrition, even if not totally. It expands the content of Article 12 of CEDAW, on women's health, stating: "The Committee notes that the full realization of women's right to health can be achieved only when States parties fulfil their obligation to respect, protect and promote women's fundamental human right to nutritional well-being throughout their lifespan by means of a food supply that is safe, nutritious and adapted to local conditions".<sup>231</sup> In this statement, the right to nutritional well-being does not have any correlation to women's pregnancy. The only problem with GC 24 is that it does not connect women's right to adequate food and nutrition to their capacity to provide food for their families and their communities. It overlooks their self-determination and autonomy and their importance in providing food for those around them.<sup>232</sup> Due to the exposed, it is not hard to see that the Convention that was supposed to protect all women, in all stages of life does not do so in regard to the right to food.

Additionally, both the UDHR and ICESCR, which are the main treaties in international human rights law when it comes to economic rights do not protect women's *specific* right to food. Despite how well protected the principle of discrimination is in these two international documents, art. 1 and 2 of UDHR and articles 2(2) and 3 of the ICESCR, as we discussed in Chapter 2.6, some additional points need to be made on how both of them do not protect women's specific right to food, and consequently, contribute the food violences women experience inside the privateness of the household, which we will explore below as an implementation problem. As it was previously mentioned in Chapter 2.6, Article 2 of the UDHR and Article 2(2) of the ICESCR both state that the rights enunciated in each of the documents will be exercised without discrimination regarding sex. And article 3 of the ICESCR states the equality between men and women,

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<sup>229</sup> Hereinafter: GC 24

<sup>230</sup> UN Committee on the Elimination of Discrimination against Women, 'CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)' (1999).

<sup>231</sup> *ibid* 7.

<sup>232</sup> Stefanie Lemke, Anne C Bellows and Nicole Heumann, 'Gender and Sustainable Livelihoods: Case Study of South African Farm Workers' (2009) 2/3 International Journal of Innovation and Sustainable Development 195, 196; Lisa C Smith and Lawrence James Haddad, *Overcoming Child Malnutrition in Developing Countries: Past Achievements and Future Choices* (Internat Food Policy Research Inst 2000) 7.

furthered recognized by General Comment No. 16.<sup>233</sup> Despite this, in both Article 25<sup>234</sup> of the UDHR and in Article 11(1)<sup>235</sup> of the ICESCR the actors connected to food security provisions are “states parties,” “everyone,” “himself,” and “his family” which can be considered discriminatory language towards women.<sup>236</sup> Article 25 of the UDHR establishes the right of everyone, men, women, and children, to an adequate standard of living, which includes “food, clothing, housing, medical care” only to erase women’s individuality by demanding the flow of these rights through a presumed male head of the family home, identified in the expression “of himself and his family”. This excludes females, or male children or males who might not be the head of a household from being right holders of an adequate standard of living, and therefore, from being right holders of an adequate right to food and nutrition.<sup>237</sup> As for the ICESCR, the same happens with Article 11(1). There is the discriminatory insistence of a male householder leader, rendering women and children invisible with respect to a right to adequate food and nutrition.<sup>238</sup> What is worse, is that it also ignores the reality and vulnerability of woman-headed households<sup>239</sup>, and the responsibilities women have in most societies of food preparation and agriculture.<sup>240</sup> In both instruments, women and children have no subjectivity, no individuality, no agency. They are invisible, hidden inside the privacy of

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<sup>233</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)’ (n 162).

<sup>234</sup> Article 25 reads: “1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

<sup>235</sup> Article 11(1) states: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

<sup>236</sup> Anne C Bellows, ‘Exposing Violences: Using Women’s Human Rights Theory To Reconceptualize Food Rights’ (2003) 16 *Journal of Agricultural and Environmental Ethics* 249, 258.

<sup>237</sup> Claeys and others (n 25).

<sup>238</sup> Bellows (n 236).

<sup>239</sup> At least one-third of the world’s household are headed by women. See the data available in: World Bank, ‘Female Headed Households (% of Households with a Female Head) | Data’ <[https://data.worldbank.org/indicator/SP.HOU.FEMA.ZS?end=2020&most\\_recent\\_year\\_desc=true&start=2020&view=bar](https://data.worldbank.org/indicator/SP.HOU.FEMA.ZS?end=2020&most_recent_year_desc=true&start=2020&view=bar)> accessed 3 June 2021.

<sup>240</sup> Women are often seen as “feeders”, which means they often have to do the work necessary in order to provide others with the right to food, feeding them. See: Chinkin and Wright (n 41) 298; P Van Esterik, ‘Intra-Family Food Distribution: Its Relevance for Maternal and Child Nutrition.’ [1985] *Determinants of Young Child Feeding and Their Implications for Nutritional Surveillance*.



the family household where economic rights are distributed by male permission, and often to the women's disadvantage.<sup>241</sup>

The General Comment 12 mentioned above, however, did address the gender discrimination in the 1966 treaty language. It stated that the right to adequate food and nutrition applies "to everyone; thus the reference in article 11.1 to "himself and his family does not imply any limitation upon the applicability of this right to individuals or to female headed households".<sup>242</sup> It makes clear that the social family and gender norms 1948 and 1966 and the succeeding legal structure of men commanding the lives of women and children are outdated and archaic and would not be advanced in UN language.<sup>243</sup> Paragraph 26 of the same document states that "particular attention to the need to prevent discrimination in access to food or resources for food", and guarantees of full and equal access to economic resources should be given particularly for women, such as land for example.<sup>244</sup> Additionally, General Comment 16 also mentioned above, stated that "Implementing article 3, in relation to article 11, paragraph 2, also requires States parties, (...) to address customary practices under which women are not allowed to eat until the men are fully fed, or are only allowed less nutritious food"<sup>245</sup>. It is again, another way the UN system tried to include in its language this particular women's right and bring attention to the privateness of households and the food violence that happens within them.

Notwithstanding, there is no doubt that women continue to face a collective challenge in achieving food and nutrition security, a challenge that is perpetuated by the constant gender discrimination and patriarchal household presumptions that dictate societal norms.

The denial in GC12 of the language used in the ICESCR article 11.1, and the statements in GC 16, even if they improve slightly the protection given to women's right to food inside the household, does not eliminate the fact that women are still not mentioned as right holders of the right to food in the language of UDHR and ICERSC.<sup>246</sup> The same can be said about GC 24 and CEDAW. The mentioning of the nutritional well-

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<sup>241</sup> Bellows (n 236) 258.

<sup>242</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 12: The Right to Adequate Food (Art. 11)' (n 96) para 1.

<sup>243</sup> Bellows (n 236) 258.

<sup>244</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 12: The Right to Adequate Food (Art. 11)' (n 96) para 26.

<sup>245</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)' (n 162) para 28.

<sup>246</sup> Claeys and others (n 25).

being throughout a women's life in the General Recommendation, while important, does not fulfill the absence of an explicit mentioning of women's right to food in the body of the Convention meant to oversee all women's rights.

The absence of women as explicit right-holders of the right to food in these three documents strengthens the discrimination and food-violences women suffer inside and outside the household in countries around the world. It frustrates the improvement of gender equality in achieving the human right to adequate food and also frustrates the development of the necessary gendered policies.<sup>247</sup> This omission of a concrete universally binding women's right to food is a failure of international human rights law to address women's hunger and one can wonder if women's greater experience with food insecurity could be a symptom of this absence.

### 3.1.2 The gender-blindness of development policies

As for development policies and the food system, while the entire global food system takes gender into account in its patterns of production and distribution and consumption, it is not gender responsive enough.<sup>248</sup> The Food and Agriculture Organization (FAO) itself has recognized that "the global food system produces patterns of production, consumption, and distribution that benefit some people more than the others", meaning it has favored men and failed to favor women.<sup>249</sup> In other words, global processes are masculinized. If we inspect closely the introduced policies all over the world to end hunger, it is easy to see they lack a gendered lens.<sup>250</sup>

The majority of the development and trade policies and practices are mainly expected to be 'gender neutral'.<sup>251</sup> This is not the same as being "gender blind". For

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<sup>247</sup> *ibid* 101.

<sup>248</sup> Wadhwa (n 196).

<sup>249</sup> Food and Agriculture Organization of United Nations, 'Gender and Nutrition' (n 24) 2; Raymond F Hopkins and Donald J Puchala, 'Perspectives on the International Relations of Food' (1978) 32 *International Organization* 581, 582.

