

# The right to Food<sup>1</sup>

**Key words:** Right to food, nutrition, food systems, accountability, economic social and cultural rights, Committee on Food Security, food sovereignty, natural resources.

## 1. Introduction

During the negotiations of the Universal Declaration on Human Rights at the end of the Second World War, states were concerned above all about hunger produced by the armed conflict<sup>2</sup>. Now, 70 years later, 815 million people suffer from hunger and malnutrition<sup>3</sup>. Throughout the 70 years following the adoption of the Declaration, the right to food movement has identified and denounced additional causes of hunger, such as: the inadequate distribution of food and natural resources; land, water and seeds grabbing; the dominance of agri-business; the impact of extractive industries; the commercialization and commoditization of seeds and the accompanying pesticides and fertilizers packages; urbanization; tourism; climate change; eco-destruction<sup>4</sup>; and corruption and discrimination in food assistance networks. In addition to hunger, high rates of malnutrition are causing chronic non-communicable diseases such as obesity, diabetes, and cancer<sup>5</sup>.

As early as 1948 the UDHR recognized the right to food as part of the right to an adequate standard of living, but the Declaration did not otherwise elaborate on the content and scope of this right. Since then, a clear *corpus juris* on the right to food and nutrition has developed, based in the Article 11 of the ICESCR and the General Comment 12 of the CESCR. This legal basis has been enriched by the work of other

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<sup>1</sup> In addition to academic sources, this article has been enriched with the information accessed by the author in the context of her work in FIAN International, the international organization promoting and defending the Right to Food and Nutrition. Such information includes internal historical documents of FIAN, practical work with affected communities, advocacy work with national and regional authorities as well as the advocacy work in the interaction with the United Nations, the Food and Agriculture Organization and the Committee on Food Security.

<sup>2</sup> Polish Delegation in A/C.3/325, 8 November 1948, Schabas, Op.Cit, p. 1879

<sup>3</sup> FAO, The State of Food Insecurity and Nutrition in the World, 2017.< <http://www.fao.org/state-of-food-security-nutrition>> Accessed on 06 of June 2018

<sup>4</sup> Civil Society Mechanism, Civil Society Report on the Use and Implementation of the Right to Food Guidelines, 2018. Available at: <http://www.csm4cfs.org/wp-content/uploads/2018/10/EN-CSM-LR-2018-compressed.pdf> Accessed on 01.04.2018

<sup>5</sup> WHO, Controlling the Global Obesity Epidemic at: <https://www.who.int/nutrition/topics/obesity/en/> at 01.04.2018.

treaty bodies, the Special Rapporteurs on the Right to Food<sup>6</sup>, resolutions of the Human Rights Council, the FAO global summits, the Committee on Food Security, and national legal frameworks and judicial decisions, among others. These authorities clarify the nature and legal content of the right, states' corresponding obligations and mechanisms for its enforceability. They also provide guidance on how states can comply with their obligations along the whole food process and in the framework of food systems. This legal and institutional framework continues evolving, as the transformation of society creates new situations in which human rights holders require new forms of protection.

This article provides an overview of the legal milestones of the Right to Food and Nutrition. It begins by focusing on the origins of the right to food and the *travaux préparatoires* and other preparatory documents supporting Article 25 of the UDHR. These documents serve to clarify the underlying conceptual foundation and to identify the basis for further developments of the right to food and nutrition.

After reviewing the *travaux préparatoires* of the UDHR, this article provides an overview of the right to food as it was first legally recognized in ICESCR. Then, it will identify the legal content of this right as it was defined in General Comment 12. Next, the article will trace the development of the legal and institutional *corpus juris* of the right to food and nutrition along the analysis of some key elements developed in the general comment in 1999. In its final remarks, the article briefly identifies lessons learned and underlying challenges which will probably orient for the further evolution of the right to food.

## **2. The origins of the Right to Food in the Universal Declaration of Human Rights**

Before the adoption of the UDHR, the right to food was mentioned in diverse documents. These historical pieces served as source of article 25<sup>7</sup> and provided the basis for further developments in the standards set in the 70 years following the adoption of the UDHR.

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<sup>6</sup> See the list of reports of the three special rapporteurs in <<https://www.ohchr.org/EN/Issues/Food/Pages/Annual.aspx>> accessed on 23.06.2018

<sup>7</sup> Ben Saul, Introduction; The Drafting of the International Covenant on Economic, Social and Cultural Rights, 1948-1966, Legal Studies Research Paper No. 15/79, Sydney Law School, Sydney, 2015, p. 4-18.

One of the early bases for the recognition the right to food was the mention of the “freedom from want” included in the State of the Union Address of 9 January 1941 by US President Franklin D. Roosevelt and incorporated into the Atlantic Charter of 14 of August of 1941. These documents influenced the US State Department draft International Bill of Rights of 1942, which included economic and social rights but which did not succeed in gaining international acceptance. The next State of the Union Address to discuss the International Bill of Rights, delivered 11 January 1944, explicitly included a reference to a living wage sufficient to provide *adequate food*.

Also relevant was the United Nations Conference on Food and Agriculture celebrated in Virginia in 1943 on initiative of president Roosevelt. The 44 States represented in the conference “recommended that governments should recognize and embody in a formal declaration or agreement *their obligation to their respective peoples* and to one another to raise levels of nutrition and standards of living to improve the efficiency of agricultural production and distribution, and to co-operate, so far as may be possible, with other nations for the achievement of these ends.”<sup>8</sup>

In fact, the report of the Conference framed food in the freedom of want, stating “freedom from want means secure and adequate and suitable food supply of food for every man”. The report of the conference also highlights that “all men of the earth are consumers of food, more than two thirds also producers of it”. It also referred to the relevance of good earnings for producers, coming from their labours, to ensure an adequate livelihood and recalled the interdependence between producers and consumers and therefore between food and agricultural policies. It links production to nutrition explaining in a simple way that “better nutrition means better farming” and concludes “freedom from want can be reached, but needs before freedom from hunger”<sup>9</sup>.

The first clear and independent proposal for the recognition of the right to food was included in the Cuban Draft Declaration on Human Rights. The Cuban draft was submitted as an input to the ‘nuclear’ Commission on Human Rights, which, at the

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<sup>8</sup> UN. E/HR/3 of 26 April 1946 in Schabas, Op.Cit p. 30.

<sup>9</sup> United Nations Conference on Food and Agriculture, Hot Springs, Virginia, 18 May –June 3, 1943, Final Act and Section Reports, Conference Series 52, 1948 <https://babel.hathitrust.org/cgi/pt?id=uiug.30112101930433;view=1up;seq=6> Accessed 31 May 2018, p.1.

same time prepared the first draft of the UDHR. The first draft fed into a next draft prepared by the “full “Human Rights Commission, established in 1946 by the ECOSOC. It included the right to adequate food in its art 11<sup>10</sup>.

Another influential input was a document prepared by the UN Secretariat, referred to Roosevelt’s four freedoms, which included in its article 42 the rights to *good food* and housing and pleasant and healthy surroundings<sup>11</sup>.

Particularly influential was the American Law Institute’s (ALI) Statement of Essential Human Rights from 1944, submitted by Panama to the Human Rights Commission, which incorporated an article on food and housing<sup>12</sup> which states: “The state has a duty to take such measures as may be necessary to ensure that all its residents have an opportunity to obtain these essentials”<sup>13</sup>. The comment to the ALI draft, explained that at that time “Food has not been dealt with in constitutional instruments hitherto [but] Nutrition policies have developed very rapidly since 1936”<sup>14</sup>.

The ALI comment also states “This Article insures the individual the “opportunity to obtain” food and housing. According to the comment, the State is not required to provide food or housing unless the individual cannot under existing conditions obtain them by his own efforts. It may be sufficient for the state to protect its residents against diseased or uncraven wholesome food and to insure a continuous flow of food at prices within his reach”<sup>15</sup>.

The ALI draft also explains “Each State Party to the present Covenant undertakes to take steps, [...] to the maximum of its available resources with a view to achieving progressively the full realization...”. In fact, the comment to Article 14 of ALI’s draft, defines that “adequate food and housing” must be determined at any given time in the light of developing knowledge and of the material and technical resources within a country”. ... “Should conditions make it physically impossible for the time being for

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<sup>10</sup> Ben Saul, Op cit. footnote 2, p. 9-10.

