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**THE RIGHT TO FOOD
BETWEEN INTERNATIONAL AND
NATIONAL LAW**

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*“Hunger is exclusion.
Exclusion from the land, from income, jobs, wages, life and citizenship.
When a person gets to the point of not having anything to eat,
it is because all the rest has been denied.
This is a modern form of exile.
It is death in life”.*

Josué de Castro¹

¹ DE CASTRO (1955). Josué de Castro (1908-1973) was chairman of the FAO Council from 1951 to 1955, he dedicated his life to studying the deeper roots and causes of hunger in Brazil and in the world. He wrote two fundamental books on the issue – *The Geography of Hunger* and *The Geopolitics of Hunger* – which contributed to understanding hunger as a man-made phenomenon.

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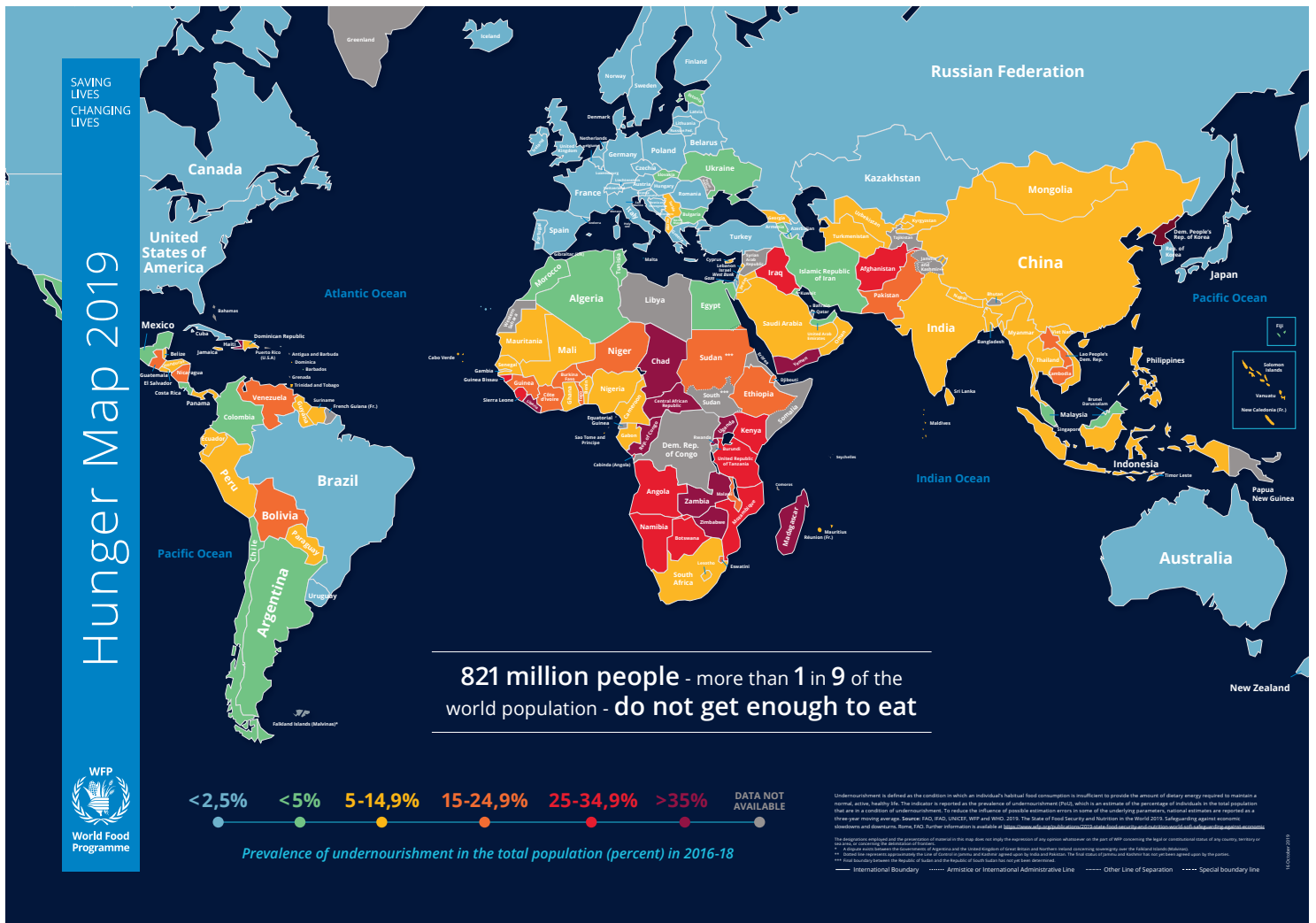
LIST OF ACRONYMS AND ABBREVIATIONS

AoA	Agreement on Agriculture
APEC	Asia-Pacific Economic Cooperation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CELAC	Community of Latin American and Caribbean States
CESCR	Committee on Economic, Social and Cultural Rights
CFS	Committee on World Food Security
CRC	Convention on the Rights of the Child
CSM	Civil-Society Mechanism
DG	Director-General
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEAS	European External Action Service
EFSA	European Food Safety Authority
EPAs	Economic Partnership Agreements
ESC	European Social Charter
ESC rights	Economic, Social and Cultural rights
FAO	Food and Agriculture Organization of the United Nations
FFHC	Freedom from Hunger Campaign
FLW	Food Loss and Waste
GATT	General Agreement on Tariffs
GC12	General Comment No. 12
GJN	Global Justice Now
HLPE	High-Level Panel of Experts

HLTF	UN High-Level Task Force on the Global Food Security Crisis
HRBA	Human-Rights Based Approach
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFAD	International Fund for Agriculture and Development
IFIs	International Financial Institutions
IHL	International Humanitarian Law
IMF	International Monetary Fund
LSLTS	Large-Scale Land Transactions
LVC	La Vía Campesina
MDGs	Millenium Development Goals
NAFTA	North American Free Trade Agreement
NIEO	New International Economic Order
OAS	Organization of American States
OP-ICESCR	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
PARLATINO	Latin American and Caribbean Parliament
PSM	Private-Sector Mechanism
RBA	Rome-based Agencies
ROPPA	Réseau des Organisations Paysannes et de Producteurs de l’Afrique de l’Ouest

SDGs	Sustainable Development Goals
SOFI	The State of Food Insecurity in the World
TNCs	Transnational Corporations
TRIPS	Trade-Related Aspects of Intellectual Property
UDHR	Universal Declaration of Human Rights
UNDROP	UN Declaration on the Rights of Peasants and Other People Working in Rural Areas
UPOV	Union for the Protection of New Varieties of Plants
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WB	World Bank
WFC	World Food Conference
WFP	World Food Programme
WFS	World Food Summit
WTO	World Trade Organisation
African Charter	African Charter on Human and People's Rights
African Children's Charter	African Charter on the Rights and Welfare of the Child
American Convention	American Convention on Human Rights
American Declaration	American Declaration of the Rights and Duties of Man
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
Protocol of San Salvador	American Convention on Human Rights in the Area of Economic, Social and Cultural Rights

Figure 1 - WFP's World Hunger Map



I. Introduction

Food is one of mankind's most fundamental needs. Having access to nutritious food is a crucial matter of daily concern to improve people's living conditions, global health and the environmental sustainability of the Planet. Yet, hunger is currently menacing the security of humanity, as the total number of hungry people in the world has risen for the third year in a row. Whilst hunger has been declining for decades, estimates demonstrate that, in 2019, nearly 821 million people in the world faced chronic food deprivation². Amongst these, there is a growing number of children suffering low birthweight or stunted growth: that is, 151 million children are stunted, 51 million are wasted, and more than 2 billion people are micronutrient deficient³. The problem of hunger, malnutrition, and poverty is in fact a rampant question of global order, especially due to its social implications, which concern even the richest countries.

The origins of the increase in world hunger are to be found in many factors. Persistent conflict, famines and climate change are its main drivers. Yet, rising unemployment, declining wages and income inequality are also contributing to worsen people's access to sufficient food. Whilst this situation is particularly severe in most low-income countries – particularly, in Africa, Latin America and Asia, as shown in figure 1 – where most of the population is experiencing acute undernourishment, also many people living in the Global North are increasingly becoming food insecure, because of complementary factors creating further barriers to access food. As of today, over 2 billion people do not have *regular* access to safe, nutritious and sufficient food: these are the so-called “moderately food insecure”, who have been publicly reported among food insecure people for the first time⁴. In fact, food insecurity has become a universal problem, affecting all countries, all regions of the world, all ages and genders.

Interestingly, according to scientists, malnutrition is not only a problem related to nutrient deficiency, as it also concerns food excesses. Although this may seem paradoxical, malnutrition can coexist with overweight and obesity, thus increasing also the risk of contracting Non-Communicable Diseases⁵. Three are the reasons behind this. Firstly, fresh, sustainable and nutritious

² FAO, IFAD, UNICEF, WFP, WHO (2019).

³ Micronutrient deficiency is defined as a lack of essential vitamins and minerals required in small amounts by the body for proper growth and development, and is often referred to as “hidden hunger”; cfr. GÖDECKE, STEIN, QAIM (2018).

⁴ FAO, IFAD, UNICEF, WFP, WHO (2019).

⁵ Non-Communicable Diseases (“NCDs”), that is heart disease, stroke, cancer, chronic respiratory diseases, and diabetes, are a major cause of mortality at present in the world. NCDs are responsible for poverty and hindered economic development, and are causing an increasing number of deaths per year. Although the burden is growing, common, modifiable risk factors underlie these diseases: they could be easily prevented eliminating some risk factors such as tobacco consumption, unhealthy diets, insufficient physical activity, excessive alcohol consumption, overweight/obesity, raised blood pressure, raised blood sugar, and raised cholesterol.

food is often more expensive and less available than cheaper, highly processed foods, high in calories. Another reason is that the stress of living with uncertain access to food and food restrictions can cause physiological changes that increase the risk of overweight and obesity. And lastly, a malnourished child has a higher risk of obesity later in life⁶. In fact, food excess is not the opposite of hunger: they are actually linked, thus creating the so-called “double burden of hunger”⁷. Considering that no region is exempted from the epidemic of obesity and overweight, the double burden of malnutrition contributed to further validating the belief that food insecurity is a universal phenomenon.

However, malnutrition has other relevant implications. The consequences of malnutrition and scarce access to food are staggering, including both economic and human capital costs. According to the 2018 Global Nutrition Report, malnutrition in all its forms could cost society up to US \$3.5 trillion per year, thus reducing Africa and Asia’s GDP by up to 11%⁸. This figure is compounded by overweight and obesity which, costing US \$2 trillion per year in lost economic productivity and health care costs worldwide, further contributes to threatening international development⁹. On the contrary, halting world hunger and improving access to food would incredibly spur development, producing a positive multiplier effect on poverty and the environment, improving democracy, protecting human rights, and finally guaranteeing world development.

This reasoning aims to suggest that bolder actions must be taken to improve our “broken food systems” and enhance access to food, that is to grant the fulfilment of the human right to food. In fact, food is especially a human right. Hunger in all its forms is a violation of the right to be free from hunger, which is intrinsic of the right to life. Whether the problem is *under-nutrition* or *mal-nutrition*, evidence proved that it is not a major scarcity of resources that provokes the persistence of hunger. The real core of the hunger issue is not the lack of food produced, but rather the lack of *access to* food. Despite hunger and malnutrition is increasing, academic studies proved that the global production of food already produces enough food to feed 10 billion people, while the world population today counts for 7.6 billion inhabitants¹⁰.

The outbreak of the 2007 world economic crisis has required that access to food be guaranteed to the least privileged people as well as to the “new poor” living in the middle-income countries. These vulnerable people are migrants and refugees fleeing in the European Union, the youth who is most affected by higher unemployment rates, but also those families who saw their purchasing power gradually diminish after the crisis. It is for them that the

⁶ FAO, IFAD, UNICEF, WFP, WHO (2019).

⁷ The “double burden of hunger” is the combination of both the burden of chronic hunger and the burden of hidden hunger combined; cfr. GÖDECKE, STEIN, QAIM (2018).