<sup>250</sup> Andrea M Collins, 'Governing the Global Land Grab: What Role for Gender in the Voluntary Guidelines and the Principles for Responsible Investment?' (2014) 11 *Globalizations* 189, 193.

<sup>251</sup> Georgina Waylen, 'Putting Governance into the Gendered Political Economy of Globalization' (2004) 6 *International Feminist Journal of Politics* 557, 565.

instance, the World Bank<sup>252</sup> has attempted to develop policies that address gender inequality. But despite these efforts, scholars have found that even in the implementation and development of “gender-sensitive” global policies, gender bias still exists.<sup>253</sup> Even when they are “gender-sensitive” policies have a very different impact on men and women. They often forget about the gender dynamics inside and outside the household related to food, which makes them fail on helping women. For instance, policies focused on cooked meal distribution in schools<sup>254</sup> turned a blind eye to the gender dynamics in the countries that the food was being distributed in. In India girls were not only asked to serve cooked meals to the boys in the classroom, but also to eat whatever was left afterwards, making them eat last and less in a place where they should have had the same rights as their male colleagues.<sup>255</sup> Public Distribution Systems (PDS) commit the same mistake of being blind to gender power dynamics. The purpose of this policy is to provide subsidized food grains to the people that are in the lowest rank of the society in order to treat, and hopefully, prevent their chronic hunger.<sup>256</sup> While this is a good idea, it falls short on two levels. First, more often than not, the people responsible for the grains distribution register made-up quantities of grains, and give much lesser than what they charge and register, especially when women are the ones who go to get the subsidized grains.<sup>257</sup> Secondly, they completely ignore the discriminatory societal norm that women ought to eat last and the least.<sup>258</sup> While they distribute the grains to family households, there is no way to control if women will actually receive them when it comes to dinnertime. Another policy that is advised by several international organizations,

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<sup>252</sup> World Bank, *World Development Report 2012: Gender Equality and Development* (The World Bank 2011) <<https://elibrary.worldbank.org/doi/abs/10.1596/978-0-8213-8810-5>> accessed 18 June 2021.

<sup>253</sup> Penny Griffin, *Gendering the World Bank: Neoliberalism and the Gendered Foundations of Global Governance* (2009).

<sup>254</sup> Programme Quality Working Group, ‘Cooked Meal Distributions in Emergencies – Practical Guidance’ (Food Security Cluster 2020). Food and Agriculture Organization of United Nations, ‘State of School Feeding Worldwide - Overview’ (2013).

<sup>255</sup> Akshaya Mukul / TNN / Updated: Aug 4, 2012 and 06:56 Ist, ‘Caste, Gender Biases Blight Mid-Day Meal Scheme in Four States | India News - Times of India’ (*The Times of India*) <<https://timesofindia.indiatimes.com/india/caste-gender-biases-blight-mid-day-meal-scheme-in-four-states/articleshow/15347784.cms>> accessed 25 May 2021.

<sup>256</sup> S Mahendra Dev, ‘Public Distribution System: Impact on Poor and Options for Reform’ (1998) 33 *Economic and Political Weekly* 2285.

<sup>257</sup> Kunal Purohit, ‘In India’s Second Poorest State, Govt Efforts To Curb Hunger Are Failing’ (7 December 2019) <<https://www.indiaspend.com/in-indias-second-poorest-state-govt-efforts-to-curb-hunger-are-failing/>> accessed 25 May 2021.

<sup>258</sup> Arpita Mathur, ‘Women and Food Security: A Comparison of South Asia and Southeast Asia’ (2011) 18 *South Asian Survey* 181, 9.

including FAO<sup>259</sup> and the World Bank<sup>260</sup>, is investing in women farmers, since it is one of the most effective strategies for reducing extreme poverty and hunger.<sup>261</sup> However, as stated above, rural areas have high levels of gender inequality and women have less access to land, seeds, credit and markets.<sup>262</sup> They are also given lower salaries than men in agricultural work<sup>263</sup>, when they are as productive as them.<sup>264</sup> The fact that these policies are often unaware of the existing gender power dynamics or decide to ignore the gender-based violence associated to food<sup>265</sup>, in the places they are implemented makes these food initiatives fail on having as a huge positive impact in the lives of women as they do in the lives of men.<sup>266</sup>

This duality of failure between law and policy, and how it concretely shapes women's lives around the world is visible in the connection between women's food insecurity, the privateness of households, and women's lack of property rights. The following sections intend to explore how these two circumstances are law implementation problems and the main causes for women's hunger.

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<sup>259</sup> FAO (ed), *Women in Agriculture: Closing the Gender Gap for Development* (FAO 2011); 'When You Think Farmer – Think Female! |Climate Change|FAO' <<http://www.fao.org/climate-change/news/detail/en/c/1381667/>> accessed 2 June 2021; Team SOFA and Cheryl Doss, 'The Role of Women in Agriculture' (FAO 2011).

<sup>260</sup> 'World Bank Bond Highlights Importance of Investing in Women through Agriculture' (*World Bank*) <<https://www.worldbank.org/en/news/press-release/2019/03/08/world-bank-bond-highlights-importance-of-investing-in-women-through-agriculture>> accessed 2 June 2021; Robert F Townsend and others, 'Implementing Agriculture for Development : World Bank Group Agriculture Action Plan (2013-2015)' (World Bank Group 2013) 43.

<sup>261</sup> 'Eliminating Poverty and Hunger By Empowering Women' (*Council on Foreign Relations*) <<https://www.cfr.org/blog/eliminating-poverty-and-hunger-empowering-women>> accessed 25 May 2021.

<sup>262</sup> FAO, *Women in Agriculture* (n 259) 6.

<sup>263</sup> Ashwini Deshpande, Deepti Goel and Shantanu Khanna, 'Bad Karma or Discrimination? Male–Female Wage Gaps Among Salaried Workers in India' (2018) 102 *World Development* 331.

<sup>264</sup> An FAO analysis of gender and cash crop production in Ghana found that women cocoa farmers are as productive as men but earn less. See: Team SOFA and Doss (n 259) Box 5.

<sup>265</sup> Anne C Bellows and others, 'Violence as an Under-Recognized Barrier to Women's Realization of Their Right to Adequate Food and Nutrition: Case Studies From Georgia and South Africa' (2015) 21 *Violence Against Women* 1194.

<sup>266</sup> *ibid*; Wadhwa (n 196).

### 3.2 Food violences and the privateness of households as the first implementation problem that leads to women's hunger

The authors Christine Chinkin and Shelley Wright in their academic work, “The Hunger Trap: Women, Food, and Self-Determination,” mention the existence of a ‘Hunger Trap’ in which the women of the world are stuck. This trap is made of two circles. One circle represents the ‘public sphere’, where States, international organizations, and multinational companies interact. Within this big circle, there is another circle which is the ‘private sphere’. And this is the circle where the women live.<sup>267</sup> The inner circle represents all things associated with women and the private world of family, domesticity, home and is often invisible for those who act and live in the public sphere.<sup>268</sup>

International Law still follows the dichotomy of “private” and “public” sphere<sup>269</sup>, and the public sphere is actually regarded as “the province” of international law<sup>270</sup>, “the appropriate terrain of regulation”.<sup>271</sup> Some matters are of international "public" concern while other matters are "private". The international community has no acknowledged legal interest in the matters that are “private” to states and considered matters of their domestic jurisdiction.

At a deeper level, one can see the exact same dichotomy based on gender, where “private” is connected to women and the home, and “public” is connected to men, the state, economics. While what can be seen by a society as “private”, may be considered as “public” by another, there is no denying that there is an universal association between women's activities and the private sphere, therefore considering women's actions of lesser value.<sup>272</sup>

This difference explains in some ways why the food policies that are created in the “public” sphere to solve the issue of hunger *fail* to penetrate into the women's

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<sup>267</sup> Chinkin and Wright (n 41) 264.

<sup>268</sup> *ibid.*

<sup>269</sup> To understand how the distinction between public and private realms arose out of a double movement in modern political and legal thought, please see: Morton J Horwitz, ‘The History of the Public/Private Distinction’ (1982) 130 University of Pennsylvania Law Review 1423.

<sup>270</sup> Hilary Charlesworth, Christine Chinkin and Shelley Wright, ‘Feminist Approaches to International Law’ (1991) 85 The American Journal of International Law 613, 625.

<sup>271</sup> Margaret Thornton, ‘The Public/Private Dichotomy: Gendered and Discriminatory’ (1991) 18 Journal of Law and Society 448, 449.

<sup>272</sup> *ibid*; Chinkin and Wright (n 41).