<sup>11</sup> Ibidem.

<sup>12</sup> Ibidem.

<sup>13</sup> UN. E/HR/3 of 26 April 1946 in William A. Schabas, The Universal Declaration of Human Rights, The Travaux Préparatoires, Volume I, October 1946 to November 1947, p. 29, 30. (Refers to art. 14 of ALI’s draft).

<sup>14</sup> Ibidem.

<sup>15</sup> UN. E/HR/3 of 26 April 1946 in Schabas, Op.Cit p. 30.

an individual to be insured or supplied with adequate food and housing, he would be entitled only to what is reasonable under the circumstances.”<sup>16</sup>. A similar reasoning was suggested by the UK in December 1947 when it proposed that: “Everyone [...] has the right to the preservation of his health through the highest standard of food, clothing, housing and medical care which the resources of the State or community can provide”<sup>17</sup>. France also proposed a similar formulation<sup>18</sup>.

The draft submitted by Cuba stipulated the right to food as an independent right. The ALI Draft and the Initial Human Rights Committee draft, dedicated one article to the rights to food and housing. The Draft Outline of International Bill of Rights (prepared by the Division of Human Rights)<sup>19</sup> stated: “Everyone has the right to good food and housing and to live in surroundings that are pleasant and healthy”. The Draft outline prepared by the Secretariat included similar provisions<sup>20</sup>. On the other side, the document called “Analysis of Various Drafts of International Human Rights”<sup>21</sup>, mentions that many drafts devote to the right to social security, include among others a reference to the right to food. Also, a list on the Types of Rights included in the proposals of Declaration, included food as one of different elements of the right to social Security<sup>22</sup>. In this line, the final text of the article 25 of the UNDHR included food as part to of the right to an adequate standard of living and wellbeing, together with the rights to housing and clothing and connected to the rights to health and social security.

Under this understanding, during the negotiations of the UDHR some states emphasized in the connection between the right to food and other rights. So, for example the United States initially connected the right to food to the access to work, framed within the right to an adequate standard of living<sup>23</sup> and later on also recognized the connection to the right of social security<sup>24</sup>. France, linked the right to

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<sup>16</sup> UN. E/HR/3 of 26 April 1946 in Schabas, Op.Cit p. 30

<sup>17</sup> E/CN.4/77/Annex A, 16 December 1947, Schabas, Op.Cit. p. 1330

<sup>18</sup> E/CN.4/82/Add.8, 6 May 1948, Schabas Op.Cit 1507E/CN.4/95, 21 May 1948, Op.Cit. Schabas, p. 1612.

<sup>19</sup> E/CN.4/AC.1/3, 4 June 1947, in Chabas Ob.Cit.p. 407.

<sup>20</sup> E/CN.4/AC.1/3/Add.2,9 June 1947, in Chabas Op.Cit. p. 433

Plan of the Draft Outline of an International Bill of Rights  
(Prepared by the Secretariat)

<sup>21</sup> E/CN.4W.16 of 23 January 194, in Ob.Cit. Shabas p.149

<sup>22</sup> UN.Doc. A/CN.4/w.18 of 31 January 1947 in Chabas, Ob.Cit. p. 292.

<sup>23</sup> E/CN.4/AC.1/8, 11 June 1947, in Chabas Op.Cit, p. 838

<sup>24</sup> E/CN.4/57, 10 December 1947, Schabas Op.cit, p. 1251

food to the rights to health and work and to the access to resources. The ILO also required a connection to social security<sup>25</sup>.

According to the positions of the US and France, people should have the access to the resources which enable them to feed themselves. Nonetheless, in the debate on the 8 November 1948, the Polish delegation stressed that: “There were countless cases in which the family needed the protection of society and the State: it had to be assisted through special provisions relating to expectant mothers, nurseries for infants, food priorities in emergencies or in under-developed countries, and the like. The question might also have other aspects: by expressly laying upon the State the obligation of assuring the protection of the family, it might perhaps be possible to prevent expectant mothers and babies from being put into concentration camps, as unfortunately still happened in Franco Spain or Greece, for instance”<sup>26</sup>. This calls attention to the fact that the provision of services cannot be ignored when defining the scope of the Right to Food, even if providing food is not the primary duty of state when realizing this right.

On the 18<sup>th</sup> of November France proposed a conciliatory text in which it made clear that *personal resources would be supplemented by social services*,<sup>27</sup> considering social services providing food and housing as a complementary or subsidiary measure when people were not able to feed themselves.

The only mention found expressing some opposition to the inclusion of the right to food was made by Mr. Wilson (United Kingdom) supported by Mr. Fontana (Uruguay)<sup>28</sup>. The UK representative requested a separate vote to “as to whether special reference should be made to “food and clothing”, to what “Mr. Chang (China) did not see what possible objection there could be to that phrase when millions of people throughout the world were deprived of food and clothing.”<sup>29</sup>. China did not agree that the term “standard of living” was sufficiently precise. *The* question concerned not only the quantity but also the quality of food. Two dimensions of the legal attribute of adequacy later developed in General Comment 12 of the CESCR.

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<sup>25</sup> E/CN.4/SR.71, 14 June 1948, Schabas, Op.Cit, p. 1874.

<sup>26</sup> A/C.3/325, 8 November 1948, Schabas, Op.Cit, p. 1879

<sup>27</sup> A/C.3/350, 18 November 1948, Schabas, Op.Cit. p. 2653

<sup>28</sup> Ibidem.

<sup>29</sup> E/CN.4/SR.71, 14 June 1948, Schabas, Op.Cit, p. 1879.

The Chairman called for a vote on the question as to whether the words “food and clothing” should be included in the text. It was decided to include those words by 11 votes to 3<sup>30</sup>. In addition, Brazil considered article 22 (25 in the adopted version), “as one of the most important articles in the declaration. Food, clothing, housing and medical care were vital necessities not only for the individual but also for the society and for the State. Neither society nor the State could continue to exist unless the individual enjoyed the minimum standard of living which that article aimed to guarantee”<sup>31</sup>

The final version of the UDHR, establishes in its art. 25 (22 during the negotiations) that:

“1. Everyone has the right to a standard of living adequate for the health and wellbeing 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>32</sup>.

### **3. The further construction of the *corpus juris* on the in the development of right to food**

#### **a. The International Covenant on Economic, Social and Cultural Rights**

The first binding provision on the right to food and nutrition is article 11 of the ICESCR<sup>33</sup>. By the initiative of China<sup>34</sup>, following the UDHR, this provision includes food as one element of the right to an adequate standard of living. Proposals by El

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<sup>30</sup> Ibidem, p. 1880.

<sup>31</sup> A/C.3/SR.14317, November 1948, Schabas Op.Cit p. 2644.

<sup>32</sup> A/RES/217(III) of 10 December 1948 Schabas, Op.Cit, p. 3096.

<sup>33</sup> For an analysis of the travaux préparatoires of art 11 the ICESCR see Matthew Craven, “The International Covenant on Economic, Social and Cultural Rights, a Perspective on its Development” (Clarendon Press Oxford 1993) 287ss.

<sup>34</sup> E/CN.4/L.57, 14, UNESCOR, CN4(1952) in Matthew Craven, ibidem 291

Salvador, the Dominican Republic and Ecuador<sup>35</sup> repeat the man centred formulation stipulating “the right of everyone to an adequate standard of living for *himself* and his family”<sup>36</sup>. In the negotiations, some states highlighted that this formulation would exclude those without families<sup>37</sup>, but did not put attention to the gender deficiencies of the formulation.

This paragraph also includes the adjective adequate before food, following the original references to “good food” in the precedents of the UDHR. Later on this more technical term, “adequacy” is one of the fourth elements of the legal content of the right to food, as interpreted in the General Comment 12 of the ICESCR. The term “good food”, used in the precedents in the USA was changed by the more technical adequate.

Furthermore, the article includes some new elements:

*First*, it establishes that states will “take appropriate steps to ensure the realization of this right” and affirms the key role that “co-operation based on free consent” plays on it<sup>38</sup>.