⁸ FAO, IFAD, UNICEF, WFP, WHO (2019); FANZO, HAWKES et al. (2018).

⁹ *Ibidem*.

¹⁰ HOLT-GIMÉNEZ, SHATTUCK, ALTIERI, HERREN, GLIESSMAN (2012).

human right to food must be implemented and effectively guaranteed at the global level.

Deeper structural factors lie behind the lack of adequate access to food: distribution and ownership of resources, market rules that privilege the wealthiest, but especially *politics*. The very rationale beneath the persistence of malnutrition has been well exposed by Martin Luther King. In his Nobel Peace Prize lecture, he said:

“Why should there be hunger and deprivation in any land, in any city, at any table, when man has the resources and the scientific know-how to provide all mankind with the basic necessities of life? There is no deficit in human resources. The deficit is in human will”¹¹.

Having better knowledge, more data and instruments, the opportunity to end malnutrition in all its forms has never been more punctual. Yet the burden of malnutrition (and world poverty) persists because of a manifest lack of political will.

While the dispute over food insecurity is clear and its burden extremely elevated, inaction prevails, making advancement unacceptably slow. The only way to overcome the evanescent political will is to foster the implementation of the human right to food into national constitutions and realise its protection through justiciability and advocacy globally. Dealing with a human right, access to food must be mainstreamed by international actors and, mostly, by law. For the right to food to be recognised and fulfilled as a human right at the global level, international and national law are absolutely essential.

World governments need to implement food security and nutrition policies into their national strategies, in a global effort to diminish world inequalities and hunger. Eradicating hunger and malnutrition in all its forms is a major challenge, but if all countries commit themselves to respect the duty of fulfilling the right to food, then the “Zero Hunger” goal would be realisable. Building upon these premises, this research will mainly explore whether a judicially enforceable right to food is capable of reversing the claimed political inaction. Grounding on this, the present dissertation will investigate the human right to food and the way such right is protected through the instruments provided by the human rights’ legal doctrine.

II. Research question and outline of the work

“Hunger is not an issue of charity. It is an issue of justice”: with these words, Jacques Diouf, the seventh Director-General of the Food and Agriculture Organization of the United Nations (“FAO”), indicates the nature of food insecurity. In essence, hunger is a manmade phenomenon and a severe violation of the fundamental right to life. Diouf’s statement suggests that international and national law are essential for ensuring the right to food as a

¹¹ For more details, see the Nobel Prize website section dedicated to “Martin Luther King Jr. Nobel Lecture”.

judicially enforceable human right. Provided that the permanence of hunger is not due to a scarcity of resources, but rather to its inaccessibility, this dissertation will focus on the evolution of the right to food and of the legal instruments which recognise it, thus allowing individuals to recur to courts to adjudicate the right to food. Although political action is essential to realise the human right to food, law is equally important as it should foster its concrete recognition and respect through rule of law and legal adjudication.

As this work will seek to demonstrate, manifold international documents and covenants, as well as national constitutions, have implemented the right to food and recognised it as a justiciable, legally enforceable right. If in the past victims of hunger could hardly appeal the right to food against governments, now, with such right becoming legally actionable, these people can invoke it by bringing cases of right to food infringement before courts, with increasingly positive results. Courts are gradually intervening to strengthen the right to food, employing many strategies to cover its vast array of dimensions, whereas governments are gradually recognising that protecting the right to food is essential for successful food security strategies. If hunger is to be understood not as an issue of food availability and production, but rather as a problem of access and distribution, then the role that law plays in shaping this discourse is absolutely central.

Therefore, the main goal of this dissertation will be to discover how international and national law – both the way they develop and how they are invoked by different actors – play a part in constructing and shaping discourses for the protection of the human right to food. Building on the idea of “law as a language”¹², this research will concentrate on the possibility for the judiciary methods to develop a certain rhetoric, as a way of engaging and shaping global discourses advancing an understanding of global issues in line with the possible solutions that may be proposed¹³. International human rights doctrine has since been developed as the leading legal solution to world hunger. It is by now unimaginable to speak about global hunger without invoking the language of international law, and in particular of the right to food as a human right. For this reason, it is crucial to mainstream an understanding of hunger that configures food as a human right to whom everyone should have access to through legal strategies and approaches at the international, regional and domestic level. Due to the alleged political inaction affecting global governments, the main thesis that will be maintained is that the right to food should be strengthened by means of rule of law and judicial enforceability. The justiciability of this right implies that people can access courts and have their claims heard by judicial organs, which will accurately investigate the question and emit an official judgement, with reparations over the offenders.

Building on this main research question, this dissertation will explore the human right to food between international and domestic law in light of three

¹² CONSTABLE (2014).

¹³ *Ibid.*

main questions. Specifically, the questions that will be answered are the following:

- a. *Does a human Right to Food exist and how did it evolve to develop its own legal basis?*
- b. *In which manner is the Right to Food implemented into domestic, regional and international statutes?*
- c. *Can individuals and communities appeal to international, regional or national courts, in order to compensate violations of the right to food?*

Therefore, this research will demonstrate whether a timely and adequate justiciability of the human right to food can lead to the establishment of best strategies to guarantee concrete access to safe, sustainable and nutritious food for all. In order to answer these questions, the following dissertation will be articulated into three main chapters.

The first chapter – *From Food Security to the Right to Food* – will analyse the evolution of the global governance of food, providing an in-depth analysis of food regimes' development from 1940s to the present days. It will therefore focus on the happenings that provoked the 2007 Global Food Crisis and that enabled the mainstreaming of the concept of right to food. The investigation will therefore concentrate on the meaning of this right and its main features, which will be followed by an overview of the legal instruments that enshrined and officialised the right to food at all levels. Finally, as food in general is characterised by a multidimensional nature, the chapter will conclude by distinguishing food security from food safety.

The second chapter – *How to implement the Right to Food* – will concentrate on the methods which allow for a proper implementation of the right to food at all levels. For this purpose, the chapter is opened by a preliminary paragraph upon the linkages existing among the right to food and other human rights, with a particular emphasis on the right to water and land. This clarification is essential as it contributes to better characterise how this right is formally included into national, regional and international statutes, which will be addressed in the second paragraph. Given the key role played by UN Agencies, a thorough investigation of their role in defining the best strategies for the eradication of hunger will follow. In relation to this, the investigation will proceed by critically evaluating the extent to which the FAO's Right to Food Guidelines have succeeded in establishing and guaranteeing universal access to food. The final paragraph, by contrast, will examine those factors that challenge the effective realisation of the right to food, focusing on the market, Food Losses and Waste, and climate change.

The third chapter – *Legal adjudication of the Right to Food in practice* – will consider the centrality of legal instruments in the history of access to food realisation. Beginning the discussion with a necessary premise on the issue of justiciability of Economic, Social and Cultural Rights (including the right to food), some relevant cases of right to food legal adjudication in practice will be presented. The research will thus investigate the concrete fulfilment of this right as a crucial step in measuring its degree of effectiveness by taking into consideration claims presented before supranational and national courts. This

will include a profound analysis of the so-called “Right to Food case”, that is *People Union for Civil Liberties v. Union of India & Others*. Linked to this, the investigation will include an examination of the remedies that can be applied to right to food violations by both domestic and supranational bodies. For the sake of completeness, this chapter will be concluded by examples of explicit and voluntary violation of this right. This will entail analysing the so-called “State Food Crimes”, bringing the cases of North Korea, Venezuela and Zimbabwe as manifest examples.

Finally, supported by the arguments presented throughout this investigation, the thesis will find that, in order to concretely realise the right to food at the global level, the juridical argument must necessarily be linked to the political one. As a matter of fact, the legal adjudication of the right to food is less effective if not coupled with the adoption of proper and effective national policies. Some exemplary cases have proved that people’s right to access food may be safeguarded by imposing interim measures or remedies on States, companies or individuals breaching the right. However, the way of justiciability of the human right to food did not overcome the abovementioned lack of political will. Although courts demonstrated their willingness to accomplish a transformative change provided that the right to food constitutes a human right, governments lacked to implement courts’ judgements introducing new effective programmes. Without the necessary systemic adjustments – that is policies and programs, or framework laws directly addressing this issue – the effective protection of the right will thus not be guaranteed. This should entail also changing the international political framework that surrounds this phenomenon. Improving the global food governance by building better food systems from the top reaching downward is an essential step to unlock international development. That is, in other words, adopting a bottom-up approach giving voice to the peoples. Therefore, the thesis will conclude that only by transitioning from justiciability to real enforceability can the right to food be effectively safeguarded, thus guaranteeing access to safe, sufficient and nutritious food to everyone.

III. Research methodology

With food issues gaining prominent importance because of the claimed rise in world hunger, academic interest on the development of a right to food has grown accordingly. Several studies have looked at the motivations laying behind the lack of adequate access to nutrition for all. In particular, a consistent number of researchers explored the evolving judicial context for the fulfilment of the right to food and how (and if) it contributed to its effective realisation.

Therefore, this dissertation is built upon a thorough literature review of the existing academic production concerning the protection of human rights and its interaction with the legal doctrine. The methodology of the literature review has been necessary to map the academic works produced throughout the years in this field, thus developing a consistent and complete framework

of this topic. Moreover, given the explorative and broad nature of the research question, developing a literature review seemed the most appropriate technique to take into account every relevant aspect of it. Through this methodology, the thesis examined the most relevant scholarly production, aiming to trace the very origins of the debate concerning the right to food and its judicial implications. However, it has been decided to focus predominantly on the literature produced during the time span extending from 2015 to 2019, in order to address the latest developments occurring in the subject, although some exceptions occurred anyway.

Because of the extent of the issue, the academic resources were selected adopting two filters. The first filter has been applied to the *research field*, as the dissertation has taken into account only works whose main theme was international law, human rights, and international affairs in general. Secondly, the resources were filtered according to selected *keywords* pertinent to the main theme, namely “right to food”, “food security”, “access to food”, “food crimes”, or “right to food justiciability”.

The literature review has been conducted using *Ex Libris* and *Summon*, the discovery platforms made available by LUISS “Guido Carli” University, which allow for a single integrated search of LUISS Library’s volumes and of other relevant full-text resources available online in open access, including materials accessible through LUISearch, LuissThesis and Digital Library institutional archives. The most used databanks were *Cambridge Core*, *HeinOnline*, *NexisUni*, *Taylor and Francis Online*, and *Oxford Academic Journals*. These platforms permitted to have access to the materials published by the main journals in the field of human rights law, such as *The Human Rights Quarterly*, *Human Rights Law Review*, *Journal of Human Rights Practice*, *Transnational Legal Theory*, and *The International Journal of Human Rights*.

Alongside academic literature, UN Agencies publications and NGOs reports have been included amongst the resources. The literature review was indeed supplemented with the official materials and annual reports published by the FAO and its Right to Food Team, as well as papers and documents published by the Committee on World Food Security (“CFS”). Building upon a study of the International Development Law Organization (“IDLO”), existing legal case studies from different countries and regions have also been investigated, showing strategic entry points of right to food litigation.

Using the abovementioned resources, this research could establish a more detailed view of motivations and difficulties behind right to food realisation. It aimed at proving the relevance of right to food analysis, its development and connection with international, regional and national law. Whilst there is some debate on the extent of the justiciability of economic, social and cultural rights, regarding, in particular, the concrete fulfilment of the human right to food through judicial instruments, academic-oriented literature validated that law stands at the forefront of this issue.

Chapter One

From Food Security to the Right to Food

1.1. A historical review of Food Governance

Food is a fundamental human right and a factor of social cohesion and identity. Nevertheless, a constellation of class and interstate power relations, norms and institutional structures linking market rules to international relations, have detached food from its social dimension, transforming it into a mere commodity¹⁴. For the purpose of this investigation, it seems essential to provide an overall review of how food systems evolved throughout history and in which way they have been organised and governed on a global scale. This entails adopting the lenses of the global governance of food, which will permit to trace also the origin of the debate about the right to food while reflecting on the present *status quo* of the global relations of food production and consumption. Concerning this, this chapter will adopt one of the most fertile theories in historical political economy: the ‘food regime’ analytical approach.