“private” sphere. The continuous interaction of States, international organizations, and multinational corporations furthering women’s deprivation, not being able to reach them in their “private sphere” as agents of public law, creating more hunger for women.<sup>273</sup>

What additionally furthers this failure is the fact that households are also seen as “private”, and so is what happens inside of them. Households define the protective shell of the family.<sup>274</sup> They are the space designated to family and have the status of a private domain that is exclusively controlled by family patriarchs and exempt from law. Their “privateness” and their invisibility, promoted by the fact that there is no direct protection offered to households as a whole, and the fact that those who live in the household have limited political participation, contributes to the violence that happens in them.<sup>275</sup> This invisibility creates a wall between those who suffer the violences inside the household, and the public policies that addresses those violences.<sup>276</sup> This dichotomy of private and public is enforced by the law itself, as it was stated in the previous section, since both the UDHR and the ICESCR contributed to this privateness of households, and the invisibility that comes with it, by demanding the flow of economic social and cultural rights through a male head of the family house.<sup>277</sup>

As for violence, the author Galtung defined it as: “avoidable insults inflicted on basic human needs and more generally life and lowering the real satisfaction level of needs below what is potentially feasible”<sup>278</sup>. Violence can have many forms. It can be a active force or a simple passive threat; it can be cultural violence based on traditional practices<sup>279</sup> and it can also be structural violence. Structural violence includes concurrent violations allied with social injustice that are “built into the social structure and shows up as unequal power and consequently as unequal life chances”.<sup>280</sup> Structural violence acts as a frame for direct and cultural violence. It is what maintains social and discriminatory relations that are built on prejudice directed against certain groups.<sup>281</sup> These definitions are important to have in mind, since structural violence *feeds* the cultural violences women suffer, especially when it comes to food. In fact, a *central* reason that interferes

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<sup>273</sup> Wadhwa (n 196) 2; Chinkin and Wright (n 41) 264.

<sup>274</sup> Bellows (n 236) 258.

<sup>275</sup> *ibid* 263.

<sup>276</sup> *ibid* 251.

<sup>277</sup> *supra* 237.

<sup>278</sup> Johan Galtung, ‘Cultural Violence’ (1990) 27 *Journal of Peace Research* 291, 292.

<sup>279</sup> Galtung (n 278).

<sup>280</sup> Johan Galtung, ‘Violence, Peace, and Peace Research’ (1969) 6 *Journal of Peace Research* 167, 171.

<sup>281</sup> Prejudices can be built against all types of minorities: racial, or political minorities; rural peoples; the elderly or infirm and even children. See: Bellows (n 236).

with women's capacity to realize all their human rights, but in specific their right to adequate food and nutrition is the structural violence and discrimination they face<sup>282</sup>, not only inside<sup>283</sup> the household, but outside as well.

The term "food violences" was proposed by the author A. C Bellows in 2003 exactly to illustrate the connection between food and gender-based violence, and how *structural*, how built into the system, and our homes, it is. The term is meant to "describe periodic or chronic physical, psychological, and political harm associated with food availability and food-related work."<sup>284</sup> Food, and the work associated with it, from food production, shopping and meal preparation, can represent instigators of gender-based violence.<sup>285</sup> Both food violences, and the gender-based violences women suffer are largely invisible, unacknowledged, and unprotected.<sup>286</sup> They are also intrinsically related and affect, most of the time, the same subjects – women – who are instrumental to household food security, but at the same time, whose work is devalued since they belong to the "private sphere"<sup>287</sup>.

The food violences that affect women are diverse and complex. They encompass when, how, what and how much women eat, the expectations surrounding the women's food work and its quality, as well as the right to reward or abuse women for how well they perform their food work.<sup>288</sup> They also encompass the trauma of hunger, malnutrition.<sup>289</sup> The complexity of reasons why this happens has to do with the several sciences involved. Some are cultural reasons, personal, social and even economic reasons.<sup>290</sup> It is easy to measure and see the general position of women within a certain society. It is easy to see if they are respected or disrespected. One only needs to look to what happens around dinner time. One only needs to look if women are the first or the last to

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<sup>282</sup> Bellows and others (n 265) 1195.

<sup>283</sup> This section of the thesis will only focus on the violences happening inside the household and how they connect to women's food insecurity.

<sup>284</sup> Bellows (n 236) 251.

<sup>285</sup> Bellows and others (n 265) 1195.

<sup>286</sup> No less devastating, but outside the realm of this academic thesis, are food violences associated with farm and food industry labor, uneven economic relationships between nations, corruption of food nutritional value (through industrial processing, packaging, fast food sales, etc.), and massive non-point source pollution, among others.

<sup>287</sup> Anne C Bellows, 'The Praxis of Food Work', *Feminist Locations: Global/Local/Theory/Practice in the Twenty-First Century* (Rutgers University Press 2001).

<sup>288</sup> Anne C Bellows also mentions "the ability to exploit women's engagements in food work and the related violences to leverage global marketing incursion of unhealthy foods into local food systems" as a food violence. However, while it is important to mention it, the aim of this thesis does not include the assessment of global marketing and local food systems. For more information on the topic see: Bellows and others (n 265) 1199.

<sup>289</sup> Bellows (n 236).

<sup>290</sup> Chinkin and Wright (n 41) 263.

eat, if they are included or excluded in ritual practices involving food, and the types of food they may or may not eat. All these factors show how important a certain society regards women to be.<sup>291</sup>

As for how much women eat, researchers have found that, ever since 1984<sup>292</sup>, except in times of famine, malnutrition does not affect all members of a household in an equal manner.<sup>293</sup> Food is distributed in an unequal manner inside most households, which means that program resources distributions directed at households, if those exist, may not consistently reach target individuals as desired.<sup>294</sup> There are a lot of intra-household variables that affect household food supply and provision, and in turn household food security, such as who makes the decisions inside the household and who distributes the food inside it.<sup>295</sup> Van Esterik even stated as long ago as 1985 that “There is sufficient evidence to say that food is not equally divided within households (...) the distribution of food reflects the order of precedence and social value of the food consumers”<sup>296</sup>, meaning women, because since they have less social value, receive less food. In several societies women often eat last, least and more poorly. Women eat last after the largest and choicest portions have gone to men and boys<sup>297</sup>, and are also less likely to be automatically served.<sup>298</sup>

The problem, even though more than three decades old, is still a current one.<sup>299</sup> Studies in Nepal showed that adult women were less likely to meet their nutrient necessities for energy than men of the same age.<sup>300</sup> In China, a case study of eight provinces displayed the same results, where men presented a higher discrepancy score

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<sup>291</sup> *ibid.*

<sup>292</sup> G Pelto, ‘Intrahousehold Food Distribution Patterns’, *Malnutrition: Determinants and Consequences* (Alan R Liss 1984).

<sup>293</sup> Joel Gittelsohn, ‘Opening the Box: Intrahousehold Food Allocation in Rural Nepal’ (1991) 33 *Social Science & Medicine* 1141, 1141.

<sup>294</sup> *ibid.*

<sup>295</sup> Fatma Osman Ibnouf, ‘The Role of Women in Providing and Improving Household Food Security in Sudan: Implications for Reducing Hunger and Malnutrition’ (2009) 10 25, 154.

<sup>296</sup> Van Esterik (n 240).

<sup>297</sup> Tina Rosalina and others, ‘Food-Poverty Status and Food Insecurity in Rural West Lombok Based on Mothers’ Food Expenditure Equivalency’ (2007) 28 *Food and nutrition bulletin* 135; Sasson (n 197); Anne C Bellows and others, ‘Violence as an Under-Recognized Barrier to Women’s Realization of Their Right to Adequate Food and Nutrition: Case Studies From Georgia and South Africa’ (2015) 21 *Violence Against Women* 1194; Wadhwa (n 196).

<sup>298</sup> In Nepal for instance, research conducted in six villages in Pahargaon shows that women are less likely to be automatically served (18%) and much more likely to serve themselves (74%). In most households, adult women are the food servers and due to food pollution rules (*jutho*) must first serve others before themselves. See: Gittelsohn (n 293) 1143.

<sup>299</sup> Helen Harris-Fry and others, ‘Determinants of Intra-Household Food Allocation between Adults in South Asia – a Systematic Review’ (2017) 16 *International Journal for Equity in Health* 107.