*Second*, following the proposal of the Director-General of the FAO submitted as informal amendment in 1963<sup>39</sup>, it includes for the first time “the fundamental right of everyone to be free from hunger”<sup>40</sup>. This formulation adopts a “minimum floor” approach, and not the holistic concept of the right to food accepted internationally, but is the next stone building the basis for further advances in the World Food Summit of 1996 and in the General Comment 12 of CESCR. According to Craven, the mention of the ‘right to be free from hunger’ would be a way to prioritize the compliance with the ‘minimum core content’ of the right to food.<sup>41</sup>

*Third*, it establishes that, to comply with the right to be free from hunger, States shall take “individually and through international co-operation, the measures, including specific programmes, which are needed to improve methods of production,

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<sup>35</sup> A/C.3/L583,12 UN GAOR C3 (1957) Craven, Op.Cit n.39 p.293.

<sup>36</sup> ICESCR, Art.11, par 1.

<sup>37</sup> M.Craven Op.Cit n. 39 p 294.

<sup>38</sup> ICESCR, Art. 11, par 1.

<sup>39</sup> Sen (FAO), A/C3/SR.1232, at 9-4 par 4-10(1963) in Craven Op.Cit. n 39 p.297

<sup>40</sup> ICESCR, Art.11 par 2.

<sup>41</sup> Craven, Op.Cit n 39 p 307-308

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.<sup>42</sup>

Though the recognition of the right to be free from hunger is a minimalist approach, the objectives of the measures enshrined in this paragraph connect the different phases of the food process, from the access to land and production of food, passing to the distribution and connecting to nutrition, being a next stone in building the more holistic concept.

Craven states that the only conflictive element in the intergovernmental debate was the agrarian reform. The original “five-power amendment” proposed the sentence; “adapting or reforming existing systems of land tenure and land use and systems of the exploitation of natural resources”<sup>43</sup>

*Fourth*, article 11 establishes that states shall adopt such measures “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”. This paragraph in conjunction with the acknowledgement of the relevance of international cooperation in paragraphs 1 and 2 demonstrates that at the time the negotiating States were aware of the transnational implications of the food market in the realization of the right to food and the importance of coordination and collaboration for its implementation. This is the root of at least some of the extraterritorial obligations of states derived from the right to food<sup>44</sup>.

According to Craven: “The crucial characteristic of article 11 (2) appears to have been that although certain objectives and methods of implementations were

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<sup>42</sup> ICESCR, Art 11, (a)

<sup>43</sup> UN Doc. A/C.3/L1177,18UN GAOR, C3(1963); Eluchand (Chile) A/C3/SR1267,at287, para 3 (1963) in Craven, Op.Cit. n 39 p. 300

<sup>44</sup> On the extraterritorial Obligations of States see: Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, 2011. O.de Schutter, A Eide, A Kahlfan, M Orellana, M Salomon and I Seiderman, “Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights” (2012) 34 HRQ 1084.

outlined, they were considered sufficiently general not to bind a State to any particular course of action”<sup>45</sup>.

**b. The evolution of the international law of the right to food: a perspective of diverse legal standards departing from the bases set by the General Comment 12 of the CESCR**

In 1996, 180 states affirmed the right of every one to have access to food and nutritious food consistent on the Right to Adequate Food and the fundamental right of every one to be free from hunger in the Rome Declaration on World Food Security, adopted during the World Food Summit. The Declaration gave a specific mandate to the High Commissioner for Human Rights to better define the rights related to food and to propose ways of implementation<sup>46</sup>.

The CESCR received this mandate and adopted the General Comment 12 (GC 12) in 1999 after an intensive process of consultation<sup>47</sup>. Clearly defining the right to food, the General Comment was a response to hesitant governments and detractors of the justiciability of this human right, who frequently argued the vagueness of the concept as an excuse to avoid incorporation in the national legal systems or the recognition of violations of the right in judicial decisions.<sup>48</sup> In this exercise, the CESCR recalls the elements of article 11 of the ICESCR and interpret them authoritatively.

The aspects included in the GC12 are milestones to analyse further normative and institutional developments on the Right to Food and Nutrition. The most relevant include the elements analysed below.

**i. Defining the Right to Food**

The CESCR defined the Right to food for the first time in international human rights standards in paragraph 6 of General Comment 12: *“The right to adequate food is*

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<sup>45</sup> M Craven Op.Cit. n 39 p.299.

<sup>46</sup> J Ziegler, C Golay et al, *The Fight for the Right to Food I Lessons Learned*, The Graduate Institute, Geneva (2011) p 5.

<sup>47</sup> CESCR GG 12 pars 2,3.

<sup>48</sup> This answer was frequent in different advocacy interviews by the author of the article in different countries and in general in the work of FIAN International along the years. So for example Parliamentarians in Mexico, when advocating for the inclusion of the Right to Food in the Constitution in 2011.

*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 CESCR definition becomes clearer in the analysis of its legal content and legal content the states’ obligations developed in GC 12, which develop on the definition.

Later on, authors as Ziegler and Golay have published a deep analysis of the concept and content of the right to food<sup>49</sup>. De Schutter and Cordes have dedicated an entire book to describe the main obstacles standing in the way of implementing the right to food in the era of globalization<sup>50</sup>. All these efforts contribute to an evolving interpretation of the concept according to the emerging challenges of our society.

## **ii. Establishing the legal content of the right to food**

Already in the definition, the committee includes the legal elements later developed along the paragraphs 7 to 13. The legal content includes the attributes of adequacy, availability, accessibility and sustainability, all those not just related to food but also to the access to resources to obtain it.

### *Adequacy – the nutritional aspect*

The Committee clarifies in its definition in paragraph 6 that the right to adequate food “*shall not be interpreted in a narrow or restrictive sense, which equates it with a minimum package of calories, proteins and other specific nutrients*”. It also clarifies that the adequacy of food depends on the social, economic, cultural, climatic, ecological and other conditions and that both, the quantity and quality depend on the individual needs of the right holder<sup>51</sup>. Likewise, the Committee highlights the importance of food diversity and an *adequate nutrition* “for mental and physical growth, through the life cycle, according to gender and occupation<sup>52</sup>”

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<sup>49</sup>. Jean Ziegler, Christophe Golay, Clair Mahon and Sally-Anne Way: The Fight for the Right to Food, Lessons Learned, The Graduate Institute, Geneva, 2011. Kerstin Mechlem, “Food Security and the Right to Food in the Discourse of the United Nations”, [European Law Journal](#) 10(5):631 – 648, September 2004

<sup>50</sup> Olivier de Schutter, Kaitlin Y. Cordes, Accounting for Hunger, The Right to Food in the Era of Globalization, Hard Publishing, United Kingdom, 2011.

<sup>51</sup> CESCR, General Comment 12 par 8.

<sup>52</sup> Ibidem par 9.

An important aspect of food adequacy is the food safety. This implies the absence of organic and/or chemical adverse substances. The pollution of water with organic bacteria can be caused for instance by poor hygienic conditions or lack of sanitation facilities. The chemical contamination of food could be caused by toxics, for example, those derived of pesticides or of the use of heavy metals used in mining activities and which very often end up in cultivations and water used for food preparation. The Special Rapporteur on the Right to Food has written a report on the adverse effect of pesticides on the right to food<sup>53</sup>.

Moreover, the Committee highlights the cultural acceptability of food<sup>54</sup>, which is of critical value for indigenous peoples, ethnic minorities and other rural communities non nutrient-based values attached to food and food consumption.

### *Sustainability*

According to paragraph 7 of the GC12: “*The notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations.*”.

This element becomes especially relevant in the context of climate change and ecological destruction. International instruments and interpretations clearly recognize that climate change is a threat to functioning food systems and right to food realization.<sup>55</sup> Recommendations to states regarding climate change mitigation and adaption, as well as preparedness for climate shocks, are now a central part of right to food discussions. There is also increased recognition that industrial forms of agriculture and deforestation are major contributors to greenhouse gas emissions, and that as a result, states should support alternative forms of agriculture and highly regulate deforestation. In recent years, a number of instruments and interpretations have begun to urge states to implement policies, programmes and laws that support agro-ecological forms of food production as key to transformations

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<sup>53</sup> Special rapporteur on the Right to Food, A/HRC/34/48, 24 January 2017.