Originating in the late 1980s as a methodological project within the realm of the political geography of global food systems, the concept of food regime has been formulated for the first time by Harriet Friedmann¹⁵. However, this notion has been developed more systematically in a prominent article written by Friedmann together with Philip McMichael¹⁶ and further expanded in their successive individual academic work¹⁷. With its strong Marxist influence, the notion of food regime offers a comparative-historical perspective, which investigated the role of agriculture and global food trade relations in relation to specific geopolitical and power configurations. Through this approach, it has been possible to identify and theorise the *actors*, the *institutions*, and the main *paradigms* and the relative power relations characterising the global food governance over time by examining how societies organised themselves to guarantee both an adequate food supply and access to food. This approach aimed at demonstrating that global trends and phenomena, including world hunger or limited access to food, may result from precise socio-economical and geopolitical conjunctures. For it placed food within global power relations, food regime’s analysis has been advantageous in contextualising the passages from one food governance configuration to the other starting from World War II to nowadays. In particular, a food regime is posited as

“the political structuring of world capitalism, and its organisation of agricultures to provision labour and/or consumers in such a way as to reduce wage costs and enhance commercial profits”¹⁸.

¹⁴ McKEON (2017b: 3).

¹⁵ FRIEDMANN (1987: 247-258).

¹⁶ FRIEDMANN, McMICHAEL (1989: 93-117).

¹⁷ McMICHAEL (2005: 269-303).

¹⁸ McMICHAEL (2013: 8); ID. (2017: 8).

In other words, food regimes offer a unique comparative perspective on the geopolitical arrangements that alternated throughout history until the development of modern capitalism. Drawing on regulationism¹⁹ and world-systems theory²⁰, such analytical framework emphasised the role of food production and trade in the evolution of capitalism on a global scale, maintaining that stable periodic rules-setting are brought about by disputes among social movements and government authorities which determine new power configurations²¹. These new configurations are legitimised by notions such as free trade and international development aid designed for modernisation. In particular, food regimes help to contextualise

“how particular food complexes (from seed technologies through cropping systems to food processing/manufacturing) and food circuits in each regime support the exercise of particular forms of power in expanding and sustaining fields of market and ideological dominance”²².

The food regime concept essentially ‘historicised’ world history through the perspective of relatively stable arrangements of agricultural production and transitional periods of capital accumulation²³, thus permitting to recognise a ‘geopolitics of food’ which produced a determined understanding of food and definite global food trade patterns.

Through this framework, scholars identified three consecutive food regimes which dominated the global governance of food from the XIX century to date. The first two were characterised by a state-centred development paradigm, dominated by the United Kingdom (1870-1930s) and the United States (1950-1970s). Ruled by transnational corporations (“TNCs”), the third one, by contrast, emerged in the late 1980s as a product of neoliberal globalisation and is often referred to as the *corporate* or *neoliberal* food regime. Corporations began to exercise a prominent role in global food relations, determining a shift to the corporate development paradigm of globalisation²⁴. Yet, according to McMichael and McKeon²⁵, the neoliberal approach is currently going through a phase of crisis, and there is an ongoing scholarly debate on the extent to which such a regime is still in place or not²⁶.

A structured analysis of these three regimes will be the main subject of the ensuing paragraphs. These will provide a thorough review of the particular food relationships that occurred throughout the last decades once positioned historically within geopolitical relations. In this sense, such a review will focus on the main components constituting each of the three food regimes –

¹⁹ BOYER, SAILLARD (2006).

²⁰ WALLERSTEIN (2004).

²¹ FRIEDMANN (2005: 232); MCMICHAEL (2009: 140).

²² MCKEON (2019: 35).

²³ MCMICHAEL (2009: 140).

²⁴ MCMICHAEL (2003: 171).

²⁵ MCMICHAEL (2013: 8); MCKEON (2019: 298 e ss.).

²⁶ MCMICHAEL (2009: 140).

that is actors, institutions, and main paradigms – which shaped precise geopolitical conjunctures through patterns of food circulation.

1.1.1. First food regime (1870-30s)

National or local institutions have generally defined food policies that managed international food production until World Wars. The first food regime was characterised by the hegemony of Great Britain and its Empire, which, under the legitimising rhetoric of free trade, dominated the global market. This regime was characterised by low-cost imports of wheat and meat from the settler States (notably USA, Canada and Australia) and of cereals, livestock and tropical products from the colonies (*i.e.* Asia and Africa). Such a system was maintained by the establishment of a dominant currency – the Gold Standard – which constituted the basis for establishing “a world price for staple foods”²⁷. It is under this framework that Britain could supply the emerging European industrial classes with cheap food: consequently, the Empire began to be referred to as the “workshop of the world”²⁸. Its hegemonic role was favoured by a “civilising narrative”²⁹ that legitimised such international management of agricultural trade, based on overexploiting colonies’ resources, and imperialism itself. For these reasons, in a later work, Friedmann re-termed the first food regime as “the settler-colonial food regime”³⁰ or “the colonial-diasporic food regime”³¹, whereas McMichael named it “the British-centred imperial food regime”³².

Although by so doing Britain could externalise the production of staple foods at low prices and assure an over-availability of food, it imposed a monocultural agricultural system in the occupied colonies, favouring the impairment of its food systems and natural resources. The benefits that the West gained from the emerging capitalist system were indeed realised to the detriment of the New World. The establishment of a food regime, framed within the reduction of food prices and the transformation of food into a commodity, had the direct effect of marginalising many actors both in the Old Continent and overseas. Becoming subject to world prices, smallholders and family farmers’ living conditions deteriorated because of free trade and inadequate and uneven access to food for all. Overexploiting colonial resources triggered socio-economical fragmentation and severe famines, thus contributing to the vulnerability of the first food regime.

The stability of Britain’s food regime was undermined by a combination of factors, including national rivalries among European powers, measures of economic protectionism, and the failure of the Gold Standard. Yet, economic recession and urban inoccupation following the two World Wars, alongside

²⁷ McMICHAEL (2013: 24).

²⁸ McMICHAEL (2017: 28).

²⁹ McKEON (2019: 36).

³⁰ FRIEDMANN (2004: 125).

³¹ FRIEDMANN (2005: 234).

³² McMICHAEL (2013: 26-32).

the European agricultural crisis and the so-called ‘Dust Bowl’ disaster³³, finally determined the collapse of the first food regime.

As has been reported by Friedmann and later by McKeon, the alternation among regimes is indeed the main feature of ‘food regimes’ analysis. They vary in a mutually conditioning dynamic determined by different geopolitical configurations. Adopting a historical-comparative approach, the global governance of food is characterised by periods of stability (*i.e.* of accumulation of resources) – where it is possible to identify the unfolding of a precise food regime – and by periods of transition and restructuring – in which a new regime is likely to emerge. As stated by McKeon, each regime remained in force for generally 20-30 years and was generally followed by an ensuing period of crisis and transition³⁴. In fact, this also applied to the transition leading to the second food regime, which could unfold only after a deep crisis that extended approximately from the 1930s to 1945. This phase was marked, in particular, by a gradual increase in levels of malnutrition occurring as a consequence of the Great Depression (1929-39), but also of the beginning of the Second World War, which commenced before remedies could be undertaken³⁵. Therefore, the transition from the first to the second food regime was marked not only by the need to restore the economy, but rather to respond to global hunger as a specific and primary post-war objective.

The creation of the Food and Agriculture Organization (“FAO”) represented a decisive moment for the emergence of a global institutional governance of food indeed. Founded in 1945, the FAO was created as a specialised agency of the United Nations dedicated to the agricultural and food sector, which aimed (and still aims) at the elimination of hunger at the global level. Its establishment “was heralded as a contribution to building a better post-war society and guarding against another global conflict”³⁶, insofar as fighting hunger represented a security and moral priority. The notion of food security itself has been developed under the aegis of the FAO, as this UN Agency should have also fulfilled some crucial functions of food governance. Foremost amongst these functions was the international management of agricultural markets, including stabilising world agricultural prices, managing an international cereal reserve, and cooperating with the organisations responsible for agricultural development loans and international trade policy, ensuring that the measures markets took were coherent with food security goals³⁷.

³³ The *Dust Bowl* was a period of severe dust storms hitting the United States and central Canada between 1931 and 1939 which damaged the ecology and agriculture of American steppes and caused the displacement of many rural families. This environmental disaster was the result of inadequate dryland farming methods that provoked the drying and erosion of the soil.

³⁴ McKEON (2009: 234).

³⁵ McKEON (2009: 17); SHAW (2007: 7-8).

³⁶ McKEON (2019: 37).

³⁷ SHAW (2007: 24); McKEON (2019: 37).

However, as these long-term public goals challenged short-term national and trade interests, international consensus upon the FAO's role collapsed. With much of the Global South still under colonial rule, global food decision-making at that time mainly depended on the rich surplus-producer states. According to FAO's first Director-General ("DG"), Lord John Boyd Orr (1945-48), Great Britain and the United States

"were not prepared to give either funds or authority to an organisation over which they had not got full control. Britain might have lost its advantage of cheap food imports, while the US thought that she could do better for herself as a world power through bilateral aid to other countries"³⁸.

Therefore, these two countries primarily sought to limit FAO's purview. This became particularly clear when the proposal to establish the World Food Board – a mechanism designed to restructure international agricultural trade 'on a non-free-market basis' in order to address the surplus issue and the nightmare of world hunger³⁹ – was declined in 1947, with the United States and Britain voting against it. From that time onwards, the FAO was indeed degraded to a narrowly technical organisation, whose tasks were limited to holding international conferences and collecting data and researches. Believing instead that food should be considered more than a merely tradable commodity⁴⁰ and that "the world require[d] a food policy based on human needs"⁴¹, Lord Boyd Orr resigned from the Organisation. This critical issue was certainly evident to the ensuing DG, Dr Binay Ranjan Sen (1956-67), who strived to restructure and refocus the Agency under the belief that it was only *moving beyond* governments that 'the old enemies of mankind: hunger, poverty, injustice and the denial of human rights and human dignity'⁴² could be tackled.

The structure of this food regime suggested that the international management of food and agriculture was still strongly dominated by the sovereign States and their relative national priorities. As a result, the ensuing food regime will be ruled by the rising hegemonic State of that time: the United States. The configuration of the second regime will be the subject of the next section.

1.1.2. Second food regime (1960-70s)

The second food regime emerged as the winds of the Cold War began to blow: its rule-setting was ostensibly marked by the binomial rivalry opposing capitalism and communism. Led by the growing hegemony of the United States, the second food regime arose from the prompt reaction of the American government to the combined misfortunes of both the Great Depression and the

³⁸ ORR, LUBBOCK (1953: 57); SHAW (2007: 27).

³⁹ MCKEON (2009: 18).

⁴⁰ MCKEON (2009: 192).

⁴¹ *Ibid.*

⁴² Report of the FAO of June 1970, *on the Second World Food Congress*; MCKEON (2009: 21).

Dust Bowl disaster. Long dealing with problems of food surpluses, the United States restored its agricultural production with two initiatives. On the one hand, by launching a national support programme for agricultural commodity production with state-subsidised and energy-heavy inputs aimed at promoting economic recovery in the worst-affected regions⁴³. On the other, the US government further encouraged food overproduction to re-direct such surpluses towards the former colonies. Through this initiative, the United States could unfold the foreign policy of ‘food aid’.

Fostered in 1954 by President Eisenhower when Public Law 480 and the “Food for Peace” programme were enacted, food aid represented the most distinguishing feature of the United States and of “their” regime. Based on the dollar-based monetary system – Bretton Woods – food aids were realised by selling American goods to the underdeveloped countries in return for their ‘soft’ currency, which was detained by the US government as ‘counterpart fund’. In other words, whilst this kind of foreign economic aid was assumed to be a gift provided to face emergencies⁴⁴, it was, in fact, a *more virtuous* wording for referring to export subsidies⁴⁵ that the US deployed to secure markets and opportunities for its intensive agro-industrial model. Being used so intensively, food aid defined the peculiar feature of the second food regime, that is its mercantile character so that Friedmann called this period as the “mercantile-industrial” food regime⁴⁶.