<sup>300</sup> Gittelsohn (n 293); Rosalina and others (n 297) 136.



than women for energy, protein, calcium, iron, vitamin C, and retinol.<sup>301</sup> A recent study of 30 countries in sub-Saharan Africa, for example, found that 74 percent of under-weight women resided in households with a male head who is not underweight.<sup>302</sup>

Gender discrepancies in household food allocation have been observed in other diverse locations such as Bangladesh<sup>303</sup>, Brazil<sup>304</sup>, Great Britain<sup>305</sup>, and Sudan<sup>306</sup>, just to name a few, and they always appear to favor males. When asked about this practice a Hindu woman with two nearly grown sons, explains that in her household, the men eat first because “They work so hard, they deserve it best and early. So, that is why I wait for them to finish. ... I’m a woman, it is okay for me to starve.”<sup>307</sup> Some women on the other hand express frustration that their partners fail to provide enough food for them and their children.<sup>308</sup> When this happens, and there is not enough food, most women feed their children first, and only then themselves.<sup>309</sup>

Additionally, this problem also affects pregnant women, making them receive inequitably lower shares of food and nutrients<sup>310</sup>, and in some cultures, food violence and food insecurity affect girls and teenager girls in a discriminatory manner as well. Female children are often neglected in South Asia, for instance in Bangladesh<sup>311</sup>, and India<sup>312</sup> where they are seen as a drain in the household, due to the high costs of having them and the loss of the labor that happens in the household once the adult female moves to her husband’s household after marriage.<sup>313</sup> Food violence also affect teenager girls in

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<sup>301</sup> Wei Luo and others, ‘Intrahousehold Food Distribution: A Case Study of Eight Provinces in China’ (2001) 10 Asia Pacific Journal of Clinical Nutrition S19.

<sup>302</sup> Caitlin Brown, Martin Ravallion and Dominique van de Walle, *Are Poor Individuals Mainly Found in Poor Households? Evidence Using Nutrition Data for Africa* (The World Bank 2017) <<https://elibrary.worldbank.org/doi/abs/10.1596/1813-9450-8001>> accessed 7 June 2021.

<sup>303</sup> Kaneta K Choudhury and others, ‘Gender Inequality and Severe Malnutrition among Children in a Remote Rural Area of Bangladesh’ (2000) 18 Journal of Health, Population and Nutrition 123.

<sup>304</sup> Campos and others (n 200).

<sup>305</sup> Michel Nelson, ‘The Distribution of Nutrient Intake within Families’ (1986) 55 British Journal of Nutrition 267.

<sup>306</sup> Ibnouf (n 295) 155.

<sup>307</sup> This interview and others was conducted by Lentz, whose conclusions can be found in: Lentz (n 196) 275.

<sup>308</sup> Gohin, mother of three children, explains that her husband “doesn’t feed us well. He only takes care of himself and [his parents]. What little food we have, I bring from my parents’ house. Sometimes, I skip meals to meet the needs of my children.” The interview was done along others in: *ibid*.

<sup>309</sup> United Nations Children’s Fund (UNICEF), ‘The State of Children in Indonesia 2020’ (n 192) 36.

<sup>310</sup> Helen A Harris-Fry and others, ‘Status and Determinants of Intra-Household Food Allocation in Rural Nepal’ (2018) 72 European Journal of Clinical Nutrition 1524.

<sup>311</sup> Choudhury and others (n 303).

<sup>312</sup> Roli Srivastava, ‘More Baby Girls than Boys Die in India, as Parents Neglect Healthcare: U.N.’ *Reuters* (21 February 2018) <<https://www.reuters.com/article/us-india-gender-health-idUSKCN1G50FY>> accessed 26 May 2021; United Nations Children’s Fund (UNICEF), ‘Every Child Alive: The Urgent Need to End Newborn Deaths’ (2018) 13.

<sup>313</sup> Gittelsohn (n 293) 1150.

sub-Saharan Africa. According to several studies<sup>314</sup>, more female teenagers aged between 15 and 19 years ,in sub-Saharan Africa, are suffering from anemia (the highest rate of 68% is registered in Mali) and weight insufficiency (47% in India), while male teenagers of the same age are suffering less from these conditions.<sup>315</sup> In Ethiopia, over 5 years of interviewing families about their food habits and studying the eating habits of more than 2,000 teenagers, were compiled into a study published by Tefera Belachew from the University of Jimma.<sup>316</sup> The results showed that in normal situations, the health of girls and boys was similar. But once access to healthy food became difficult, their health differed. Among the teenagers interviewed, about 25% of the females have been confronted with food insecurity, compared with 16% of the males. Boys were also usually fed first and received better quality food.<sup>317</sup> Regarding food variety, 77% of girls had lower dietary variety when compared to 22% boys<sup>318</sup>, which causes girls to suffer more from general diseases and pathologies. Consequently, men's food intake does not reflect household food intake. If the mother has inadequate food intake, with or without other household members having adequate food intakes, the household is still food-poor. The fact that one individual—the mother—has to sacrifice her share to make up for the missing food of the others still means that, overall, there is not enough food, and therefore if the food were evenly distributed, everyone in the household would be food-deprived to some extent.<sup>319</sup>

Food violences also include *what* women eat and how much of it. Meals were observed in which the senior male received a large portion of a desirable food such as a bowl of yogurt while adult women, in case they received some yogurt, received a disproportionately smaller share, perhaps only a tablespoon.<sup>320</sup> Some foods are simply not distributed to women. This can happen due to belief systems, where for instance, in Nepal, women are not allowed to eat soybeans and wild green leafy vegetables, or because certain foods are lacking, such as animal products.<sup>321</sup>

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<sup>314</sup> Sasson (n 197) 4; Tefera Belachew and others, 'Food Insecurity, Food Based Coping Strategies and Suboptimal Dietary Practices of Adolescents in Jimma Zone Southwest Ethiopia' (2013) 8 PLOS ONE e57643.

<sup>315</sup> Belachew and others (n 314).

<sup>316</sup> Tefera Belachew and others, 'Food Insecurity, School Absenteeism and Educational Attainment of Adolescents in Jimma Zone Southwest Ethiopia: A Longitudinal Study' (2011) 10 Nutrition Journal 29.

<sup>317</sup> *ibid.*

<sup>318</sup> Belachew and others (n 314) fig 4.

<sup>319</sup> Rosalina and others (n 297) 145.

<sup>320</sup> Gittelsohn (n 293) 1148.

<sup>321</sup> *ibid* 1150.

Violence against women, even if just expressed by controlling what women eat, when and how much, while highly influencing women's food security<sup>322</sup> “is rarely acknowledged or anticipated when attempting to address women's particular over-representation among the food and nutrition insecure”.<sup>323</sup> This reluctance emphasizes why policies worldwide are not gendered enough in order to make a difference in women's lives. It also exposes the gap between the formal legal provisions of a guaranteed international right to food, explored in Chapter 2 of this thesis, and the realities of life for women around the world.

By turning a blind eye to household food based violences, policy makers, States, and the law *itself* are not only disempowering the victims and their whole communities. Further, they are refusing to act, in a meaningful way, on the knowledge that the structural violences women suffer are the main cause for their hunger.

### 3.3 Women's lack of land rights as the second as the second implementation problem that leads to their hunger

When we remember that it was only in the 19<sup>th</sup> century that women could own property, separate from their husband, it is not hard to grasp that such late legal recognition of women's property rights would still have repercussions today.<sup>324</sup> Ever since then, women have struggled to gain equal property rights, especially due to the fact that “joint ownership” often meant the land was the man's property.<sup>325</sup>

The discrimination women face when it comes to land ownership is so serious, and *modern*, that both the United Nations Office of the High Commissioner and UN

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<sup>322</sup> Lentz (n 196).

<sup>323</sup> Anne C Bellows and Anna Jenderedjian, ‘Chapter 3: Violence and Women's Participation in the Right to Adequate Food and Nutrition’, *Gender, Nutrition, and the Human Right to Adequate Food* (Routledge 2016) 108.

<sup>324</sup> And still, women had to be married. The law “Married Woman's Property Act” was passed in New York in 1848 and was later used as a model for other states, and for other countries. In Britain for instance, the British Parliament only passed a similar statute in 1882. See: Constance B Backhouse, ‘Marriage, Women, and Property: A Legal History of Enforced Dependence’ (1987) 12 *American Bar Foundation Research Journal* 591.

<sup>325</sup> Anne BW Effland, Denise M Rogers and Valerie Grim, ‘Women as Agricultural Landowners: What Do We Know about Them?’ (1993) 67 *Agricultural History* 235, 238.