<sup>54</sup> CESCR, General Comment 12, Par.7 and 11.

<sup>55</sup> UNFCCC, Paris Agreement, UN Doc. FCCC/CP/2015/10/Add.1 (2015) (preamble “*Recognizing* the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change”). FAO, *The State of Food and Agriculture: climate change, agriculture and food security*, Rome, 2016.

towards more sustainable food systems that also support small scale producers.<sup>56</sup> Further standards of support of small agricultural production to ensure biodiversity have been developed by the CSF.<sup>57</sup>

In this context, it is to highlight that art. 11 of the ICESCR, which stipulates the importance of an efficient use of natural resources, as well as the obligation of progressive realization contained in art. 2.1 of the ICESCR, shall be framed in the context of sustainability and even further on the right to a safe and healthy environment. This interpretation is coherent with the statements of the Division of Human Rights, which 70 years before, who highlighted the need of pleasant and healthy surroundings<sup>58</sup>. The right to a safe and healthy environment has been recognized i.a in art. 11 of the San Salvador Protocol, by the Inter-American Human Rights Court in its Advisory Opinion 23 and<sup>59</sup>, in the Declaration on the Rights of Peasants<sup>60</sup> and by the Special Rapporteur on Human Rights and the Environment<sup>61</sup>.

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<sup>56</sup> See generally UN Special Rapporteur on the Right to Food, Olivier De Schutter, Report Submitted by the Special Rapporteur on the Right to Food, Olivier De Schutter, UN Doc. A/HRC/16/49 (2011) (on the connection between agroecology and the right to food). See also UN Committee on World Food Security, Forty-Third Session: "Making a Difference in Food Security and Nutrition", UN Doc. CFS 2016/43 Report (2016), at para. 19(V)(a); UN Human Rights Council, Resolution Adopted by the Human Rights Council on 23 March 2016, UN Doc. A/HRC/RES/31/10 (2016), at para. 18. UN Special Rapporteur on the Right to Food, Olivier De Schutter, Interim Report of the Special Rapporteur on the Right to Food, UN Doc. A/67/268 (2012), at para. 61(e) ("Support sustainable aquaculture practices that benefit local communities and agroecological fish-farming practices, including rice-fish or rice-shrimp systems"); UN Special Rapporteur on the Right to Food, Olivier De Schutter, Final Report: The Transformative Potential of the Right to Food, UN Doc. A/HRC/25/57 (2014); UN Special Rapporteur on the Right to Food, Hilal Elver, Right to Food, UN Doc. A/70/287 (2015), at paras. 87 and 89(l); UN Special Rapporteur on the Right to Food, Hilal Elver, Right to Food, UN Doc. A/71/282 (2016), at para. 99(h) ("States ensure the political and financial commitments needed to shift from current industrial agricultural systems to nutrition-sensitive agroecology that is healthy for people and sustainable for the planet"); UN Special Rapporteur on the Right to Food, Hilal Elver, Report of the Special Rapporteur on the Right to Food, UN Doc. A/HRC/34/48, at paras. 106(c) and 107(o); Declaration of the International Forum for Agroecology, Nyéléni, Mali (February 27, 2015).

<sup>57</sup> UN Committee on World Food Security, Thirty-Seventh Session: Final Report, UN Doc. CFS:2011/FINAL REPORT (2011), at para. 29(ii); UN Committee on World Food Security, Forty-Second Session: "Making a Difference in Food Security and Nutrition", UN Doc. CFS 2015/42 Report (2015), at para. 15; UN Special Rapporteur on the Right to Food, Olivier De Schutter, Report Submitted by the Special Rapporteur on the Right to Food, Olivier De Schutter, UN Doc. A/HRC/19/59 (2011), at paras. 4-5 and 49; UN Special Rapporteur on the Right to Food, Hilal Elver, Right to Food, UN Doc. A/71/282 (2016), at paras. 92, 98 and 99(h).

<sup>58</sup> See above p. 5 fn. 19

<sup>59</sup> Inter-American Human Rights Court, Advisory Opinion OC-23/18, (ser. A) No. 23, Nov. 15, 2017.

<sup>60</sup> UNGA, A/RES/73/165 of 17 December 2018, Declaration on the Rights of Peasants and other People Working in Rural Areas, art.18.

<sup>61</sup> UN. Doc A/73/1888 of 19 July 2018, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

### *Availability*

In paragraph 12 of General Comment 12 the Committee highlights how availability has to be guaranteed from productive land and other natural resources, well-functioning distribution, processing and market systems that move from the place the provision to the place of demand. On this regard, also the FAO Right to Food Guidelines reiterate the importance of availability establishing states should ensure *“that changes in availability and access to food supply do not negatively affect dietary composition and intake.”*<sup>62</sup> The guidelines also recognize availability as one of the four pillars of food security<sup>63</sup>, setting the connection between the needed realization of the right to food, to achieve food security, and clarify that the Guidelines aim to guarantee the availability.

Special Rapporteurs have also referred to availability in the framework of conflicts, clarifying that in post-crisis period, priority should be given to ensuring the availability, accessibility, and adequacy of food for marginalized populations, including, internally displaced persons, refugees, and any victims, of war crimes<sup>64</sup>.

### *Accessibility*

The committee clarifies that people shall have economic and physical access to food<sup>65</sup>. In its clarification it considers the interconnection between the access to food and to other rights, especially those under article 12, specifying that the economic access to food should not affecting “the satisfaction of other basic needs” and spelling out that special programs shall be implemented to ensure accessibility for marginalized groups.

Concerning the physical accessibility, it explains that it shall cover “physically vulnerable individuals, including children, infants, elderly, mentally ill and others” and includes priority for victims of catastrophes.

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<sup>62</sup> FAO, Voluntary Guidelines on the Right to Food, Guideline 10.1.

<sup>63</sup> FAO, Voluntary Guidelines on the Right to Food, Guideline 15.

<sup>64</sup> Jean Ziegler, The Right to Food: Report of the Special Rapporteur on the Right to Food, UN Doc. E/CN.4/2006/44 (2006), at para 52(d); UN General Assembly, New York Declaration for Refugees and Migrants, UN Doc. A/RES/71/1 (2016), at para. 80. Hilal Elver, Interim Report of the Special Rapporteur on the Right to Food, UN Doc. A/72/188 (2017), at para.96e.

<sup>65</sup> CESCR, General Comment 12, Par. 13.

Further content on access to food has been developed inter alia in the Voluntary Guidelines on the right to food. So, for example, Guideline 8 guide states to take measures to ensure women' equal access to land<sup>66</sup>, to adopt programmes including different mechanisms of access and appropriate use of agricultural land directed to the poorest populations<sup>67</sup>. It also recommend states to implement measures to improve the access to the labour market<sup>68</sup>, to advance land reform to enhance access for the poor and women<sup>69</sup> and to provide access to water<sup>70</sup>, i.a.

Furthermore, the whole content on the Voluntary Guidelines on Responsible Governance of the tenure of Land, Fisheries and Forests aims to ensure that through adequate governance states guarantee equity in the access to resources needed for the enjoyment of the right to food, especially the most marginalized populations which rely in consuetudinary tenure systems<sup>71</sup>.

### **iii. Clarifying the states obligations under the Right to Food**

In the ALI draft to the UDHR<sup>72</sup>, the mention of food as a state duty and not just as a need was a clear indication of its consideration as a human right and not just as a benefit or service. Nevertheless, the approach adopted in the UDHR was to refer to the entitlements and not to the obligations and therefore this reference was not incorporated in article 25 of the UNDHR. The first time that obligations derived from the Right to Food were explicitly stipulated in an international law instrument, was in the Article 11 of the ICSCR, adopted 18 years later. These were further clarified and further specified defined in General Comment 12 of the CESCR adopted 51 years.

The Committee identifies three *general obligations*: First, *the obligation to achieve progressively the full realization of the right*, which includes to obligation to move as expeditiously as possible towards the full realization, as well as a *prima-facie* prohibition of retrogressive measures. Although some dimensions of the Right to

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<sup>66</sup> FAO, Right to Food Guideline 8.6.