If in the first food regime, it was just one among many exporting countries, thanks to food aids the United States emerged as the dominant food exporter of that period. It transformed Europe from a major importer to a self-sufficient and eventually major export region. But mostly, it made the host of former colonies become strictly dependent on imported food and manufactures. The historical period from 1945 to 1973 was marked indeed by the enfranchisement of the former Asian and African colonies, which transitioned into autonomous nation-states. This proved that food aid was an innovative post-war method that only apparently encouraged Third World industrialisation and aimed at tackling world hunger. Despite this, the Western countries still pursued the civilising narrative that characterised neo-imperialism by practising the lauding rhetoric of ‘the push for development’⁴⁷, that “sanctif[ied] the role of the ‘developers’ and [legitimated] their often self-serving recipes for addressing the problems of the ‘developing world’”⁴⁸. The state-led ‘development project’ was also presented as a fundamental path to complete the making of the nation-state after the accomplishment of decolonisation⁴⁹. However, food aid was also employed as a critical instrument for securing the strategic perimeters of the Cold War, that is to

⁴³ MCKEON (2019: 39).

⁴⁴ FRIEDMANN (2005: 233).

⁴⁵ FRIEDMANN (2005: 240).

⁴⁶ *Ibid.*

⁴⁷ MCKEON (2019: 39).

⁴⁸ *Ibid.*

⁴⁹ McMICHAEL (2009: 141).

counterbalance the rising influence of the Soviet Union. Such an instrument was sponsored to the Global South in order to:

“contain their communist overtures as they attained independence, and to open up their markets to American agro-exports while promoting the dispossession of their patently “un-modern” peasantry”⁵⁰.

It can be argued that food scarcity was used as a pretext to transform food into a powerful instrument: the United States seized a human rights crisis for political goals. Moreover, food aid, together with the technologies of the Green Revolution and more favourable terms of credit, was presented by the ‘developers’ as the best set of techniques to boost modernisation and end hunger. In particular, the Green Revolution was a technical package of high-yield hybrid seeds reliant on irrigation and agrochemical products designed to fight hunger⁵¹. Easy credit, instead, merely allowed developing countries

“to engage in capital and technology intensive development schemes parroting the West’s agricultural modernisation and industrialisation-based path to development”⁵².

Yet, this bubble exploded in the late 1970s, when interest rates increased steeply, leaving the countries that took advantage of the favourable credit terms heavily indebted and loaded with inappropriate and inoperable industrial facilities.

This food regime persisted until the prices of agricultural resources remained relatively stable, yet it collapsed during the 1972-73 détente between USA-USSR, which had the consequence of tearing grain surplus stocks for the first time. The price of wheat and seed oil tripled, generating the world food crisis of 1974 that notably hit Ethiopia and the Sahel region with severe famines. Such food shortage coincided with a more general crisis of accumulation, marked by the 1973 oil crisis, which led to higher energy prices and caused the failure of the Bretton Woods monetary system.

As the crisis reached its peak, the FAO launched the “Freedom from Hunger Campaign” (“FFHC”) and a series of international conferences focused on food and hunger designed to gather public attention around Third World problems⁵³. In particular, in 1974 the FAO convened the World Food Conference (“WFC”) – the most important amongst these summits because it consisted in an intergovernmental meeting – where millions of people were defined as “food insecure” due to the increase in world wheat prices and the disappearance of surplus stocks. The Conference marked the moment in which food security officially became an explicit political objective of the United Nations. During the crisis, FAO’s DG of that time, A. H. Boerma (1968-1975), started to reframe the human right to food: “Food is not like any

⁵⁰ PATEL, McMICHAEL (2010: 15); McKEON (2019: 39).

⁵¹ McKEON (2019: 40).

⁵² *Ibid.*

⁵³ McKEON (2009: 22).

other commodity. If human beings have a right to life at all, they have a right to food”⁵⁴.

Becoming aware that Third World poverty was only apparently addressed as an urgent humanitarian emergency, the Group of developing countries gathered together in the “G77” and launched the New International Economic Order (“NIEO”). In order to promote better world trade terms, mainly related to controlling export commodities’ flows and TNCs’ work into their territories, the G77 countries turned their faith to the FAO⁵⁵. The G77 valued the FAO as the best UN Agency that could in actual terms, help them enhance agricultural production and overcome food insecurity. On the contrary, threatened by such new Third World arrangement, the OECD took advantage of the food and oil crisis to accuse the FAO to be unable to predict and manage agri-food crisis, therefore requiring the weakening of the FAO’s international mandate. They wanted the Agency to become a neutral technical organisation with strictly limited powers, rather than becoming the sort of Ministry of Agriculture of the United Nations⁵⁶. The internal issue on its nature and outreach persecuted the FAO from its early stages, especially regarding the gap between:

“what is technically possible and the political will necessary to attain it, on the one hand, and the difficulties of conjugating technical and political dimensions of food and agricultural issues in a meaningful and transparent way, on the other”⁵⁷.

As a consequence, during the WFC, the succeeding DG E. Souma (1976-1993) publicly committed himself to decentralise and reform the Organisation. Its power and authority were undermined with the creation of a ‘patchwork’ of politically convenient and autonomous intergovernmental agencies which integrated some core functions of the FAO. Indeed, the World Food Programme (“WFP”), established in 1961, was detached from the FAO to take charge of food emergency response becoming the humanitarian agency of the UN. The International Fund for Agricultural Development⁵⁸ (“IFAD”) was created in 1977 to substitute the FAO in rural development financing and food aid programmes. Moreover, the WFC also recommended the creation of a world food bank ensuring access to approximately 10 million tonnes of grain reserves, to improve tropical agriculture and to establish a new forecasting system that would prematurely warn on the outbreak of future food crises. Finally, the Conference established the World Food Council, a top-heavy policy body which – having no authority over the many UN Agencies tasked with food – merely contributed to eroding FAO’s normative powers.

⁵⁴ BOERMA (1976: 153); JAROSZ (2009: 50).

⁵⁵ MCKEON (2019: 41).

⁵⁶ *Ibid.*; ETC GROUP (2009).

⁵⁷ *Ibid.*

⁵⁸ Resolution of the UN General Assembly of 15 December 1975, A/RES/3503(XXX), *Establishing an International Fund for Agricultural Development*;

Nevertheless, despite the lessons learnt from the 1930s food crises, the World Food Conference ultimately framed the crisis as pure hunger. The international stakeholders did not question either whether markets themselves were favouring the worsening of food security and the increase in vulnerability. Millions of people were just defined as “food insecure”, that is people lacking food⁵⁹. From that moment, the rhetoric of “right to food” and “food security” prevailed. The “inalienable right to be free from hunger and malnutrition” was included in the official Universal Declaration on the Eradication of Hunger and Malnutrition⁶⁰ adopted by the WFC, by which governments promised to achieve this right universally by 1984.

Whilst the right to food had already been enshrined in the Universal Declaration of Human Rights⁶¹ (“UDHR”) of 1948, developing a proper definition for food security permitted to highlight for the first time the disparity between mass agricultural productivity and meeting people’s vital needs.⁶² Food security had been generally framed as the ability to buy food. On the contrary, the right to food enshrined an alternative vision aimed at favouring the increase of food access: that is, improving food redistribution. Redistribution would have had a double effect: not only it would have widened access to food, but also encouraged a balanced relationship between the Global North and South. Yet, as the GATT’s Uruguay Round negotiations began, which eventually led to the establishment of the WTO in 1995, neoliberal policies centred on free trade prevailed at the global level.

As a consequence of the food crisis, the stability of the second food regime trembled, opening the way for the gradual establishment of a third regime dominated by transnational corporations (“TNCs”). In paradigmatic terms, the United States had, in a way, set the stage for this transition by rearranging international agricultural provisioning on ‘transnational commodity complexes’⁶³ employed along the value chain. Thus, the universal promotion of US liberalism favoured the emergence of an increasingly private global trade regime ruled by corporations⁶⁴. It was argued, indeed, that international trade was exaggeratedly dependent on states subsidies: consequently, TNCs presented market liberalisation and privatisation as the ideal instruments to achieve modernisation. In addition to this, TNCs interests have been already favoured by the technologies of the Green Revolution and by the institution

⁵⁹ MCMICHAEL (2009: 150).

⁶⁰ Report of the FAO World Food Conference of 5-16 November 1974, *Declaration on the Universal Declaration on the Eradication of Hunger and Malnutrition*; Resolution of the UN General Assembly of 17 December 1974, A/RES/3348(XXIX), *endorsing the Declaration on the Universal Declaration on the Eradication of Hunger and Malnutrition*.

⁶¹ Resolution of the UN General Assembly of 10 December 1948, A/RES/217 (III), *Universal Declaration of Human Rights*.

⁶² FRIEDMANN (2005: 245-249).

⁶³ MCKEON (2019: 41).

⁶⁴ *Ibid.*

of the International Union for the Protection of New Varieties of Plants⁶⁵ (“UPOV”). Introducing the protection of intellectual property in agriculture, the treaty allowed corporations to protect their seeds, thus dismissing the farmers’ ancestral right to plant their own harvested seeds⁶⁶.

Yet, the end of the second food regime was also marked by consistent protests of the farmers. Devastated by massive subsidised imports imposed by the Western countries, they sought to redirect their domestic agricultural production toward exports. Indeed, starting already from the late 1970s, peasants from all regions of the world organised national demonstrations to ask for agrarian reforms, land redistribution and improved rights. They came mainly from Brazil with the Landless Workers Movement, Philippines, Mozambique and Algeria, but also from Italy. These struggles laid the groundwork for the global rural mobilisation of the Eighties⁶⁷.

Therefore, whether in the previous food regimes States detained a considerable role, the transition towards the third food regime included new actors. At the forefront of the successive international management of food and agriculture were transnational corporations, but also the emerging movements of the peasants and civil society organisations.

1.1.3. Third food regime (from the 1980s up to 2005)

The state-led ‘push for development’ plan, that made developing countries dependent on export subsidies from abroad collapsed in the late 1970s because interest rates became extremely unaffordable. The credit crunch left developing countries in financial debt so that they had to seek help from the International Financial Institutions (“IFIs”) of the time, that supplied them with bailout loans. Thus, since the 1980-90s these institutions – that is, the World Bank (“WB”), the International Monetary Fund (“IMF”) and the World Trade Organisation (“WTO”) – began to dominate the global governance of food as a direct consequence of the credit crunch.

In particular, the World Trade Organisation played a prominent role because it accomplished the inclusion of the Agreement on Agriculture (“AoA”) as part of its premises. Given the intensification of world competition for agricultural commodities, it became indeed essential to reframe *agriculture as trade* in order to realise world market liberalisation⁶⁸. The WTO was established in 1995 to replace the General Agreement on Tariffs and Trade (“GATT”), which on the contrary did not involve or mention agricultural trade in any way. Although it required controversial negotiations, the AoA was finally adopted and supported mostly by Western countries, notably the US, which could decrease the costs of their agricultural policies

⁶⁵ International Convention for the Protection of New Varieties of Plants of 2 December 1961, *establishing the International Union for the Protection of New Varieties of Plants*.

⁶⁶ TANSEY, RAJOTTE (2008: 32-34).

⁶⁷ McKEON (2019: 41).

⁶⁸ McMICHAEL (2013: 52-54); BERNSTEIN (2016: 622).

and continue to protect its agricultural sector in a veiled fashion⁶⁹. However, the AoA was also welcomed by some emerging agro-exporting countries, like Brazil, despite it obliged them to open their markets further.

While the IMF, the WB and the WTO were the major institutions of this regime, a myriad of associated trade agreements contributed to the making of the asymmetrical economic relationship between the North and the South. The US-Canada-Mexico North American Free Trade Agreement (“NAFTA”) was one of them, although being negotiated at a later stage in 2013. Similarly, the Economic Partnership Agreements (“EPAs”) that the European Union sought to negotiate with its former colonies since 2002 is another example of such. The Agreement on Trade-Related Aspects of Intellectual Property (“TRIPS”) implemented in 1994 was also framed within the WTO, concerning, in particular, the stimulation of the food system by corporations. These covenants pushed even more than the WTO in requiring that the Global South’s markets be more open to foreign investment and that their governments’ capacity to control them be reduced.