Women have brought attention to this issue in the past year.<sup>326</sup> In fact, at the time of writing this thesis, the United Nations Committee on Economic, Social and Cultural Rights is developing a General Comment, No. 26, on Economic, Social and Cultural rights and the Governance of Land Tenure, where women's lack of land rights is examined.<sup>327</sup> Moreover, the former Special Rapporteur on the right to food, Olivier De Schutter has also highlighted the importance of addressing the discrimination women face in regards of access to land in an earlier report, as well the connection between ownership of land and food security.<sup>328</sup>

The right of women to have equal access to land is widely protected and mentioned in international human rights law and explicitly addressed in CEDAW in Article 14.2(g). This Article protects women's right to farm-related resources, such as credit, appropriate technology and equal treatment in land, emphasizing the need to expand gender equality in rural work.<sup>329</sup> One can even argue this article has a strong connection to the concept of "food sovereignty".<sup>330</sup> The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas recognized, in its Article 4(2)(h), the right of peasant women and other women working in rural areas to have "equal access to, use of and management of land and natural resources, and to equal or priority treatment in land and agrarian reform and in land resettlement schemes".<sup>331</sup> Additionally, other international legal and policy instruments lay out a clear foundation for women's rights to land and other related resources. The UN Committee on Economic, Social and Cultural Rights, in its GC 16, also mentioned above, in its paragraph 28, noted that women have a right to own, use or otherwise control land, property and housing, as equally as men do, and that women have the right to access the necessary resources to do

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<sup>326</sup> United Nations Office of the High Commissioner and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), *Realizing Women's Rights to Land And Other Productive Resources* (Second Edition, UN Women 2020).

<sup>327</sup> Please note, once again, that this General Comment is being Drafted as this thesis is being written. As a consequence, the paragraphs I mention here might change when the final version is published. See: UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 26 (2021) on Land and Economic, Social and Cultural Rights: Draft Prepared by the Rapporteurs, Rodrigo Uprimny and Michael Windfuhr (Advanced Edited Version)' (2021) UN Doc. E/C.12/69/R.2 (Restricted Access) paras 16–17.

<sup>328</sup> In his words: "Access to land and security of tenure are essential for the enjoyment of the right to food." See: Human Rights Council (HRC), 'Report of the Special Rapporteur on the Right to Food' (2010) UN Doc A/65/281.

<sup>329</sup> Rudolf and others (n 225) 428.

<sup>330</sup> As stated in the first chapter, "food sovereignty" includes not only the right to food, but also the right to produce food and associated rights such as the right to land, for example, which Article 14 clearly mentions in 2(g). "

<sup>331</sup> UN Human Rights Council, 'United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas' (2018) 39th session Article 4(2)(h).

so.<sup>332</sup> Additionally, in the General Recommendation No. 34, also mentioned above, the Committee on the Elimination of Discrimination against Women considers rural women's rights to land, natural resources, including water, seeds, forestry, as well as fisheries, as fundamental human rights.<sup>333</sup> Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security<sup>334</sup>, and the Beijing Declaration and Platform of Action<sup>335</sup> all emphasize the need to achieve gender equality in the enjoyment of land and property rights. At the 2010 High-level Plenary Meeting of the General Assembly on the Millennium Development Goals, Governments around the world also committed to promoting and protecting women's equal access to land and to property, as well as to productive resources.<sup>336</sup> As it is possible to see, women's right to land is extensively protected in international human rights law. But it is not often realized into practice, as this section aims to show.

Land supports independence, both in urban and rural areas, where it can generate direct income if it is rented or sold.<sup>337</sup> Further, in rural and sub-urban areas, land is a key input for agricultural production.<sup>338</sup>

For women land is even more valuable. Land ownership for them equals empowerment and autonomy and has major implications for the realization of women's rights. It is also linked to higher monetary earnings and personal savings, better access to credit, improved education and health outcomes, as well as better protection from gender violence.<sup>339</sup> Land enhances status and improves living conditions. It reduces women's

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<sup>332</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)' (n 162) para 28.

<sup>333</sup> Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 34 on the Rights of Rural Women' (2016) UN Doc CEDAW/C/GC/34 para 56.

<sup>334</sup> They encourage the "effective participation of all members, men, women and youth" in 'local or traditional institutions, including in the case of collective tenure systems'. See: Food and Agriculture Organization of the United Nations (ed), *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (Food and Agriculture Organization of the United Nations 2012) 12.

<sup>335</sup> 1995 Fourth World Conference on Women, 'Beijing Declaration and the Platform for Action' (1995) para 55.

<sup>336</sup> General Assembly of the United Nations, 'Resolution Adopted by the General Assembly on 22 September 2010' (2010) UN Doc A/RES/65/1 para 72 (k) and (l).

<sup>337</sup> Food and Agriculture Organization of the United Nations, *Realizing Women's Rights to Land in the Law: A Guide for Reporting on SDG Indicator 5.a.2.* (2018) 13.

<sup>338</sup> Michael Aliber and Tim Hart, 'Should Subsistence Agriculture Be Supported as a Strategy to Address Rural Food Insecurity?' (2009) 48 *Agrekon*.

<sup>339</sup> Working Group on the Issue of Discrimination against Women in Law and in Practice, 'Insecure Land Rights for Women Threaten Progress on Gender Equality and Sustainable Development' (2017).

reliance on male partners and relatives and increases their bargaining power within the household, which might lead to them not always eating last, less or worse.<sup>340</sup>

Producing food is not possible without land and that is why land ownership is linked to better nutrition and food sovereignty.<sup>341</sup> All aspects of food production and consumption increase, when women have access to land. Increasing women's control over land has been shown to improve children's nutrition, health and education access.<sup>342</sup> Women are more likely than men to focus the resources and skills available to them on the nutrition and health aspects of their family, improving its further the overall welfare.<sup>343</sup> The absence of tenure rights for women has terrible consequences for them, and for their communities, who grow hungrier. One direct consequence of the gender dynamics in agricultural landownership is that women do not consider themselves as owners of the land, and therefore do not make the decisions on it, and how they want the land to be used, and which food should be grown.<sup>344</sup> Furthermore, other consequences of lack of property rights include the fact that they are excluded from important decisions regarding their land, such as selling it or leasing it; a shortage of resources when if an abusive partner expels them from their home and women also lose their house if their husband dies.<sup>345</sup> Despite women's crucial role in agriculture, food production, and land-based livelihood, since they correspond 60% of the world's farmers,<sup>346</sup> because they are not typically considered as farmers or landowners, women are usually excluded from agricultural support programs and financial credit and loans which are all necessary for

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<sup>340</sup> *ibid.*

<sup>341</sup> As subchapter 2.2 explored, not only does women's access to food increase when they have access to land rights, but so do their right to "healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems", which is exactly the meaning of food sovereignty. See: 'Food Sovereignty : Via Campesina' (n 72).

<sup>342</sup> Julia Behrman, Ruth Meinzen-Dick and Agnes Quisumbing, 'The Gender Implications of Large-Scale Land Deals' (2012) 39 *Journal of Peasant Studies* 49; UN Women, 'Facts & Figures' (*UN Women*) <<https://www.unwomen.org/news/in-focus/commission-on-the-status-of-women-2012/facts-and-figures>> accessed 13 June 2021.

<sup>343</sup> Ibnouf (n 295); Smith and Haddad (n 232).

<sup>344</sup> One example has to do with female landlords that would self-censor and were reluctant to discuss the implementation of several agricultural practices with their renters, fearing they would "scare away the good tenants". See: Sachs (n 215) 104.

<sup>345</sup> Large-scale acquisitions of land by foreign and domestic investors in developing countries disproportionately affect women. The aim of this thesis is not to explore this cause of land dispossession. However, to obtain more information on how it affects women, please see: Working Group on the Issue of Discrimination against Women in Law and in Practice (n 339); Jessica Chu, 'Gender and "Land Grabbing" in Sub-Saharan Africa: Women's Land Rights and Customary Land Tenure' (2011) 54 *Development* 35; Sachs (n 215); Collins (n 250).