<sup>67</sup> FAO, Right to Food Guideline 8.7.

<sup>68</sup> FAO, Right to Food Guideline 8.9.

<sup>69</sup> FAO, Right to Food Guideline 8.10.

<sup>70</sup> FAO, Voluntary Guideline 8. 11.

<sup>71</sup> CFS, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, under <http://www.fao.org/3/a-i2801e.pdf> (08.05.2019)

<sup>72</sup> See above fn. 8.

Food can only be achieved progressively, the Committee has clarified that others are of immediate character, including a minimum essential level of food, which is sufficient, nutritionally adequate and safe to ensure freedom from hunger<sup>73</sup>. This interpretation can be considered as rooted in ALI Draft to the UNDHR, according to which, if the right was not possible to be realized immediately, it should be realized. “what is reasonable”<sup>74</sup>. Second, the Committee identifies the *obligation of non-discrimination*<sup>75</sup>, which includes for example the prohibition of different treatment in food assistance or in access to natural resources based on socio-economic status, ethnic origin, gender, political or religious affiliation. Third, the committee identifies a general *obligation of international cooperation*. In fact, par. 36 establishes that “States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food”.

General Comment 12 also develops the typology of *specific obligations* to respect, protect and fulfil, the later including the subcategories to facilitate and provide.

The obligation to respect implies that the state shall not interfere in the realization of the right, for example through forced evictions affecting right holders’ livelihood or through the destruction of plantations.

The obligation to protect means that states shall impede that non state actors, as for example land lords or business do not impair or nullify the enjoyment of the right to food, for example through resources grabbing, abuse of dominant position in the market or misleading information negatively impacting on nutrition. The obligation to protect implies states’ obligations to regulate, monitor, investigate, sanction and guarantee access to remedy<sup>76</sup>.

The obligation to fulfil refers to states obligation to adopt measures for the right holders to be able to feed themselves (obligation to fulfil) or in extreme and needed

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<sup>73</sup> CESCR. General Comment 12, par. 14

<sup>74</sup> See above p. 15, fn 16, 17 and 18.

<sup>75</sup> CESCR, General Comment 12, par. 19.

<sup>76</sup> CESCR, UN.Doc. E/C.12/2011/1 of 20 May 2011, Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights, par. 5. UN.Doc. E/C.12/GC/24 10 August 2017, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, par. 14-22.

case states' obligation to provide food to those who are not in place to feed themselves<sup>77</sup>.

The categories of specific obligations have been used by right to food defenders in the analysis of cases and have inspired national legislation. Furthermore the work of the special rapporteurs on specific cases call the attention of states on specific violations in cases of non-compliance with such obligations and their thematic reports guide states on the compliance with such obligations with regards to specific topics as for example recently on fisher workers, agricultural workers, natural disasters, and the effects of pesticides. Also the special rapporteurs in their national reports have given guidance on how states can meet their right to food obligations<sup>78</sup>.

In General Comment 12 the Committee has also introduced the concept of *international obligations*. Paragraph 36 establishes that: "*States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food. In implementing this commitment, States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required. States parties should, in international agreements whenever relevant, ensure that the right to adequate food is given due attention and consider the development of further international legal instruments to that end*" Furthermore, in article 37 the Committee establishes that "*States parties should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure*". In 2011 a group of international law experts adopted the Maastricht Principles on Extraterritorial Obligations of States (ETO) in the Area of Economic, Social and Rights, which further develop on how states' obligations derived from the right to food and other ESCR are applicable under states' jurisdiction, even if this is exercised out of their territory. ETOs have also

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<sup>77</sup> On the obligation to provide in the negotiations of the UDHR see above p.4 fn. 15 and regarding the contributions of Poland.

<sup>78</sup> OHCHR, Annual Reports of the Special rapporteurs on the Right to Food, under <https://www.ohchr.org/en/issues/food/pages/annual.aspx> 08.05.2019

been recognized in a number of General Comments and in other legal sources<sup>79</sup>. This is relevant for the right to food for example in the areas of resources grabbing, climate change, regulation of speculation of food prices, protection of traditional seeds vis á vis patented seeds, food aid, the impact of digitalization on the right to food, inter alia.

#### **iv. Clarifying the Right to Food of women and children**

##### **a) Women as Right Holders: Correcting the gender deficiencies regarding the rights holders**

A gender analysis of the text of Art. 25 of the UNDHR, and in general to the language used by the states during the negotiations, represents a vision of the society in which the man is the centre of the family, in which women just need special attention in their role as mothers. The reference of the wellbeing and health “of himself and of his family” shows the consideration of the head of the family, the man, as the “protagonist” of this right. There is not a clear reference to the women, but to motherhood, letting excluded a clear recognition to all other women, which are not in a procreative role.

In its GC 12, the CESCR makes a first effort to correct the gender deficiencies generated by male centred narrative used UDHR and article 11 of the ICESCR. The Committee clarifies that the reference to “himself and his family” does not imply any limitation upon the applicability of this right to individuals or to female headed households” (Par 1). Although this clarification does not explicitly refer to the right to food of women, it plants the seed for further normative developments, which overcome the original patriarchal approach and recognize the important role that women play in feeding the world and reaffirming women as right holders. Later in paragraph 6 the GC 12 includes women and children as right to food right holders. In its General Comment 16, adopted in 2005, the Committee clarifies the equal right of men and woman, including to the enjoyment of the right to food<sup>80</sup>.

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<sup>79</sup> To see more sources on ETOs, please see: <https://www.etoconsortium.org/en/main-navigation/library/documents/> (19.05.2019).

<sup>80</sup> CESCR, E/C.12/2005/4 11 August 2005 paras 28, 19.

In 2004, the FAO Right to Food Guidelines included 13 references to the special attention that state should give to women in policies, strategies, educational and nutritional programs, access and control over resources, food production and monitoring<sup>81</sup>, when implementing the right to food. The FAO has also published specific analysis to clarify the importance of and way to implement the right to food of women<sup>82</sup>.

In 2012, the Tenure Guidelines of the Committee on Food Security included references to women in 16 guidelines, mainly emphasising the equality of rights between men and women in access and control over land, their right to participation, the special attention that monitoring mechanisms should give to the impact on women, and women access to recourse mechanisms and remedy. The guidelines also prevent discriminatory laws and practices against women and include affirmative measures or specific focus on women i.a on land redistribution programs and in strategies to adapt to and mitigate climate change<sup>83</sup>.

The UN Special Rapporteurs on the right to food have written thematic reports on the right to food of women and dealt with gender aspects of the right in a crosscutting manner in other thematic reports, showing its importance along the life cycle and its interconnection with other rights for the specific situation of girls and women<sup>84</sup>.

Although the Right to Food is not explicitly recognized in the Convention on the Elimination of All Forms of Discrimination against Women, the CEDAW Committee recognized and further defined this right starting in 2011. In 2011, in its concluding observations to Nepal, it recognized explicitly and for the first time the Right to Food

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<sup>81</sup> FAO, Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, (Rome 2004) Guidelines 2.5, 3.5, 3.8, 3.9, 7.4, 8.3, 8.4, 8.6, 8.10, 10.10, 11.2, 13.4 and 17.5.

<sup>82</sup> Isabella Rae (FAO Right to Food Team), Women and the Right to Food, International Law and State Practice, FAO, Rome 2008; FAO Women and Population Division, Sustainable Development Department, Rural Women and the Right to food, < <http://www.fao.org/docrep/w9990e/w9990e10.htm>> accessed on 07 June 2018. FAO Right to Food Unit, Right to Food and Gender < <http://www.fao.org/3/a-a1610e.pdf>> accessed on 07 June 2018.

<sup>83</sup> Committee on Food security, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, (Rome 2012) Guidelines 3, 4, 4.6, 5.4, 5.5, 7.1, 7.4, 9.2, 9.6, 15.3, 15.5, 15.6, 15.10, 17.3, 21.1,23.2.