In practice, IFIs and corporations have aggressively guided the ‘transnationalisation’ of agri-food capital, thus defining a “global private regulation” mechanism⁷⁰, designed to: organise stable conditions of production and consumption that could allow investment planning and the production and sale of agricultural products on a global scale. Such a new configuration of global food governance could be achieved through a set of neoliberal structural adjustment policies, made in the name of “feeding the world”. These programmes considerably reduced the policy manoeuvre margins of governments, drastically cut governmental support to and regulation of agriculture, and further opened developing country markets to unfair competition. Thus, States were put at the service of both the market and transnational corporations⁷¹, marking the beginning of the paradigm based on productivism, which became the pivot of agriculture and food security during the third food regime.

Indeed, since the late 1980s, the discursive power of *financialisation* propagated, supported and legitimised the rise of agri-food transnational corporations as leading actors of global food governance. The academia has conceptualised the expression financialisation as the increasing role of financial institutions, actors and motives in agri-food commodity markets and the transformation of commodities into an asset class judged by risk-return properties⁷². On account of this, the third food regime is often referred to as the ‘corporate’ food regime which, by virtue of its “increasing emphasis on efficiency, competitiveness and growth, has transformed the business into an absolute major actor that is considered able to guarantee the supply of the

⁶⁹ McKEON (2019: 45).

⁷⁰ FRIEDMANN (2005: 244).

⁷¹ McKEON (2019: 46).

⁷² EPSTEIN (2005:3); DOMANSKI, HEATH (2007); FUCHS, MEYER-EPPLER, HAMENSTÄDT (2013).

desired good”⁷³. According to Eide, this period was characterised by the staggering transition “from the wealth of nations to the wealth of corporations”⁷⁴. As can be observed, the dominant discourse assumed that the development of such an arrangement was the natural outcome of corporations’ highest capacity to manage and create financial value. In fact, TNCs would have never gained such levels of power without the complicity of both powerful governments and neoliberal public policies. Yet, corporations began to dominate three strategic segments of the international food trade: the supply of production resources, trade of agricultural products, and food transformation and retail.

The acceleration of the liberalisation process permitted to concentrate the power of global trade relations in an ever-decreasing number of multinationals. These were (and still are) mainly six: Monsanto, Du Pont, Syngenta, Bayer, Dow, and BASF, determining the imposition of their oligopoly over the entire food system. Not only these companies ruled the corporate food regime, but they also began to privatise the scientific-technological research relative to plant selection, selling commercial seeds and agrochemicals in the global private sector. At the same time, they vertically integrated, directly or indirectly, those companies working in the other phases of the production cycle in order to gain unlimited and convenient access to the traded commodities. Moreover, Big Data technologies have been recently added to this process as a new driver suitable to link business inputs to agricultural instruments in an unprecedented way⁷⁵.

Therefore, the paradigm of productivism and market hegemony became a pivot of agriculture and food security during the third food regime⁷⁶.

Ruled by IFIs, WTO rules and structural adjustment policies, the corporate food regime fostered a ‘world-farm’ scheme⁷⁷, based on the agri-export model and the international division of agricultural labour coordinated by TNCs.

Private actors, especially multinational corporations, began to play a more significant role, shifting from being rule-takers to rule-setters that could decide, implement, monitor and enforce rules and regulations. Under this regime, farmers were (and still are) demanded to supply standardised products suitable for international big supermarkets chains⁷⁸. That is products which have to fully satisfy specific quality and certification requirements, in order to compete with low-cost cereals and fulfil people’s demands.

In relation to this, Friedmann introduced the notion of ‘green capitalism’⁷⁹, that is the growing public demand for more equitable trade terms and greater environmental salubrity and food quality, to which TNCs increasingly

⁷³ FUCHS (2007).

⁷⁴ EIDE (2005: 18-19).

⁷⁵ IPES-FOOD (2017).

⁷⁶ MCKEON (2019: 47).

⁷⁷ MCMICHAEL (2013: 60).

⁷⁸ MCMICHAEL (2016: 59-60).

⁷⁹ FRIEDMANN (2005: 229).

responded in the last decades⁸⁰. These increasingly sophisticated regulations have guided the reorganisation of agri-food supply chains, which have been implemented internally by corporations (especially those of the large-scale distribution), adopting some labels of control and characterisation of production, such as biological, natural, fair, and so on. Yet, these food quality standards addressed only some elements of environmental protection, which are often determined by visibility and marketing qualities to meet the demand of wealthy consumers in the North merely⁸¹. This practice – which has been named “green protectionism”⁸² – is therefore at the origin of new differences and conditions of exclusion between large and small producers, rich and poor consumers, places of production (of raw materials) and places of consumption (of products with high added value). Whilst some scholars argue that higher export standards might lead to multiplier effects on the domestic food safety of developing countries⁸³, other academics critically contend that these new standards might only increase the quality gap between export and domestic food supply⁸⁴. Indeed, it has been observed that when such regulatory requirements could not be met, they often forced the agricultural workforce to displacement or land dispossession, thus contributing to the worsening of world hunger. This demonstrated that the corporate ‘global’ food regime incorporates a fundamental (yet basilar) contradiction: the predominance of profit over human rights. Under its logic, dimensions and the economic interests orienting it, the corporate global food chain is closely connected to an *industrialised* model of agri-food production. As one of the key results in the last decades, small-scale producers have been dispossessed of their lands to make room for more extensive monoculture plantations, where industrialised machines replaced farmers and chemical processes replaced the natural ones.

An oft-quoted alternative to this system has been *contract farming*, that is to say, an agreement between the small-holder and the buyer about the production and supply of agricultural products on the market at predetermined prices and respecting required quality and quantity standards⁸⁵. However, despite allowing small-holders to remain and cultivate their land, such an arrangement could strongly subject farmers to corporate control, especially on how, when and what they plant⁸⁶. Therefore, private retail food governance implied social well-being degradation for the majority of the population, resulting from highly uneven and unequal conditions in employment and income in the producing countries.

Despite the mounting evidence of the negative influence of structural adjustments’ policies, the developing countries were continuously encouraged

⁸⁰ CORRADO (2011: 35).

⁸¹ FRIEDMANN (2005: 229).

⁸² CAMPBELL (2004).

⁸³ JAFFEE, HENSON (2004).

⁸⁴ FUCHS (2011: 353-367).

⁸⁵ UNIDROIT, FAO, IFAD (2015: 1-15).

⁸⁶ McKEON (2017b: 9).

to open their market as global trade was sponsored as a source of stability⁸⁷. Even in this case, likewise, the development project, lied the contraposition between the sincere belief of the reliability of neoliberal policies, against the promotion of particular interests. The corporate food regime formulated its set of rules institutionalising corporate power over the world food system, but it did not even consider small-holders' rights and interests. According to McMichael:

“The paradox of this food regime is that at the same time as it represents global integration as the condition for food security, it immiserates populations, including its own labour force. The perverse consequence of global market integration is the export of deprivation, as ‘free’ markets exclude and/or starve populations dispossessed through their implementation. In turn, dispossessed populations function as reserve labour, lowering wages and offering the possibility of labour casualisation throughout the corporate empire”⁸⁸.

However, these neoliberal structural adjustment policies were institutionalised since 1989 with the establishment of the “Washington Consensus”, an expression coined to refer to the standard package of economic-policy prescriptions promoted for developing countries undergoing economic crisis by the leading Washington-based institutions, that is the US Treasury Department, the IMF, and the WB. Its constitutive pillars were mainly three: macroeconomic stabilisation, economic opening concerning both trade and investment, and the expansion of market forces within the domestic economy⁸⁹. It is worth noting that financial institutions promoted, once again, the neoliberal methodology as the exact infallible path to tackle all the evils of the world, most notably *food insecurity*. On the contrary, however, their ‘development receipt’ caused the reduction of the political influence of UN Agencies, inasmuch they endorsed ‘soft’ policies based on human rights promotion, rather than ‘hard’ recipes focused on economic manoeuvres. Indeed, although the 1990s were marked by several international conferences centred on food security, only some of these were called by the United Nations, as many others were organised by alternative forums such as the G7/G20. As a result, the global governance of food emerged significantly fragmented by the multiplication of the global governance of hunger. For these reasons, McKeon reported that:

“It took a determined lobby effort led by FAO to get a ‘hunger’ objective incorporated into the Millenium Development Goals that emerged in 2000 from the UN decade of Global Summits”⁹⁰.

Indeed, the IFIs and its neoliberal advocates still shaped the global discourse of hunger as an issue of supplying foodstuff. Yet, the notion of food as an undeniable and fundamental human right had already been enshrined in the

⁸⁷ LAWRENCE, LYONS, WALLINGTON (2010: 232).

⁸⁸ McMICHAEL (2005: 285).

⁸⁹ MARCHETTI (2016).

⁹⁰ McKEON (2019: 48).

UDHR and also in the 1966 Covenant of Economic, Social and Cultural Rights. The concept of a *right to food* was also reaffirmed in the FAO's 1996⁹¹ and 2002 World Food Summits⁹²: the leading UN Agency tasked with food security was indeed seeking to introduce an alternative perspective on hunger. To this it has contributed the Nobel laureate economist Amartya Sen. significantly In his influential work on "Poverty and Famines", Sen introduced the essential idea that what really is relevant is people's entitlement to have access to food, rather than just focusing on food supply⁹³. This perspective was also favoured by the emergence of the question of *agricultural* sustainability. Structural adjustment and neoliberalist policies combined with the input-intensive technologies of the Green Revolution had severely damaged the environment. An awareness of the problem emerged when the consequences of agriculture-intensive techniques became evident, also affecting poverty and hunger.

Because of its devastating impact on small-scale farmers, the dominant neoliberal regime began to be contested, notably by emerging social movements, demonstrating that the global food governance was by no means a matter for only intellectuals. A progressively articulated movement of resistance and denunciation supported by civil society organisations emerged. This political movement was composed of rural social movements, mainly from the Global South, who mobilised to fight economic globalisation and liberalisation altogether. Rural movements turned to the international arena, especially when the global peasant network called "La Vía Campesina" ("LVC") was established in 1993 as a reaction to the GATT's Uruguay Round. Similarly, in 2000 the West African Peasant and Agricultural Producers' Organisations (*Réseau des Organisations Paysannes et de Producteurs de l'Afrique de l'Ouest*, i.e. "ROPPA") was founded. The mushrooming of peasants' movements was the culmination of transnational movements from all over the world which emerged as a unique group, that is the "people of the fields"⁹⁴ who brought pressure from below for the emergence of alternative more sustainable paradigms. With such movements, farmers could advocate for their own rights, in a broader perspective aimed at rethinking the conditions of the international trade of food and agriculture.

In particular, La Vía Campesina proposed a 'peasant way', that is a positive antithesis to corporate industrial agriculture that advocated for more sustainable management of food by both land users and agri-business corporations. LVC questioned the immense global movement of resources

⁹¹ Report of the FAO World Food Summit of 13-17 November 1996, WFS 96/REP, *on World Food Security and World Food Summit Plan of Action*; Resolution of the UN General Assembly of 16 December 1996, A/RES/51/171, *on Food and sustainable agricultural development*.

⁹² Report of the FAO World Food Summit: five years later of 10-13 June 2002, WFS 02/A/57/499, *International Alliance Against Hunger*; Resolution of the UN General Assembly of 20 December 2002, A/RES/57/271, *on the World Food Summit: five years later*.

⁹³ SEN (1981).