<sup>346</sup> UN Women (n 342).

effective use of land and for them to increase their agriculture technologies.<sup>347</sup> This makes their communities more food insecure. As the Human Rights Council stated, and we exposed in our Chapter 2, “the right to food includes the rights of vulnerable and discriminated groups to have access to land, small-scale irrigation seeds, credit, technology and local markets in rural areas, and a sufficient income”.<sup>348</sup> With land, not only do women have the resources to finally produce their own food, they are also able to receive agricultural support from world-wide programmed and financial credit and loans, which makes them able to increase their agricultural technologies.<sup>349</sup> In fact, investing in women farmers is one of the most effective strategies for reducing extreme poverty and hunger around the world.<sup>350</sup>

According to global statistics, around the world women own less land and have less secure rights over land than men, corresponding, on average, to less than 20 percent of the world’s landholders<sup>351</sup>, while men own the other 80 percent, despite women accounting for 65 percent of the farm labor.<sup>352</sup> Women contribute to food production in rural areas more than has been generally recognized.<sup>353</sup> In all countries for which the information is available the number of women landholders is significantly less than the number of male landholders.<sup>354</sup> Although women account for around 65 per cent of all farm labor, 70 per cent of the rural landless are women, and most of them have lost their land shares since the 1990s through government redistribution or widowhood.<sup>355</sup> Most of the rural women are unemployed, and engage in subsistence agriculture. They contribute

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<sup>347</sup> One example has to do with female landlords that would self-censor and were reluctant to discuss the implementation of several agricultural practices with their renters, fearing they would “scare away the good tenants”. See: Sachs (n 215) 104.

<sup>348</sup> Human Rights Council (HRC), ‘Preliminary Study of the Human Rights Council Advisory Committee on Discrimination in the Context of the Right to Food’ (n 9) para 5.

<sup>349</sup> Vongai Murugani and others, ‘The Role of Property Rights on Rural Women’s Land Use Security and Household Food Security for Improved Livelihood in Limpopo Province’ (2014) 46 *Journal of human ecology* (Delhi, India) 205.

<sup>350</sup> ‘Eliminating Poverty and Hunger By Empowering Women’ (n 261).

<sup>351</sup> ‘The Gender Gap in Land Rights’ (n 187) 2.

<sup>352</sup> Working Group on the Issue of Discrimination against Women in Law and in Practice (n 339) 1; UN Women (n 342).

While this issue is more prominent in less developed countries, it happens in developed countries as well. For instance in the US, in 2014, women only owned 10% of the 911 million acres used for agriculture. See: United States Department of Agriculture and National Agricultural Statistics Service, ‘2014 Tenure, Ownership and Transition of Agricultural Land (TOTAL) | 2012 Census of Agriculture | USDA/NASS’ <[https://www.nass.usda.gov/Publications/AgCensus/2012/Online\\_Resources/TOTAL/index.php](https://www.nass.usda.gov/Publications/AgCensus/2012/Online_Resources/TOTAL/index.php)> accessed 10 June 2021.

<sup>353</sup> Ibnouf (n 295).

<sup>354</sup> ‘Gender and Land Rights Database | Food and Agriculture Organization of the United Nations’ <<http://www.fao.org/gender-landrights-database/en/>> accessed 9 June 2021.

<sup>355</sup> Human Rights Council (HRC), ‘Report of the Special Rapporteur on the Right to Food, Olivier De Schutter: Mission to China’ (2012) UN Doc A/HRC/19/59/Add.1 para 31.

notably towards household food production and food security of their communities. For instance, around 61% of South African farmers<sup>356</sup> are women and close to two thirds of them use agriculture as a way to increase food in the household.<sup>357</sup> In rural Sudan, for example, women are seen as “key innovators”<sup>358</sup>, developing new ways to secure food supplies for their family.<sup>359</sup> The reason why women are not able to produce more food and more efficiently has to do with gendered discrimination; they are less able to acquire the technological advances that would allow them to invest on their farms, since women are rarely seen as farmers.<sup>360</sup> Despite the numbers and statistics showed in this section, there is still a lack of data when it comes to women landowners, since it is believed a lot of them are missing from these statistics.<sup>361</sup> This is highly problematic because it contributes to the invisibility of these women; it also shows a lack of consideration for them in agricultural programs and policies, and once again, a lack of understanding of the gendered dynamics they experience.<sup>362</sup>

The ways which land can be acquired are directly and intimately related to the discrimination women face regarding property rights. Land can be acquired through the land market, national land redistribution programs, inheritance and marriage.<sup>363</sup> Women do not have access to the markets to buy land, due to their poverty.<sup>364</sup> Due to the persistence of gender inequalities in employment and income, as well as in access to other productive resources and services, women’s ability to acquire property through the market is more limited than that of men.<sup>365</sup> As for national land redistribution programs, they often allocate land to the household heads, which most times is a male. In the best-

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<sup>356</sup> The percentages vary from country to country but they are always high: 93 of women farmers percent in Burkina Faso, 87 percent in Angola, 98 percent in Burundi, 96 percent in Malawi, and 92 percent in Mali and Tanzania. See: Ibnouf (n 295).

<sup>357</sup> M Altman, T GB Hart and PT Jacobs, ‘Household Food Security Status in South Africa’ (2009) 48 *Agrekon* 345.

<sup>358</sup> Ibnouf (n 295) 151.

<sup>359</sup> Women have been using watermelon dried seeds to make porridge or giving watermelon juice mixed with honey to the children, since the fruit grows a lot in the rural areas of Sudan, developing a new food source. See: *ibid* 152.

<sup>360</sup> Roy Prosterman, ‘Enhancing Poor Rural Women’s Land Rights In The Developing World’ (2013) 67 *Journal of International Affairs* 147; Bina Agarwal, ‘Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market’ (2003) 3 *Journal of Agrarian Change* 184; Collins (n 250); Murugani and others (n 349).

<sup>361</sup> Sachs (n 215) 103.

<sup>362</sup> *ibid*.

<sup>363</sup> Murugani and others (n 349).

<sup>364</sup> It was already established in previous subsections that women are poorer than men. See: Schutter (n 11) 12; Botreau and Cohen (n 6) 43.

<sup>365</sup> United Nations Office of the High Commissioner and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) (n 326) 38.



case scenario, they may allocate land to the couple, but very rarely to women.<sup>366</sup> While inheritance is often one of the main channels through which women can secure independent land rights,<sup>367</sup> cultural and legal norms sometimes deny daughters and women spouses their right to inherit, causing a significant impact on women's opportunity to acquire land independent of their civil status.<sup>368</sup> According to the OECD's SIGI 2019 Global Report, only 44 countries accord women the same inheritance rights as men in both law and practice, while 29 countries do not grant female surviving spouses and daughters the same rights as their male counterparts to inherit land.<sup>369</sup> A 2013 study done by Landesa and UN Women in India surveyed more than 1,400 women. It showed that, despite the 1956 Hindu Succession Act, which required equal rights for sons and daughters when it comes to inheritance, and its further 2005 Amendment, only one in eight women whose parents owned agricultural land inherited any of it.<sup>370</sup> One in four women did not even know that they had any right to inherit land that belonged to their families.<sup>371</sup> And the majority of women interviewed did not know about a single case in which another woman had inherited family land.<sup>372</sup> As it is, marriage is therefore the main way women have of acquiring land, and even so, it belongs to the couple.<sup>373</sup>

Perhaps the most significant source of discrimination when it comes to women's right to land, has to do with the type of land governance adopted in the country women are from. There are two main general types of land governance. The first type is statutory law, the legal system practiced in the Western world, that grants individual ownership of

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<sup>366</sup> *ibid.*

<sup>367</sup> Even when the discriminatory elements of laws are removed, and equality is established, the laws created are often evaded under the pressure of cultural and social norms. For example, even when a sister can inherit land on an equal basis with her brothers, she may accept a lump-sum payment instead of her portion of the land just in order to maintain a good relationship with her brothers and follow the norms of gender stereotypes. See: Nira Ramachandran, 'Women and Food Security in South Asia: Current Issues and Emerging Concerns' in Basudeb Guha-Khasnobis, Shabd S Acharya and Benjamin Davis (eds), *Food Insecurity, Vulnerability and Human Rights Failure* (Palgrave Macmillan UK 2007) <[https://doi.org/10.1057/9780230589506\\_9](https://doi.org/10.1057/9780230589506_9)> accessed 9 June 2021.

<sup>368</sup> United Nations Office of the High Commissioner and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) (n 326) 38; Pauline E Peters, "'Our Daughters Inherit Our Land, but Our Sons Use Their Wives' Fields': Matrilineal-Matrilocal Land Tenure and the New Land Policy in Malawi' (2010) 4 Journal of Eastern African Studies 179.

<sup>369</sup> OECD, *SIGI 2019 Global Report: Transforming Challenges into Opportunities* (OECD Publishing 2019).

<sup>370</sup> Landesa Rural Development Institute, 'The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005' (UN Women 2013).