<sup>84</sup> See i.a. A/HRC/22/50, 24 December 2012, Report submitted by the Special Rapporteur on the right to food, Olivier De Schutter 'Women's rights and the right to food'; A/HRC/31/51 14 December 2015, Report Submitted by the Special Rapporteur on the Right to Food, Hilal Elver 'Integrating the Gender Perspective in the Right to Food'

of Women, recommending the state the inclusion of this right in its new constitution. The committee has included recommendations on the right to food and nutrition of women, in some concluding observations, based in its articles on non-discrimination (Art.2), services for pregnant and lactating women (12 b) and on rural women (Art. 14)<sup>85</sup>. In 2016, the CEDAW dedicates its General Recommendation Number 34<sup>86</sup> to the rights of rural women, clearly recognizing the right to food and other related rights as the right to land and seeds for women.

Recently, WFP published information explaining that: “giving women farmers more resources could bring the number of hungry people in the world down by 100 - 150 million people”<sup>87</sup>.

Scholars have also dedicated entire books to explain the Right to food of women, so for example Anne Bellows and others<sup>88</sup> focus on how the separation of women’s rights from the right to adequate food and nutrition and the fragmented attention to food as commodity and the medicalization of nutritional health disproportionately affect women. In the book the authors call for the reconceptualization of the right to adequate food toward incorporating gender, women’s rights and nutrition based on the food sovereignty framework<sup>89</sup>.

### **b) Children as Rights holders**

The mention of children resulted very pertinent in 1999, since the Convention on the Rights of the Child<sup>90</sup>, adopted ten years before, does not explicitly mention the right to food of children, even if CRC implicitly contains some elements of the right to food and nutrition of children in articles 24, and 27. Under article 24, on the highest attainable standard of health, the Convention recognizes that the right to food and nutrition in relation with the right to health goes beyond the provision of nutritious

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<sup>85</sup> See for example: CEDAW/C/NPL/CO/4-5 29 July 2011 paras 32 (d), 37,38 (c), (d); CEDAW/C/COL/7-8 29 October 2013 par 32; CEDAW/C/IND/45 2 of July 2014 para 15.

<sup>86</sup> CEDAW/C/GC/34, 4 March 2016, General Recommendation 34 on the Rights of Rural Women, par. 63-66.

<sup>87</sup> World Food Program, Women and Hunger:10 Facts, < <https://www.wfp.org/our-work/preventing-hunger/focus-women/women-hunger-facts>> accessed 08.06.2018.

<sup>88</sup> Anne C. Bellows, F.L.S.Valente, S. Lemke, M.D. Nunez Burbano (Eds), Gender, Nutrition and the Right to Adequate Food, Toward an Inclusive Framework, Routledge, New York 2016.

<sup>89</sup> Ibidem p 1.

<sup>90</sup> General Assembly res 44/25 of 20 November 1989, Convention on the Rights of the Child, entry into force 2 September 1990.

food and alerts on the risks and dangers of environmental pollution<sup>91</sup>. It also calls for the nutrition information and education of, as well as support to those responsible for the children's care and well-being, in particular mothers and parents<sup>92</sup>. States Parties shall also take steps "to ensure appropriate pre-natal and post-natal health care for mothers"<sup>93</sup>

In article 27, on the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development, the Convention further links the implicit right to food and nutrition to social protection measures. It prescribes that States shall take steps "*to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition...*"<sup>94</sup>

Other CRC article relevant for the right to food and nutrition of children is article 2 on non-discrimination. It is applicable for example in cases in which children cannot access to adequate food because they belong poorest sectors of the society and not affirmative measures are taken to correct existing inequalities, what ends up in a *de facto* discrimination. It is also applicable when public officers discriminate some specific children groups in access to school feeding programs due to their geographical location, ethnical belonging or the political affiliation of their parents.

Also article 3 on the actions of public or private institutions responsible for the care or protection of children are relevant for example with regards to school feeding programs. Article 6 on the right to life and Article 17 on the protection of the child from information and material injurious to their well-being are relevant, for instance with regards to states' obligation to regulate private actors producing misleading information on ultra-processed food, which can cause nutritional damage to children<sup>95</sup>.

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<sup>91</sup> Ibidem Art.24 par (c)

<sup>92</sup> Ibidem Art 24 par €

<sup>93</sup> Ibidem Art 24 para (d)

<sup>94</sup> Ibidem par 27.3.

<sup>95</sup> FIAN Colombia, El Juego de la Publicidad que atrapa y envenena a niños y niñas en Colombia, in: <http://www.fiancolombia.org/el-juego-de-la-publicidad-que-atrapa-y-envenena-a-ninas-ninos-y-adolescentes-de-colombia/> (19.05.2019)

In its interpretative work, the CRC has also referred to diverse aspects of the right to food in several general comments. In its General Comment 15<sup>96</sup> the Committee includes references to food in the context of humanitarian emergencies<sup>97</sup>, the provision of adequate nutritious food<sup>98</sup>, prevention of obesity<sup>99</sup>, the consequences of environmental pollution<sup>100</sup>, marketing of energy-dense, micronutrient-poor foods, and drinks containing high levels of caffeine or other substances potentially harmful to children<sup>101</sup>, and on disaster relief<sup>102</sup>.

CRC General Comment No. 16, on the impact of the business sector on children, is relevant to ensure that States comply with their obligation to protect children from the adverse impact of businesses activities affecting natural resources necessary to produce adequate food. It also includes aspects regarding the activities of transnational companies in the area of industrial production and commercialization of food impairing the enjoyment of the human right to food and nutrition by children.

Furthermore, General Comment No. 3<sup>103</sup> on HIV/AIDS and the rights of the child touches upon the risk of malnutrition as linked to the care of children with HIV/AIDS.

General Comment No. 5<sup>104</sup> on the rights of adolescents discusses early marriage and pregnancy as significant factors in health.

General Comment No. 7<sup>105</sup> on the implementation of child rights in early childhood advocates for the promotion and protection of breastfeeding for children's nutrition.

General Comment No. 11<sup>106</sup> on the rights of indigenous children is also particularly significant for the right to food and nutrition as it recognizes the cultural significance of traditional land and the quality of the natural environment as intricately linked to the child's right to life and survival.

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<sup>96</sup> CRC/C/GC/15 17 April 2013 on the Highest Attainable Standard of Health.

<sup>97</sup> Ibidem par 40.

<sup>98</sup> Ibidem par 43.

<sup>99</sup> Ibidem par 47.

<sup>100</sup> Ibidem par 49

<sup>101</sup> Ibidem par 81.

<sup>102</sup> Ibidem par 88.

<sup>103</sup> CRC/GC/2003/3 17 March 2003.

<sup>104</sup> CRC/GC/2003/5 27 November 2003.

<sup>105</sup> CRC/C/GC/7/Rev.1 20 September 2006.

<sup>106</sup> CRC/C/GC/11 12 February 2009.

The more recent development is the joint General Comment 3, of the Committee on Migrant Workers and Members of their Families and General Comment 22 of CRC on the general principles regarding the human rights of children in the context of international migration. It recalls the statement on the duties of States towards refugees and migrants issued by the Committee on Economic, Social and Cultural Rights, according to which “all children within a State, including those with an undocumented status, had a right to receive education and access to adequate food and affordable health care”<sup>107</sup>. The GC 22 also highlights the challenges faced by migrant children in gaining access to sufficient safe food.

#### **v. The collective dimension of the Right to Food and Nutrition and Food Sovereignty**

When referring to the exercise of the right by the individual alone *or in community with others*, the CESCR recognizes a collective dimension of the right to food<sup>108</sup>. In fact, the exercise of the right to food in community with other is what allows its social and cultural dimensions. In this sense, 10 years later, General Comment 21 of CESCR makes explicitly food as part of culture and the cultural values attached to food and food consumption<sup>109</sup>.

In this context, the peasant’s movement La Via Campesina has developed the concept of ‘food sovereignty’, as a political project based on the rights of peoples to define their own food systems and to develop policies on how food is produced, distributed and consumed. With small-scale food producers at the centre, food sovereignty is grounded in processes of empowerment and generation of knowledge, supporting collective construction of alternatives that reinforce peasant economies, and the interconnected systems of production, distribution and consumption; and equitable and sustainable food systems that guarantee the right to adequate food for all<sup>110</sup>.