⁹⁴ EDELMAN (2003: 185-220).

realised under unequal trade rules, that was compelling farmers to displacement. It openly critiqued the assumption that international trade and free markets would optimise food supply, and by extension food security⁹⁵, as stated by the GATT and the WTO. According to McMichael, LVC strived for a necessary ‘epistemic shift’, that is “an ethical intervention by which the *economic* calculus of capitalist food regimes [could be] replaced by an *ecological* calculus”⁹⁶ [emphasis added]. What they contested was the making of an ‘agriculture without farmers’⁹⁷, an industrial agriculture focused on commercial inputs and profits but disconnected with both the ecosystem and the people. According to LVC, the corporate food regime demonstrated to be incapable of ensuring world food security sustainably and ecologically. To this aim, LVC organised several international meetings, where it presented a set of proposals as concrete alternatives to the corporate food regime. In particular, these entailed focusing on the local food system, mainstreaming agroecology and family farming, defending people’s access to food and natural resources, and mostly *food sovereignty*⁹⁸. Introduced in 1996, the notion of food sovereignty emerged as the most recurring principle of these forums dedicated to food issues. Many have been its meanings since food sovereignty’s first articulation in 1996, but the definition provided in 2007 at the margins of the Forum for Food Sovereignty is deemed as the most representative as it has been approved by more than 500 households’ representatives coming from more than 80 countries. This official definition has been explicated in the “Nyéléni Declaration” in order to stress that food sovereignty is an *attribute of the peoples*, whereas the right to food is a subjective juridical situation of the individual. The definition of food sovereignty is indeed the following:

“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”⁹⁹ [emphasis added].

Unlike the dominant paradigm of productivism, the definition of food sovereignty addressed the questions of *where, how, by whom, under what conditions, for the benefit of whom, under the control of who* food should be produced. In other words, this mounting movement focused on the people and represented the relevance of their rights as the other side of globalisation. Supporting people’s democratic control of the food system, food sovereignty proponents maintained that only restructuring the global food system could the persistence of hunger be tackled¹⁰⁰. By pointing at realising food governance, the peasant movement aimed at re-localising food production and

⁹⁵ BELLOWS (2017: 18).

⁹⁶ McMICHAEL (2009: 162).

⁹⁷ McMICHAEL (2016: 651).

⁹⁸ McKEON (2019: 50-51).

⁹⁹ Declaration of the Forum for Food Sovereignty of La Via Campesina OF 27 February 2007, *Declaration of Nyéléni*, Mali.

¹⁰⁰ PATEL (2009: 36).

consumption, with the broad aim to de-link local producers from global markets.

Nevertheless, the social dimension of sustainability of the international agri-food system became to be stressed as a relevant concept in several global fora, which international summits did not address adequately. In fact, many social implications relative to workers' rights and small-holders' welfare have been simply ignored. This has become evident since the costs of these implications are now remarkable. As a consequence, the democratic legitimacy of the corporate food regime should be evaluated and addressed¹⁰¹. Moreover, the rise of the food sovereignty movement unveiled a deep politicisation of the dominant food regime.

Conversely, it highlighted alternative approaches to addressing and ensuring world food security more sustainably and democratically. This entailed a profound contestation of the corporate food regime beginning in the late 2000s¹⁰², determining its crisis. The crisis of the corporate food regime will be marked by a new ethic based on recovering the centrality of agriculture and informing polycentric and more democratic agri-food governance.

¹⁰¹ FUCHS (2011: 353-367).

¹⁰² McMICHAEL (2013).

Table 1 - Chronology of the development of the global governance of food.

FOOD REGIME	MAIN ACTORS	PARADIGM	FEATURES
First food regime: <i>i.e.</i> “imperialist” (1870-1914)	Great Britain and its Empire	Imperialism Nation-State	<ul style="list-style-type: none"> • Free trade • Low-cost imports • Monocultures • FAO creation
Period of crisis: <ul style="list-style-type: none"> • Great Depression • “Dust Bowl” 			<ul style="list-style-type: none"> • First and Second World War • FAO’s World Food Board failure
Second food regime: <i>i.e.</i> “mercantile-industrial” (1930s-1973)	USA	Nation-State	<ul style="list-style-type: none"> • US Food Aid Act • Green Revolution • Development project
Period of crisis: <ul style="list-style-type: none"> • Supply contraction • Price increase • 1970s food crisis and 1974 WFC 			<ul style="list-style-type: none"> • Credit crunch • Structural adjustment policies
Third food regime: <i>i.e.</i> “global-corporate” (1980s-nowadays)	IFIs TNCs and the private sector	Productivism Financialisation Globalisation	<ul style="list-style-type: none"> • Food quality standards • Transnational food chains • Green capitalism

1.2. The 2007 Global Food Crisis: mainstreaming the Right to Food

From 2005 on, the failure of the global food system gradually emerged. The institutions tasked with monitoring general food issues acknowledged the errors they made while trying to tackle world hunger in developing countries. Several failures arose within those organisations that over the years had dealt with underdevelopment, scattering intergovernmental instability at the global level. In its 2008 World Development Report¹⁰³ dedicated to Agriculture and Development, the World Bank itself recognised the negative impact of two decades of structural adjustment policies, admitting having committed a strategic error in neglecting agriculture as a motor of growth¹⁰⁴. Moreover, the emergence of new international actors, such as food movements, but also the BRIC countries (Brazil, Russia, India, China), enhanced the questioning of long-standing global arrangements, informing a terminal crisis of governance and sustainability. This has become readily clear in the context of such ‘institutional re-thinking’¹⁰⁵, which resulted from the eruption of the 2007-11 global food crisis.

The world food crisis that broke out in the spring of 2007 was magnificent for many reasons: for the extent of the price inflation, the amount of countries involved, and the role of new industries and corporations in its causation¹⁰⁶. Reaching the highest levels in nearly 50 years, the prices of the major agri-food commodities increased consistently, damaging mainly the millions of people who were already suffering from hunger in the developing world, but also the affluent societies of the Global North, thus making hunger a universal phenomenon. Although food crises are “endemic to the modern world”¹⁰⁷, the former Special Rapporteur on the Right to Food, Olivier De Schutter underlined the peculiarity of that precise crisis. According to him,

“[it was] possibly the first price crisis that occurred in an economic environment characterised by massive amounts of novel forms of speculation in commodity derivative markets”¹⁰⁸.

Indeed, decades of artificially low prices and structural adjustment policies, provoked by the use of agricultural subsidies in the Global North, have resulted in repeated crisis for millions of farmers of the South who, not able to compete, were driven off their land and compelled to intensified food insecurity conditions¹⁰⁹.

Impaired by years of speculative approaches based predominantly on food aid and the transfer of technologies to boost food supplies, the developing countries became overwhelmed by the exorbitant costs of an industrialised, specialised, export-oriented model of agricultural production. Conversely,

¹⁰³ BYERLEE et al. (2008).

¹⁰⁴ BYERLEE et al. (2008: 67).

¹⁰⁵ MCKEON (2019: 52).

¹⁰⁶ CHADWICK (2018: 236).

¹⁰⁷ MCMICHAEL (2009: 61).

¹⁰⁸ DE SCHUTTER (2010b).

¹⁰⁹ ROSSET (2008:460).

indeed, the promotion of such model had made the countries of the South highly dependent on imports for their food supplies. During the food crisis, for instance, Egypt has imported 50% of its food supplies, and Mozambique imported 60% of wheat¹¹⁰. The dominant policies adopted between 1980-1990s had considerably weakened the capacity of developing countries to produce their own resources, making them increasingly reliant on grains traditionally consumed by people in the North. Several developing countries became highly dependent on maize, rice, soya and wheat: these grains were amongst the commodities most affected by the price increases. For this reason, indeed, the crisis became also known as the “grain price volatility crisis”¹¹¹.

The global food price crisis caused reactions all over the world, revealing a global decision-making vacuum in global food governance. In the absence of an authoritative and inclusive global body that would deliberate on food issues, the decision-making process continued to be led by financial actors. The IFIs, the wealthy countries of the G8/G20, and particularly the independent corporate giants of the new globalised agri-food industry ruled began to rule the global food arena by default. Corporations upgraded themselves as institutions of global governance which took food-related decisions notably with a managerial approach, developing their own laws to govern agri-food trade, and without, however, ceasing the attempt to influence also public institutions¹¹². The evolution of this new framework provoked the decline of the regulatory role of the State.

Not only the decline of State as supervisor of the market, but the crisis also revealed many other problems related to the global food governance: notably, the fragmentation of the international organisations dealing with food security. This resulted also when, in 2008, the UN Secretary-General Ban Ki-moon established the High-Level Task Force for the Global Food Security Crisis, a coordination mechanism grouping 23 UN agencies to address the food crisis, gathering together the efforts with no political oversight¹¹³. Not surprisingly, this fragmentation was accompanied by inconsistent policies, notably including the duality between considering food as a commodity or as a human right. Yet, it was even less surprising to observe how *food as a commodity* was a notion that carried a much higher weight than *food as a human right*, gaining the support of the dominant economic interest and the free trade neoliberal ideology.

The governance scenario was also characterised by an inadequate and top-down articulation of the various levels of public authority, which led to the proliferation of private governance mechanisms too. Thus, the private corporate sector began to enter officially the arenas where global agri-food policies were decided. ‘Multi-stakeholder platforms’ and public-private partnerships increased sharply, invading the governance system at every level

¹¹⁰ WIGGINS, LEVY (2010).

¹¹¹ CHADWICK (2018: 239).

¹¹² MAY (2015: 1).

¹¹³ High-Level Task Force of the UN Secretary-General of April 2008, *on the Global Food Security Crisis*.

and placing all the actors on the same level without taking into account the different interests, roles and responsibilities between the parties, thus denying the differences in power¹¹⁴. The result was a network of private-public regulation operating on several levels, which created a labyrinth of competences and overlapping jurisdictions. This also left ample room for the so-called “transnational neopluralism” which allowed interest groups to interact with “regulators” to distort the system in favour of their particular interests¹¹⁵.

In this generally gloomy panorama, the scenario of food governance offered a relatively bright cross-section, characterised by the direct and practical commitment of small-holders movements representing those most affected by the damaging policies under discussion. The food crisis has opened up political opportunities for change that the movement for food sovereignty was ready to seize thanks to a decade of networking and capacity building activity, to which the international community was forced to react to. However, the only organism that sought political solutions to the causes of the crisis was the FAO, which consequently decided to reform its ineffective Committee on World Food Security (“CFS”), aiming to transform it and make it the most inclusive global forum. Introducing members of the civil society and of the academia into its international meetings, the CFS started to promote a model of real democratic inclusion at the global level, which contributed to promoting better policies, as well as reinforcing the legitimacy of the UN as a uniquely inclusive global governance arena¹¹⁶. This renewed CFS saw also the participation of the Food sovereignty movement which, together with the Committee itself, started to mainstream that the crisis was a consequence of having treated food as an item of trade, rather than a source of nutrition or, better, as a fundamental human right for a long time. Unlike economists or policymakers, food sovereignty advocates have been cautioning since the beginning that the existing structure of the global food system was directly threatening food security¹¹⁷.

Indeed, the actual structuring of the 2007-11 crisis emphasised a particular feature of the global food system: the role of financial actors. Seeking to explain appropriately the magnificent volatility of those years, numerous scholars such as Jayati Ghosh and Cornelia Staritz¹¹⁸ as well as relevant INGOs like Oxfam and Global Justice Now¹¹⁹ (“GJN”) have maintained that an increase in speculative practices in the global agri-food markets could have been in fact blamed for causing price increases. Therefore, they demonstrated that speculators of the affluent societies were misusing financial actions to ‘make a killing on hunger’¹²⁰.

¹¹⁴ McKEON (2017b).

¹¹⁵ CERNY (2016).

¹¹⁶ McKEON (2009); BELLOWS (2017: 17).

¹¹⁷ CHADWICK (2018: 239).

¹¹⁸ JONES (2010); WORTHY (2011); HERMAN, KELLY, NASH (2011).

¹¹⁹ GHOSH, HEINTZ, POLLIN (2012: 465); STARITZ, CORNELIA, KÜBLBÖCK (2013).

¹²⁰ GRAIN (2008).

Nonetheless, the crisis had the counter-effect to disseminate also new beliefs that had been totally ignored in previous policy discussions. That is, the idea of protecting developing countries' markets, improving the management of food reserves and supply, and adopting agroecology as a climate-friendly approach for a more sustainable agricultural production¹²¹. In a certain sense, it could be argued that the food crisis had the merit to externalise a shift in global governance, characterised by increased attention to climate change, health and energy.