<sup>371</sup> *ibid.*

<sup>372</sup> This is a direct consequence of boys being valued more. Boys are the ones that are meant to look after and care for their parents when they are old, while girls are seen as "marrying out of the family". See: Sneha Kumar and Nistha Sinha, 'Preventing More "Missing Girls"' (World Bank Group 2018) 8635.

<sup>373</sup> United Nations Office of the High Commissioner and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) (n 326) 38.

land titles. The second type is the customary law system, in which the local populations are the ones that create the laws of land access and use according to customary, traditional practices.

Customary law is based on mostly patrilineal tribal values and traditions, where rights descend through the male family line, but it is not static.<sup>374</sup> In these systems, land is seen as a symbol of belonging, power and control, and it is entrusted in the chief, who then distributes it to male citizen household heads.<sup>375</sup> Women are seen as secondary recipients, where they can only access land through a male relative, be it a brother, a father, or a husband. This gives men power over women and weakens women's status and rights in the household.<sup>376</sup> Women are rendered landless more often than men in these systems, due to strength given to traditional values and gender biases. One of the consequences is women's invisibility in land registration processes. Too often, legal documents, including land certificates and titles, are only registered in the name of a male family member, husbands, fathers or brothers, omitting women's names on purpose.<sup>377</sup>

Statutory land rights, on the other hand, when combined with gender equality provisions provide a more significant protection and advantage for women that are not available under customary systems<sup>378</sup>, giving women more access to land markets.<sup>379</sup> According to OECD's Global Report, based on analysis of 180 countries, 164 countries explicitly recognize women's rights to own, use, make decisions about the land, just as men. However, only 52 (29%) of these countries guarantee these rights both in law and *practice* due to discriminatory customary laws.<sup>380</sup> And in 9% of countries, women did not have any form of the same legal property rights as men; they could not own, use or control land.<sup>381</sup> This means that even when the country has statutory laws that state the equal rights of women's ownership of land, the traditional practices may be stronger and be the

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<sup>374</sup> Aninka Claassens, 'Recent Changes in Women's Land Rights and Contested Customary Law in South Africa: Women's Land Rights and Customary Law in South Africa' (2013) 13 *Journal of Agrarian Change* 71; Prosterman (n 360); Murugani and others (n 349).

<sup>375</sup> Murugani and others (n 349).

<sup>376</sup> *ibid*; United Nations Office of the High Commissioner and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) (n 326) 58; Agarwal (n 360).

<sup>377</sup> Chris Jochnick, 'Closing the Gap between Policy and Practice on Women's Land Rights' (*World Bank Blogs*, 19 March 2018) <<https://blogs.worldbank.org/developmenttalk/closing-gap-between-policy-and-practice-women-s-land-rights>> accessed 10 June 2021.

<sup>378</sup> However, when a customary law systems transitions for a statutory system, the approach must be careful when it comes to women's property rights. The existing inequalities social attitudes within a society that have a connection to gender biases will not just disappear because statutory law was implemented.

<sup>379</sup> Collins (n 250) 193; Agarwal (n 360).

<sup>380</sup> OECD (n 369).

<sup>381</sup> *ibid* fig 1.

ones that are actually applied by the local communities.<sup>382</sup> These findings emphasize the importance of strategies that address both direct (*de jure*) and indirect (*de facto*) discrimination, as explored in our Chapter 2.6, to realize substantive gender equality in accessing, using and controlling land and other productive resources.<sup>383</sup>

Not surprisingly, Sub-Saharan Africa, the region that has the highest food insecurity rate, also has the highest degree of level insecurity of women's access to land as of 2019, followed by South Asia.<sup>384</sup> Customary law rules all aspects of life for most of the rural African and Asian<sup>385</sup>, including land, restricting most rural women access to it, despite constitutional protection.<sup>386</sup> In Senegal, for instance, women have very limited and uneven access to land<sup>387</sup>, even if the Constitution of Senegal recognizes the right to equal access to land tenure and ownership in its article 15.<sup>388</sup> The same thing happens in South Asia for instance, in China, where article 48 of the Constitution<sup>389</sup> establishes the principle of equality between women and men in the enjoyment of political, economic, social and cultural rights.<sup>390</sup> However, only 17 per cent of existing land contracts and just over one third of existing land certificates included women's names.<sup>391</sup> In China, most rural women are not aware of their legal rights in relation to land and rarely request that

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<sup>382</sup> Human Rights Council (HRC), 'Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice - Thematic Report' (2014) UN Doc A/HRC/26/39 para 61; Peters (n 368).

<sup>383</sup> United Nations Office of the High Commissioner and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) (n 326) 11.

<sup>384</sup> *ibid* 1.

<sup>385</sup> Claassens (n 374).

<sup>386</sup> The estimated number of land under customary law in Sub-Saharan Africa is 90%. See: Admos Chimhowu, 'The "New" African Customary Land Tenure. Characteristic, Features and Policy Implications of a New Paradigm' (2019) 81 Land Use Policy 897, 897.

<sup>387</sup> Less than 2 per cent of women have access to land as the result of purchase, less than 15 per cent hold assigned plots and only 25 per cent have access through inheritance. Yet women carry out 70 per cent of farming activities and are responsible for more than 80 per cent of agricultural production, especially of food crops in the country. See: Human Rights Council (HRC), 'Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice on Its Mission to Senegal' (2016) UN Doc A/HRC/32/44/Add.1.

<sup>388</sup> Article 15, translated to English, states: "(...) The man and the woman have the right to accede to the possession and to the ownership [propriété] of land within the conditions determined by the law." See: Constitution of the Republic of Senegal 2001 Title II: Public Liberties and the Person.

<sup>389</sup> Article 48, translated to English states: "Women in the People's Republic of China enjoy equal rights with men in all spheres of life, including in political, economic, cultural, social, and family life. The State protects the rights and interests of women, implements equal pay for equal work irrespective of sex, and trains and selects female cadres." See: Constitution Of The People's Republic Of China 1982.

<sup>390</sup> Human Rights Council (HRC), 'Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice: Mission to China' paras 55–58.

<sup>391</sup> Landesa Rural Development Institute, 'Summary of 2011 17-Province Survey's Findings: Insecure Land Rights, the Single Greatest Challenge Facing China's Sustainable Development And Continued Stability' (Landesa Rural Development Institute 2012) <<https://www.landesa.org/china-survey-6/>> accessed 9 June 2021.

their names be included in land registration.<sup>392</sup> Other examples include Kenya, Nigeria and Tanzania.<sup>393</sup> In Tanzania, despite the inclusion of women's land rights in the Land Acts of 1999,<sup>394</sup> because women acquiring individual property rights was viewed as a threat to social organization and gender roles<sup>395</sup>, in practice little changed.

These examples clearly show that, even when statutory national laws recognize women's rights to land, "traditional" values most likely will still succeed amongst local councilors, judges and land officials.<sup>396</sup> This is the reason why realizing women's property rights, even when legal reforms occur, does not happen overnight. Many states have recently adopted legal reforms to support gender equality in access to land and other productive resources. While these reforms are important, they have not always translated into an increase in women's land ownership and control over land *de facto*<sup>397</sup>, because tensions keep on existing even in places that suffered legal reforms. The strategy adopted by a number of governments, particularly in sub-Saharan Africa and Asia, to incorporate customary land tenure rights into the formal legal system, in effect "formalizing" them, has been criticized for weakening increasingly women's land rights.<sup>398</sup> The truth is that this incorporation comes with a high risk that patriarchal, traditional forms of land distribution and access will be further legitimized.<sup>399</sup> In South Africa, for example, land reform, despite having begun at the start of democracy, continues to be, today, at the epicenter of policy agenda in the country. Currently, land reforms demand for restitution of land, land redistribution and tenure reforms. Additionally, the government approved a Land Reform Gender Policy in 1997 to improve land ownership security among women. However, despite these efforts, male-headed households currently still own larger terrains

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<sup>392</sup> Human Rights Council (HRC), 'Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice: Mission to China' (n 390) para 55.

<sup>393</sup> UNICEF (ed), *The State of the World's Children 2007: Investing in Women's Rights to Advance the Rights of Both Women and Children*. (UNICEF 2006).

<sup>394</sup> Article 142 d) (i) (a) states: the "Government (is) designed to assist women to improve their economic and social position by providing them with advances secured by a mortgage of land shall not be taken to be acting in discriminatory Manner if the advances under that Programme are made only to women". See: The Land Act of 1999.

<sup>395</sup> Collins (n 250) 194.