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<sup>107</sup> E/C.12/2017/113 March 2017, par 6.

<sup>108</sup> On the collective rights, related to rural communities see: Andrea Nuila, Briefing Note Collective Rights, FIAN International, March 2018.

<sup>109</sup> CESCR, E/C.12/GC/21 21 December 2009, General Comment 21 on the Right of Everyone to Take part in Cultural Life, paras 13, 16 (e).

<sup>110</sup> Declaration of Nyeleni, 27 February 2007 at: <https://nyeleni.org/spip.php?article290> accessed 03 of June 2018.

At least during the last decade, the concept of food sovereignty, as a collective expression of the right to food, has been at the centre of the international debates on food governance<sup>111</sup>. In the Universal Human Rights System it has been mentioned in diverse standards. So, for example in the Guiding Principles on Extreme Poverty and Human Rights, which under the Right to Food and Nutrition recognize that *“Lack of food sovereignty compromises autonomy and dignity”*.<sup>112</sup> In its General Recommendation 34 the CEDAW establishes that: *“States parties should ensure the realization of the right to food and nutrition of rural women within the framework of food sovereignty and that they have the authority to manage and control their natural resources”*<sup>113</sup>.

The recently adopted Declaration on the Rights of Peasants and other People Working in Rural Areas, recognizes the right to food and food in its article 15, with special reference to food sovereignty in its paragraph 4.

#### **vi. Indivisibility and interconnection of human rights**

The original recognition of the Right to Food, enshrined in article 25 as part of the right to an adequate standard of living is explained by its close interconnection and interdependency with other human rights, as it was evident during the negotiations of the UNDHR<sup>114</sup>. Already the mention of the food as part of the freedom of want, which is closely interconnected to the other freedoms (of speech, of worship, and from fear) allows to understand the interconnection.

In its paragraph 4 the CESCR reaffirms the indivisibility of rights and how the right to food is inseparable from social justice. It reaffirms states duty to adopt economic, environmental and social policies, at national and international level.

Likewise, the diverse general comments show the relationship between the right to food and nutrition and other rights. Access to food or the enjoyment of the right to

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<sup>111</sup> See also: E/CN.4/2004/10 9 February 2004, Report of the Special Rapporteur on the Right to Food on Food Security and Food Sovereignty; Debates on the Declaration on the Rights of Peasants

<sup>112</sup> UN Human Rights Council A/HRC/21/39, 18 July 2012, Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona para 75

<sup>113</sup> CEDAW GR 34 op. cit. n 61.

<sup>114</sup> See above p5-6, fn. 21, 22.

food and nutrition is mentioned in the general comments on: the right to housing<sup>115</sup>, persons with disabilities<sup>116</sup>, the ESCR of older persons<sup>117</sup>, the relationship between economic sanctions and respect of ESCR<sup>118</sup>, the right to education<sup>119</sup>, the right to the highest attainable standard of health<sup>120</sup>, the right to water<sup>121</sup>, the equal right of men and woman to the enjoyment of all ESCR<sup>122</sup>, on social security<sup>123</sup>, on non-discrimination<sup>124</sup>, the right to everyone to take part in cultural life<sup>125</sup>, the right to just and favourable conditions of work<sup>126</sup>, the right to sexual and reproductive health<sup>127</sup> and states obligations under the ICESCR in the context of business activities<sup>128</sup>.

Furthermore, the Right to Food Guidelines clearly reflect the understanding of the relation of the right to food with other rights, so for example Guideline 8 clearly refers to work, land, water and genetic resources for food and agriculture. Guideline 11 refers to education, guideline 14 to security networks – including social and food networks.

The interconnection has also been clear in the reports of the special rapporteurs as for example those on access to justice<sup>129</sup> and on women's rights and the right to

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<sup>115</sup> CESCR, General comment 4 on the Right to Housing, sixth session (1991) in E/1992/23 paras 1, 8 (b). Paras 8 (a) and (e) refer to legal security of tenure and access to land, to conditions for the realization of the right to food.

<sup>116</sup> CESCR, General Comment 5 on Persons with Disabilities, 11<sup>th</sup> session (1994) in E/1995/22 paras 1,33.

<sup>117</sup> CESCR, General Comment 6 on the Economic, Social and Cultural Rights of Older Persons, 13<sup>th</sup> session, 24 November 1995 paras 5, 32, 35.

<sup>118</sup> CESCR, E/C.12/1997/8 12 December 1997, General Comment 8 on the Relationship between economic sanctions and the respect of ESCR, para 3.

<sup>119</sup> CESCR, E/C.12/1999/10 8 December 1999, General Comment 13 on the Right to Education, para 41.

<sup>120</sup> CESCR, E/C.12/2000/4 11 August 2000, General Comment 14 on the Highest Attainable Standard of Health paras 3, 4, 11, 15, 36, 40, 43 (b), 51, 65.

<sup>121</sup> CESCR, E/C.12/2002/11 20 January 2003, General Comment 15 on the Right to Water, paras 3, 4, 6, 7, 12.

<sup>122</sup> CESCR, E/C.12/2005/4 11 August 2005, General Comment 16 on the Equal Right of Men and Women to the Enjoyment of all ESCR paras 28, 29.

<sup>123</sup> CESCR, E/C.12/GC/19 4 February 2008, General Comment 19 Right to Social Security, paras 18, 59 (a)

<sup>124</sup> CESCR, E/C.12/GC/20 July 2009, General Comment 20 on Non Discrimination, paras 6, 23, 30.

<sup>125</sup> CESCR, E/C.12/GC/21 21 December 2009, General Comment 21 on the Right of Everyone to Take part in Cultural Life, paras 13, 16 (e).

<sup>126</sup> CESCR, E/C.12/GC/23 27 April 2016, General Comment 23 on the Right to Just and Favourable Conditions of Work, paras 7, 18.

<sup>127</sup> CESCR, E/C.12/GC/22 2 May 2016, General Comment 22 on The Right to Sexual and Reproductive Health, para 7.

<sup>128</sup> CESCR, E/C.12/GC/24 10 August 2017, General Comment 24 on the State Obligations under the ICESCR in the context of Business Activities para 24, especially interesting is prescribing that intellectual property rights shall not lead to denial or restriction to productive resources such as seeds, crucial for the right to food and farmers rights.

<sup>129</sup> Special Rapporteur on the Right to Food , A/HRC/28/65 12 January 2014.

food<sup>130</sup> and in diverse documents of the Committee on Food Security, including its Global Strategic Framework for Food Security and Nutrition<sup>131</sup>

### **vii. Land and the rights of peasants, indigenous peoples and other rural communities**

Already in 1943 the states participating in the United Nations Conference on Food and Nutrition recognized the essential relationship between production and consumption of food<sup>132</sup>. The report explains that the two aspects, consumption and production cannot be separated: “*men cannot eat more foods and more healthful food, unless these foods can be obtained from the land or the sea in sufficient quality*”.<sup>133</sup> States recognized that since a third of “men” produce food, fighting hunger begins protecting the rights of producers, including their livelihoods and adequate conditions of work<sup>134</sup>. According to Craven, later on, in the process of negotiation of ICESCR the only conflictive aspect was the reference to agrarian reform. The original “five-power amendment” proposed the sentence; “*adapting or reforming existing systems of land tenure and land use and systems of the exploitation of natural resources*”<sup>135</sup>. The suggested formulation was complicated, since it was not clear which kind of reform was proposed. The issue was sensitive, since in former colonies there was an existing conflict between the customary tenure of land of traditional communities, and the right to property commonly imposed by the colonial powers and enshrined in civil or common law. In many situations, these conflicts hinder the access, use and control over land of local communities, affecting their access to food as well as the production of healthy food for urban areas. Not being clear if the proposal was to impose in general the right to property or to improve the recognition and protection of customary tenure systems, that formulation was risky for traditional rural communities. The ICESCR finally kept its reference to the reform of agrarian systems and ignored the reference to tenure. According to the analysis of the Travaux Préparatoires by Craven, “*The general*

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<sup>130</sup> Special Rapporteur on the Right to Food, A/HRC/22/50 24 December 2012 paras 2, 3, 4.