This general framework finally contributed to the questioning of the corporate food regime and also of one of its crucial notion, that is food security. In its latest formulation, food security had been defined as when

“all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life”¹²².

This widely accepted definition, originally dating back to the 1996 World Food Summit¹²³ and reiterated in the 2009 WFS, reinforced the multidimensional nature of food security, including food availability, access, utilisation and stability. Yet, it ignored the moral and human rights dimension of not having access to food. The concept of food security expressed a complex of aims and objectives rather than concrete actions. Being a rather vague concept, it was not suitable *per se* for imposing legal constraints on world governments. On the contrary, the notion of *right to food* refers to and incorporates a fundamental human right that every person has from its birth. Being recognised upon every person, this right can be claimed judicially by everyone. If every human being has a human right to food, conversely every human being can require the full judicial application of this right. Therefore, food as a human right not only assumes a valuable political connotation but especially a juridical one¹²⁴. The fact that the right to food is a globally recognised human right with an adequate legal basis is the main difference with the notion of food security.

In the recent years, due to the continued rise of world hunger, the entire international community has recognised this crucial difference and agreed to replace the primary paradigm based on food security with a rights-based approach centred on the human right to food¹²⁵. The recovery of the global recognition of the right to food was translated into action in 2004 with the unanimous adoption by the FAO's member States of the Voluntary Guidelines

¹²¹ McKEON (2019: 50-51).

¹²² Declaration of the FAO World Summit of 16-18 November 2009, WSFS 2009/2, *on Food Security*; McKEON (2019: 50-51).

¹²³ Report of the FAO World Food Summit of 13-17 November 1996, WFS 96/REP, *on World Food Security and World Food Summit Plan of Action*.

¹²⁴ RINELLA (2015: 23-24).

¹²⁵ GOLAY (2008).

on the Right to Food¹²⁶. This document has represented the first attempt to give practical guidance to governments on how to apply and implement the right to food into concrete national policies or laws ensuring its actual realisation. Through these guidelines, States have been called to respect the right to food in responding to both the food crisis and structural hunger endorsing a great number of new initiatives which have been enacted in the post-crisis period. Furthermore, in 2008 a UN High-Level Task Force on the Global Food Security Crisis (“HLTF”) was established with the mandate to ‘scale up’ investments in food security with a particular focus on cooperating for the realisation of the right to food¹²⁷. The improvement of human rights, especially of the right to food, has been recognised at the global level as the best way to succeed in fighting world hunger and malnutrition.

To conclude, it has been analysed how after the post-World War II period the global governance of food has been marked by an increasingly complicated mix of formal and informal public and private authorities, exercised at different levels. What has remained constant over time has been the lack of political will on the part of many sovereign States to favour long-term common interests, rather than national, or even private, short-term ones¹²⁸. In paradigmatic terms, governmental efforts to end hunger and malnutrition through the concrete application of the right to food demonstrated to be falling behind. Therefore, in the following sections, this work will provide a thorough explanation on how the right to food has been codified in world constitutions and if focusing on this approach could help overcome the lack of political will that is still condemning millions of people to hunger.

1.3. The legal basis of the Right to Food

Even though more than ten years have passed since the outbreak of the 2008 food and economic crisis, its negative consequences are continuing to affect many people. Indeed, this work was introduced reiterating the actual estimate of hungry people in the world – 821 million people¹²⁹ –, under the assumption that this figure has started to increase since 2014 as a direct effect of the crisis. Nevertheless, what the crisis has changed is the geography and sociodemographic profile of food-insecure people. For the first time, the FAO’s annual report the “State of Food and Agriculture in the World in 2019” went beyond hunger, providing the data of the number of people who face uncertainties about obtaining food, that is “the moderately food insecure”¹³⁰. Today, over 2 billion people do not have regular access to safe, nutritious, and

¹²⁶ Voluntary Guidelines of the FAO Council of 22-27 November 2004, CL127/10-Sup.1, to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

¹²⁷ Updated Comprehensive Framework for Action of the High-Level Task Force on the Global Food Security Crisis of September 2010, on Food and Nutrition Security.

¹²⁸ McKEON (2017a).

¹²⁹ FAO, IFAD, UNICEF, WFP, WHO (2019).

¹³⁰ *Ibid.*

sufficient food: hunger is no longer a problem affecting only people living in low- and middle-income countries, but also in high-income countries. Therefore, food-insecure people are peasants, farmers, small-holders, landless workers, fisherfolk, but also many citizens of developed countries whose livelihoods have considerably shrunk¹³¹.

Concerning the continuing worsening of human rights' fulfilment at the global level, including the right to food, this paragraph will focus on the evolving nature of their system as the basis for advancing human rights in international law and the legal frameworks required for their protection. Human rights are those rights intrinsic to the person, to whom everyone is entitled without discrimination, neither of race, sex, nationality, ethnicity, language, religion, or any other status from its birth. These are universal values which establish an 'ethical imperative' that must be respected in order to ensure the human dignity of every individual¹³². It is for this reason that including human rights' principles in world constitutions and international obligations is a necessary requirement for their effective implementation. One of the founding fathers of the legal theory, Hans Kelsen, has thus defined the notion of human rights:

“the right—the reflex of the legal obligation—is equipped with the legal power of the entitled individual to bring about by a law suit the execution of a sanction as a reaction against the nonfulfillment of the obligation whose reflex is his right”¹³³.

In other words, Kelsen suggested that the framework of human rights produces the legal conditions for which citizens are able to enhance their status *from rights' holders to rights claimers*, inasmuch they are recognised as legal subjects and not mere recipients of charity¹³⁴. Although human rights are said to be realised only when codified into the rigid constitutions of the international legal system, generally those who advocate for their implementation are the people who have directly experienced any human rights' violation.

Yet, having been established only in the second half of the 1990s, the codification of universal human rights within national and international law has been quite recent. The Universal Declaration of Human Rights (“UDHR”), adopted in 1948 by the General Assembly of the United Nations, has been the first legal document incorporating all the human rights' principles included in the UN Charter. The fundamental merit of the UDHR is to have officially displayed the notion that all governments have an obligation to fulfil the inherent and inalienable equality, dignity and autonomy of all people through the progressive and efficient realisation of their universal, indivisible, interdependent and interrelated rights universally. Since its establishment, the UDHR has embraced the entire range of rights, to wit both civil and political

¹³¹ BELLOWS (2017: 26).

¹³² EIDE (2005: 100).

¹³³ KELSEN (1967: 134).

¹³⁴ BELLOWS (2017: 3).

rights, and economic and cultural rights, making them interconnected and mutually reinforcing. However, these rights and their ensuing duties have been further expanded in two separate covenants established in 1996: the International Covenant on Civil and Political Rights (“ICCPR”)¹³⁵, and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”)¹³⁶. These two Covenants combined with the Universal Declaration form the so-called International Bill of Human Rights¹³⁷, whence it originated several successive declarations and conventions. A compact framework of rights based on human dignity and self-determination has since been developed, establishing a wide-ranging and interrelated normative system, that has been thus sealed in the Vienna Declaration:

“All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis [...]”¹³⁸.

Despite the declared “interrelatedness and indivisibility of human rights”¹³⁹, the artificial partition between civil and political aspects and economic, social and cultural aspects persisted generating a “structural demarcation of the human rights system”¹⁴⁰. On the one hand, civil and economic rights embrace the right to free speech and association or to a fair trial, that is those rights protecting peoples’ freedoms to ensure their possibility to participate in civic and political life. On the other, economic, social and cultural rights (“ESC rights”) include the human right to an adequate standard of living, the right to food and nutrition, education, work, *et cetera*. These rights constitute the core of human rights law and are strongly interrelated: for instance, the freedom of speech is worthless without primary education, or similarly, the right to work means little if someone does not have the right to be free from hunger. However, such an artificial but widespread tendency to distinguish two categories of human rights has been respected, as confirmed by the issuance of the ICCPR and the ICESCR.

The establishment of such a distinction was the result of a controversial debate at the UN General Assembly in 1951¹⁴¹, where it was argued that the two kinds of rights had a different nature and thus required different instruments. Civil and political rights were said to be ‘justiciable’, that is judicially applicable by legal courts. On the contrary, the applicability of

¹³⁵ Resolution of the UN General Assembly of 16 December 1966, A/RES/2200(XXI)A-C, *on the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights*.

¹³⁶ *Ibid.*

¹³⁷ EIDE (2005: 101).

¹³⁸ Resolution of the UN General Assembly of 20 December 1993, A/RES/48/1, *World Conference on Human Rights*, para 5.

¹³⁹ BELLOWS (2017: 341).

¹⁴⁰ *Ibid.*

¹⁴¹ Resolution of the UN General Assembly of 5 February 1952, A/RES/543(VI), *Preparation of two Drafts International Covenants on Human Rights*.

economic, social and cultural rights was contested because it depended more on the promotion of national policies, thus making these rights also more expensive in economic terms, as they require States to provide forms of welfare to the population¹⁴². However, regardless of this distinction, the gradual recognition of economic, social and cultural rights helped to shape the actual human rights framework, thus realising a process of historical change¹⁴³ – which is still undergoing – that permitted to define legally also the human right to food in legal terms. The definition, understanding and enforcement of this right as a legal concept evolved during the decades, going through a gradual process of judicial implementation that invested both the international, regional, and national levels and that was made possible by the involvement of several key players, from the United Nations to NGOs and civil society’s movements.

Table 2 – Human rights characteristics¹⁴⁴

Characteristic	Explanation
Universal	Human rights are applicable worldwide to every human being, regardless of political, economic, cultural, or creed-based system.
Inalienable	Human rights are inherent in all human beings, solely on the basis of being human. They cannot be taken away, sold, parted with, or renounced. Exceptionally and in particular situations, human rights can be limited through a due legal process to guarantee public well-being.
Interrelated	Improvement in the realisation of any one human right is a function of the realisation of the other human rights.
Interdependent	The level of enjoyment of anyone human right is a function of the realisation of a human being’s other human rights.
Indivisible	All civil, cultural, economic, political, and social human rights are equally important. Improving the enjoyment of any human right cannot be done at the expense of the realisation of any other human right. Moreover, the content of a human right should not be fragmented, for example, by separating the human right to use of and control over natural and productive resources from the human right to adequate food and nutrition.

¹⁴² EIDE (2005: 178).

¹⁴³ ISHAY (2008: 3).

¹⁴⁴ Bellows (2017: 5).

1.3.1. The international dimension

Despite being among the most mentioned in formal treaties but most violated in practice, the right to food is widely and firmly recognised in international law. A first reference is found in Article 25.1 of the Universal Declaration, where the right to food is framed within the context of the right to an adequate standard of living. The non-binding but universally recognised UDHR presented the most essential provision of the right, inasmuch it stipulates that:

“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*”¹⁴⁵ [emphasis added].

Nevertheless, the codification of the right to food in Article 11 ICESCR¹⁴⁶ in 1966 has been the primary significant step in advancing efforts to fight hunger beyond it being a moral duty or a policy choice¹⁴⁷.

Conversely, Article 11 ICESCR made the RTF a legally binding human rights obligation, articulating the right in a truly comprehensive manner. Article 11 ICESCR stated that:

1. “The States Parties to the present Covenant recognise 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 realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.*
2. The States Parties to the present Covenant, recognising the fundamental *right of everyone to be free from hunger*, shall take, *individually and through international co-operation*, the measures, including specific programmes, 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 utilisation of natural resources;

¹⁴⁵ Resolution of the UN General Assembly of 10 December 1948, A/RES/217(III)A, *on the Universal Declaration of Human Rights*, Art. 25.1.

¹⁴⁶ Resolution of the UN General Assembly of 16 December 1966, A/RES/2200(XXI)A, *on the International Covenant on Economic, Social and Cultural Rights*, Art. 11.

¹⁴⁷ CHADWICK (2018: 236-237).

- 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*¹⁴⁸ [emphasis added].

It is particularly noteworthy that Article 11 ICESCR not only defines the normative content of the right and the duties and obligations arising from it, as it also characterises between the *right to adequate food* and the *fundamental right to be free from hunger*. Yet, such a distinction is increasingly less relevant in practice, as the semantic differences between “freedom from”, “sufficient” and “adequate” are discarded in favour of a comprehensive understanding embracing the fact of tackling hunger as a whole¹⁴⁹.