<sup>396</sup> Kenny Manara, *Assessing Rural Women's Land Ownership Ten Years After the Enactment of the Land Laws* (Women's Legal Aid Centre 2010) 30.

<sup>397</sup> United Nations Office of the High Commissioner and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) (n 326) 42.

<sup>398</sup> *ibid* 58.

<sup>399</sup> Human Rights Council (HRC), 'Report of the Special Rapporteur on the Right to Food' (n 328) para 22.

of land and female-headed households are *still* less represented in the reform programs, having less access to land.<sup>400</sup>

As shown, just the implementation of statutory land law by itself, does not make the gender inequalities that came before it vanish, or immediately changes the existing social traditional attitudes.<sup>401</sup> In many customary contexts, women are discriminated in their access to land, as discussed above, and can only access land only through their relationship with a male relative, such as a father, husband, brother or brother-in-law. Statutory endorsement of such customary land tenure systems can therefore reinforce discrimination and gender inequalities and further the exclusion of women as landowners.<sup>402</sup> Additionally, due to its unwritten status, elites and power holders may manipulate customs to improve profits or access to land, leaving vulnerable or marginalized groups, including some women, at risk of dispossession in the name of “custom” and “tradition”.<sup>403</sup> Introducing modern forms of property rights may weaken women’s claims. During the transition, where it is accompanied by individuals registered titles, women have often lost whatever land access they had, while male claims have been made stronger.<sup>404</sup>

Due to the exposed above, it is not hard to see that women’s lack of property rights is an implementation problem. Not only is women’s ownership of land protected by numerous, legally binding, international human rights law instruments, it is also protected in many national constitutions, some of them recent, or national laws. Despite this, traditional values and gender biases seem to play a more important role in most rural communities than law does, making women’s names be erased from tenure ownership certificates. There is no way to implement the mentioned laws that give women access to land if cultures and values do not stop being patriarchal and patrilineal. It is also not hard to make the connection between women’s discriminatory lack of land rights and how their

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<sup>400</sup> Byela Tibesigwa and Martine Visser, ‘Assessing Gender Inequality in Food Security among Small-Holder Farm Households in Urban and Rural South Africa’ (2016) 88 *World Development* 33; Cherry Walker, ‘Piety in the Sky? Gender Policy and Land Reform in South Africa’ (2003) 3 *Journal of Agrarian Change* 113.

<sup>401</sup> Collins (n 250) 193.

<sup>402</sup> *ibid.*

<sup>403</sup> United Nations Office of the High Commissioner and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) (n 326) 58.

<sup>404</sup> Ann Whitehead, ‘The Gendered Impacts of Liberalization Policies on African Agricultural Economies and Rural Livelihoods’, *The Gendered Impacts of Liberalization: Towards ‘Embedded Liberalism’?* (Routledge 2009) 47; Collins (n 250) 193.

right to food and that their right to feed themselves with dignity is not being protected.<sup>405</sup> The interconnectedness between tenure rights and hunger is clear and evident. Investing land use and ownership security options for women is thus urgent in combating food insecurity and creating autonomous, empowered women.<sup>406</sup>

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<sup>405</sup> Human Rights Council (HRC), 'Preliminary Study of the Human Rights Council Advisory Committee on Discrimination in the Context of the Right to Food' (n 9) para 5.

<sup>406</sup> Agarwal (n 360).

## 4 Conclusion

The right to food is a human right, with legal worldwide recognition, that protects the right of all human beings to live in dignity, free from hunger, food insecurity and malnutrition.<sup>407</sup> It has been considered the “most basic human right.”<sup>408</sup> Every human being, despite its color, race, gender and age, amongst other differentiative factors, has “the 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”.<sup>409</sup> And yet around 688 million people are still hungry.<sup>410</sup> And of those, around 500 million, seventy percent, are women.<sup>411</sup>

Upon the harshness of these numbers, the aim of this thesis was to explore some of the reasons why women are so disproportionately food insecure. Especially in a world that in 1974, over forty years ago, already had had a World Food Conference where a Universal Declaration on the Eradication of Hunger and Malnutrition was issued. In a world where international treaties such as the UDHR, ICESCR and CEDAW were ratified by most of the international community and documents such as the Voluntary Guidelines of 2004 and the General Comment 12 of 1999 have been adopted.

The answers found are as complex as the problem.

Women’s food insecurity is a consequence of their higher poverty rates, their lower salaries and the fact that there are less economic opportunities for them. It is a consequence of the gender land ownership gap, the traditional cultural expectations regarding how much, what and when women should eat and gender biases that dictate that women are not farmers. It is a consequence of a patriarchal system that constantly discriminates them based on their gender and the structural violences women suffer because of it.

More concretely, women’s food insecurity has to do with the failure of the international system to address their hunger, both from a legal and policy perspective.

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<sup>407</sup> Christine and Claeys (n 31) 1617.

<sup>408</sup> ‘Report of the World Food Conference, Rome, 5-16 November 1974’ (n 83) 10.

<sup>409</sup> Ziegler (n 32) para 17.

<sup>410</sup> Food and Agriculture Organization of the United Nations, *The State of Food and Agriculture 2019: Moving Forward on Food Loss and Waste Reduction*. (n 5) 6.

<sup>411</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on the Right to Food’ (n 13) para 4.

While International Human Rights Law protects extensively the right to food and the principle of non-discrimination, it is possible to conclude that it does not protect women's *specific* right to adequate food and nutrition. Women's right to adequate food and nutrition is invisible both in the UDHR and in the ICESCR, since both instruments connect the right to food only to "himself and his family", seeing male household heads as the main right-holders of the right to food. This makes women invisible in both treaties' language. There is also an omission of a universal provision dedicated to women's right to food in CEDAW, where women are only recognized as right holders of this economic right when they are pregnant or lactating, thus excluding young girls and all the women that at the moment are not pregnant. This omission of a concrete universally binding women's right to food is a failure and a *gap* of international human rights law. As for worldwide policies that combat hunger, they are often not gendered enough. Even "gender-sensitive" policies have a very different impact on women and men and often forget about the gender dynamics inside and outside the household related to food. This makes policies worldwide fail on addressing women's hunger.

The concrete facets of women's systematic and systemic discrimination when it comes to right to food can be seen in the two implementation problems analyzed: the lack of real tenure rights for women and the food violences that are exercised within the privateness of households. In the cultures where gender discrimination is more prominent, women face bigger food violences, being made to eat last, more poorly and less than every man in the household.<sup>412</sup> The dichotomy between "private" and "public" in International Law, the gender biases associated with those terms, and the language chosen in the UDHR and in the ICESCR, enforces the food violences women suffer and makes it unfeasible for laws and policies to reach these women. As for women's lack of property rights, it is an implementation problem reflective of gender-based discrimination in societies and cultures where traditional patriarchal beliefs have higher value than international and national laws that state that women have equal access land as men. Food security depends on the land women are not allowed to own.

It is then possible to witness that the gap between law and what happens in women's lives is real. Even when their rights are protected, violations occur.

There are no clear and easy answers to solve women's hunger and food insecurity, since it is a multifaceted complex problem. In the hopes of addressing women's hunger,

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<sup>412</sup> Mathur (n 258) 9.



women's social status, autonomy and decision-making power would have to be raised. Better independence and livelihoods and education would have to be achieved.<sup>413</sup> There would have to be an investment in girls' and women's nutrition and health, so that women could do the best-informed decision about their nutrition choices and those of their families and communities.<sup>414</sup> Agriculture support policies would have to reach women farmers and investing in land use and ownership security options for women would be needed.

Confronting the issue of gendered global hunger can only be done through an ensured coordination of national and international actors, coming together and making an effort to create cooperative gendered-enough policies and adapting the language of international human rights treaties so it is not as gender-discriminatory as it is now.

A gender-responsive approach to solve women's hunger would mean a critical re-writing of the issue of hunger *in itself*. The only way to fulfill the goal of Zero Hunger is to completely rewrite the food system and how it works, addressing the issues covered by this thesis, and then addressing other issues. If the world is committed to fulfil the goal of Zero Hunger, there is no better way to show that commitment by starting to address women's food insecurity.

After all, "breaking the cycle of hunger and poverty at its roots begins with women".<sup>415</sup>

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<sup>413</sup> Drèze and Sen (n 199).

<sup>414</sup> United Nations Children's Fund (UNICEF), 'Special Section - Girls and Women Need Stronger Support for Better Nutrition' (n 197).

<sup>415</sup> World Food Programme (n 22) 3.

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