<sup>131</sup> Committee on World Food Security, Global Strategic Framework for Food Security and Nutrition, (2017 edition) 2.1 b (i), 4.10, 4.15.

<sup>132</sup> See above p.4 fn. 13.

<sup>133</sup> Op. Cit. fn. 13.

<sup>134</sup> Ibidem.

<sup>135</sup> See above p.9, fn. 43.

*agreement thus appears to have been that each country should find the approach to agrarian reform best suited in its conditions and that it should be carried out 'wherever necessary' desirable, and acceptable to the majority of those to be affected*”<sup>136</sup>. This left a large amount of discretion to the states in determining how to fulfil the right.

General Comment 12 recognizes the important in access to resources since the definition and furthermore in paragraph 12 it recognizes that availability can just be achieved through “*the possibilities either for feeding oneself directly from productive land or other natural resources*” or through distribution, processing and markets system. Par.26 states that “*The strategy should give particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources...*” and par. 13 explains: “*A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened*”. Paragraph 15 states that “*The obligation to fulfil (facilitate) means the State must proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood*”. Even if the GC does not explicitly mention agrarian reforms, the conjunction of this paragraphs together with article 11 of ICESCR are a base to include agrarian reforms as a way to ensure access to food and to correct discrimination in access.

In 2012 the Committee on Food Security adopted the Voluntary Guidelines on the Responsible Governance of the Tenure of land, Fisheries and Forests in the Context of National Food Security, which has as an important precedent the International Conference on Agrarian Reform and Rural Development (ICARRD), held in 2006. 46 years later, these guidelines finally tackle the conflicts between traditional systems of land tenure and property rights and guide states on how to ensure better tenure governance in order to avoid such conflicts, “with the goals of food security and progressive realization of the right to adequate food...” .

The 13th of September of 2007, the UN General Assembly adopted the UN Declaration on the rights of Indigenous Peoples which in art. 26 recognizes their

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<sup>136</sup> Ibidem.

right to land. In other many articles<sup>137</sup> UNDRIP refers to indigenous peoples' rights and territories as a recognition of the relevance that these have for their livelihoods and spiritual life. Even if not explicitly, this includes for their right to food and nutrition.

On the 17th of December of 2018, the UNGA adopted the Declaration on the Rights of Peasants and other People Working in Rural Areas. In its article 17 the UNDROP recognizes the right to land and, recalls agrarian reforms in its paragraph 6 and in article 15 recognizes the right to food, including the right to produce food and to adequate nutrition, which shows the relevance that the connection between land and food has for peasants.

### **viii. Implementing the Right to Food**

General Comment 12 included diverse provisions on how states can implement the right to food, at the national level, referring to the *adoption of national strategies*<sup>138</sup>, *including benchmarks and monitoring*<sup>139</sup>. So for example, the paragraph 25 places the strategy in all the elements of the food system and mentions some aspects of the food system as production, processing, distribution, marketing of safe food, health, education and social security. Furthermore, it refers to the implementation at national, regional, local and household level and includes the prevention of discrimination and equal access to economic resources<sup>140</sup>. The Committee also puts the focus on marginalized and disadvantaged population groups, especially in cases of severe resources constrains<sup>141</sup>. All these elements are developed in a more specific manner in the Voluntary Guidelines on the Right to Food. The implementation of the Right to Food Guidelines has been evaluated by the FAO in diverse opportunities and lastly in 2018 by the Civil Society Mechanism of the CFS. The Civil Society Report contains an overview of the corpus juris of the right to food as of today, an overview of the implementation in diverse constitutions, *legal frameworks, national policies, sectoral laws and judicial decisions* as well as in the regional systems and global governance. Finally, the report maps the current

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<sup>137</sup> UNDRIP arts. 2, 10, 25, 28, 29,30, 32 and preamble.

<sup>138</sup> CESCR, General Comment 12, Par.22.

<sup>139</sup> CESCR, General Comment 12, Par. 29.

<sup>140</sup> CESCR, GC12, par 26.

<sup>141</sup> CESCR, GC 12 Par 28.

struggles of the social movements against hunger and malnutrition and for the realization of the right to food and nutrition<sup>142</sup>.

The paragraph 29 and the Right to Food Guideline 11 invite states to consider the adoption of framework laws. According to the CSM report: In the years following the adoption of the *RTF Guidelines* “a significant number of countries (Kenya, Mexico, Nepal, Bolivia, Egypt, Ecuador and others have enshrined the right to food and/or food sovereignty in their constitutions Similarly, great progress has been made in legislative protection of the right to food, with an increasing number of countries (Brazil, Cabo Verde, Dominican Republic, Ecuador, Nepal, Nicaragua, Mali, Venezuela, India and others) adopting right to food and/or food sovereignty legislation. Building on this foundation, many states have established policies and strategies, or adopted sectoral laws in a vast number of areas, from seed regulation to tenure laws, that contribute towards right to food realization”<sup>143</sup>. An interesting overview of legal development has been included in Wikipedia, with very specific data <sup>144 145</sup>.

Also on the implementation paragraphs 32 to 34 of the GC 12 are dedicated to *remedies and accountability* for persons and groups which are victims of Violations of the RtF and includes their right to restitution, compensation, no repetition. The jurisprudence on the right to food and the clarification of its context in a number of cases has been developed in diverse countries including India, Nepal, Argentina, Colombia, Guatemala, and Germany. The International Development Law Organization prepared a complete overview and analysis of such jurisprudence in 2015 in its publication “Realizing the Right to Food: Legal Strategies and Approaches”<sup>146</sup>.

#### 4. Final remarks

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<sup>142</sup> Working Group on Monitoring of the Civil Society Mechanism for the Relations with the Committee on Food Security, *The Use and Implementation of the Right to Food Guidelines*, 2018. <http://www.csm4cfs.org/wp-content/uploads/2018/10/EN-CSM-LR-2018-compressed.pdf>

<sup>143</sup> *Ib. Idem* p. 10

<sup>144</sup> Wikipedia, *Right to Food by Country*, under [https://en.wikipedia.org/wiki/Right\\_to\\_food\\_by\\_country](https://en.wikipedia.org/wiki/Right_to_food_by_country) (08.05.2019)

<sup>145</sup> For space reasons the advances in the regional human rights systems cannot be included in this publication.

<sup>146</sup> IDLO, *Realizing the Right to Food, Legal Strategies and Approaches*, 2015 in <https://www.idlo.int/publications/realizing-right-food-legal-strategies-and-approaches> (08.05.2019)

The analysis presented is an evidence of the clear recognition of the human right to food, the development of its definition, concept and obligations and means of implementation, which begun with the inclusion of the right to food in the UNDHR and continue developing today.

The right to food is a complex right which touches very diverse areas of economic, social and cultural life. Its implementation would not be effective if not taken in its holistic nature.

While the UN human rights system has developed the concept from the approach of the right to food, the FAO and Committee on World Food Security have guided states on how to implement their obligations. The SDG2 sets some incentives for the achievement of the progressive aspects of the Right to Food. Even if the SDGs do not refer to the obligations to protect and respect, it is clear if states do not meet these obligations, the achievement of the goals will be impossible. For this aim, the accountability of the right to food duty bearers is indispensable.

Being the right to food a key element in the work of diverse institutions, one of the lessons learned is that, for the effective struggle against hunger and malnutrition, bridging among those institutions is critical. Furthermore, all the institutions involved on food and nutrition issues should depart from the recognition of the right to food and the respective obligations in their mandate. They shall implement the existing legal framework on the Right to Food.

Despite the achieved progress, the challenges to food and nutrition continue evolving. These include: war and conflict, the dominance of corporations in the food system and the related abuses impacting the enjoyment of the right to food, climate change and ecological destruction, migration, the impact of digitalization in the food systems, damages caused by pesticides and other hazardous substances, the privatization of seeds, the exponential increment of non communicable diseases as diabetes and obesity, derived from malnutrition, inter alia. Therefore, it is to expect that international, regional and national law continue evolving to cover gaps in protection.

Such developments, as those initiated in 1948 will most probably be moved by normative power of facts and the struggles of the movement claiming for food justice, domestically, extraterritorially and for present and future generations.

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