The right to food is also formalised in many other special international covenants. The 1979 Convention on the Elimination of All Forms of Discrimination against Women¹⁵⁰ (“CEDAW”) recognises the right in Article 12 as it refers to adequate nutrition during pregnancy and lactation¹⁵¹. The 1989 Convention on the Rights of the Child¹⁵² (“CRC”) devotes specific attention to the protection of the right to food in two articles. Referring to the right to health, Article 24 calls States Parties to respond appropriately:

“(c) To combat disease and *malnutrition*, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of *adequate nutritious foods and clean drinking-water*, taking into consideration the dangers and risks of environmental pollution;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and *nutrition*, the advantages of *breastfeeding*, hygiene and environmental sanitation and the prevention of accidents [...]”¹⁵³ [emphasis added].

In the general framework of the right of children to an adequate standard of living, Article 27.3 also addresses the right to food, claiming that:

“States Parties, in accordance with national conditions and within their means, shall take appropriate measures 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, clothing and housing*”¹⁵⁴ [emphasis added].

¹⁴⁸ Resolution of the UN General Assembly of 16 December 1966, A/RES/2200(XXI)A, *on the International Covenant on Economic, Social and Cultural Rights*, Art. 11.

¹⁴⁹ HÄRTEL (2016: 21).

¹⁵⁰ Resolution of the UN General Assembly of 18 December 1979, A/RES/34/180, *Convention on the Elimination of All Forms of Discrimination against Women*;

¹⁵¹ BELLOWS (2017: 62).

¹⁵² Resolution of the UN General Assembly of 20 November 1989, A/RES/44/25, *Convention on the Rights of the Child*.

¹⁵³ *Ibid.*, Art. 24.

¹⁵⁴ *Ibid.*, Art. 27.3.

More recently, the right to food has been reiterated at the international level also in the 2008 Convention on the Rights of Persons with Disabilities, that is in the context of the right to health expressed in Article 25 and within the right to an adequate standard of living and social protection in Article 28¹⁵⁵.

In conclusion, it is worth underlying that the right to food is the balance point among several areas of laws and other fundamental human rights – including in the first place the principles of the right to life and human dignity – although these aspects will be examined in the second chapter of this work.

1.3.2. The regional dimension

In the second place, the right to food has also been declined in documents endorsed at the regional level, in line with a general trend for the regionalisation of rights. It is here recalled that the term “regional” in international law refers to the continental scale (Africa, Americas, Asia, Europe, Oceania).

Within the Organisation of American States, the right to food is enshrined explicitly in the Charter of Organisation of American States¹⁵⁶, implemented in 1948 in Bogotá, where at Article 34 it is stated:

“The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals:

[...]

(j) Proper *nutrition*, especially through the acceleration of national efforts to increase the production and *availability of food*¹⁵⁷ [emphasis added].

Moreover, although the American Convention on Human Rights¹⁵⁸ (“Pact of San José”) primarily contains civil and political rights, the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights¹⁵⁹ (“Protocol of San Salvador”) explicitly mentions the right to food. Article 12 reads:

1. “Everyone has the *right to adequate nutrition* which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.

¹⁵⁵ BIGLINO et al. (2014: 17).

¹⁵⁶ Charter of the Organization of American States, Bogotá, 30 April 1948.

¹⁵⁷ *Ibid.*, Art. 34.

¹⁵⁸ Convention of the Organization of American States on the American Convention on Human Rights, San José, 22 November 1969.

¹⁵⁹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, San Salvador, 17 November 1988.

2. In order to promote the exercise of this right and eradicate *malnutrition*, the States Parties undertake to *improve methods of production, supply and distribution of food*, and to this end, agree to promote greater international cooperation in support of the relevant national policies”¹⁶⁰ [emphasis added].

Under the Inter-American framework, the right to food is also referred to in the American Declaration of the Rights and Duties of Man¹⁶¹ (“American Declaration”) under article XI on the right to the preservation of health and to well-being, it states that:

“Every person has the right to the preservation of his health through sanitary and social measures relating to *food*, clothing, housing and medical care, to the extent permitted by public and community resources”¹⁶² [emphasis added].

Concerning the African regional system, the African Charter on Human and Peoples’ Rights¹⁶³ (“African Charter”) does not mention the right to food explicitly. However, the right is enshrined with respect to the food security of children in the African Charter on the Rights and Welfare of the Child¹⁶⁴ (“African Children’s Charter”). Within the context of the right to health and health services, Article 14 affirms that:

1. “Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. State Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
 - a. to reduce infant and child mortality rate;
 - b. to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - c. to ensure the provision of adequate nutrition and safe drinking water;
 - d. to combat disease and *malnutrition* within the framework of primary health care through the application of appropriate technology;
 - e. to ensure appropriate health care for expectant and nursing mothers;

¹⁶⁰ *Ibid.*, Art. 12.

¹⁶¹ Convention of the 9th International Conference of American States on the American Declaration of the Rights and Duties of Man, Bogotá, April 1948.

¹⁶² *Ibid.*, Art. XI.

¹⁶³ Convention of the Organization of African Unity on the African Charter on Human and Peoples’ Rights, Nairobi, 27 June 1981.

¹⁶⁴ Convention of the Organization of African Unity on the African Charter on the Rights and Welfare of the Child, Addis Ababa, 11 July 1990.

- f. to develop preventive health care and family life education and provision of service;
- g. to integrate basic health service programmes in national development plans;
- h. to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and *nutrition*, the advantages of *breastfeeding*, hygiene and environmental sanitation and the prevention of domestic and other accidents;
- i. to ensure the meaningful participation of non-governmental organisations, local communities and the beneficiary population in the planning and management of basic service programmes for children;
- j. to support through technical and financial means, the mobilisation of local community resources in the development of primary health care for children¹⁶⁵ [emphasis added].

Moreover, the so-called “Maputo Protocol”, that is the Protocol to the 2003 African Charter on Human and Peoples’ Rights on the Rights of Women in Africa¹⁶⁶ addresses the right to food in two ways. In the first place, it states the right to nutrition for pregnant and breastfeeding women at Article 14.2, but it explicitly mentions the “Right to Food Security” in Article 15:

- 1. “States Parties shall ensure that women have the *right to nutritious and adequate food*. In this regard, they shall take appropriate measures to:
 - a. provide women with access to *clean drinking water*, sources of domestic fuel, land, and the means of *producing nutritious food*;
 - b. establish adequate systems of supply and storage to *ensure food security*”¹⁶⁷ [emphasis added].

It can be observed that these two regional organisations adopt different systems for the protection of the right to food: while the Inter-American Organization follows the same method applied by the United Nations where civil and political rights are mentioned in a different document from the one that protects the economic, social and cultural rights, the African system includes them in a unique convention. It has been argued that this difference is due to the issue of justiciability of economic, social and cultural rights,

¹⁶⁵ *Ibid.*, Art. 14.

¹⁶⁶ Convention of the Assembly of the African Union on the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, Maputo, 11 July 2003.

¹⁶⁷ *Ibid.*, Art. 15.

given that the African Charter, in contrast to the Inter-American and UN systems, recognises all its provisions as immediately realisable rights¹⁶⁸.

Acknowledging that the Inter-American and African regional frameworks mention the right to food in its multidimensional aspects, both directly or indirectly in the form of access to “adequate nutrition”, “safe and clean drinking water”, and “breastfeeding”, the European Union did not respond appropriately to the protection of such right. It is not explicitly recognised either in the Council of Europe or in the European Union: the most recent doctrine had hypothesised that in the post-war process for the elaboration of human rights protection, European member States considered that once the right to work and social security were protected, there was no reason to guarantee a right to adequate food. Indeed, no mention to the right to food is made in the fundamental European Treaties: neither in the European Social Charter, adopted in 1961 and revised in 1996 that actually represents the social constitution of the EU, extending the protection of social and economic rights to the Council of Europe members, nor in the legally-binding European Charter of Fundamental Rights or the European Convention on Human Rights. The absence to such right from the most relevant and binding documents within the EU is very surprising, especially considering the commitment of EU institutions and the Member States for the protection of human rights globally. This signals a dual attitude, whereby the EU promotes the applicability of human rights in international negotiations but demonstrates a lax stance at the domestic level with no reference in its legal frameworks to the right to food. Yet, the aim of this section is not to address the question relative to the process of recognition of the right to food within the European Union, which presents specific and particular profiles that will be accurately analysed in the second chapter of this work.

Despite having established one of the most excellent food, agriculture and international cooperation’s legislations in the world, the EU lacks an adequate constitutional interpretation of food as a fundamental human right. In fact, the EU recommended that its Member States protect consumer rights, as can be noted from the provisions on social security and social assistance established under Article 38 of the European Charter of Fundamental Rights¹⁶⁹ and the profile of food security on which the EU has adopted a copious legislation over the years and established an exclusive supervisory authority – the European Food Safety Authority (“EFSA”). It is clear that in this regulatory context-related merely to consumer rights, food is taken into consideration as a commodity and its discipline is not connected to fundamental human rights as such. Providing only strict rules for the protection against food harmful to health, the European Food Law legislation guarantees only food safety and quality, it, therefore, deviates dogmatically from the protection of the fundamental right to food. On the contrary, the universal human right to food

¹⁶⁸ GOLAY (2011: 189).

¹⁶⁹ Charter of Fundamental Rights of the European Union, Strasbourg, 26 October 2012, Art. 38.

is composed of both food safety and food security. These two aspects are strongly interconnected inasmuch food security – interpreted as ensuring essential protection from hunger through sufficient, adequate, safe food – is a precondition for food safety. In this perspective, the EU should reform its Food Law in the light of human rights principles. Likewise, the reference to consumers’ rights refers also to the European Common Agricultural Policy (PAC), which has among its objectives that of guaranteeing to the workers of the agricultural sector a fair standard of living and maintaining reasonable prices for consumers (Article 43 TFEU)¹⁷⁰. In its various institutional expressions, Europe, therefore, does not explicitly recognise a right to adequate food. Perhaps because it was considered absorbed by the guarantees provided by the European Charters, which guarantee the right to adequate working conditions and to social security: that is rights typically designed for workers, not for people as *human* rights holders. Alternatively, perhaps because EU lawmakers thought that the need to have adequate food was now satisfied. However, the return of radical poverty in Europe has brought out the groundlessness of this implication, demonstrating that the link between work and subsistence has broken. The actual growing trend of unemployment together with increasing migration flows, make the problem of the right to adequate nutrition and subsistence always less linked to workers’ rights. An awareness of the problem was demonstrated first by resolution no. 1957/2013, entitled "Food security: a permanent challenge that concerns everyone", approved by the Parliamentary Assembly of the Council of Europe, and then by resolution no. 2574/2015 endorsed by the European Parliament. Although having introduced terms such as “right to adequate food” and “food security” in the institutional vocabulary, these documents do not have a binding value for the Member States. Therefore, it becomes increasingly necessary to establish adequate provisions ensuring human dignity and equality to every European citizen. With food insecurity mounting in an economically stagnant Europe, it is crucial to take immediate action towards hunger and fill this void rendering effective the right to food with proper legislation. Food must acquire the same status as education and health in the European regional legislation, in order to deconstruct the dominant narrative labelling food as a commodity and replace it by a human rights narrative placing food squarely as a human right¹⁷¹.

1.3.3. Soft Law instruments

Despite its strong anchoring in international law, many other non-binding international instruments – *i.e.* Soft Law instruments – have supported and enshrined the content of the right to food. Not binding, but yet these documents demonstrated to be equally relevant, especially for the evolution of this right at the global scale. The first instrument fixing a reference to the

¹⁷⁰ Treaty on the Functioning of the European Union, Lisbon, 13 December 2007, Art. 48; PIZZOLATO (2015: 134-135).

¹⁷¹ VIVERO POL, SCHUFTAN (2016: 1-5).

right to food in international debates has been the Rome Declaration, which was the outcome of the World Food Summit¹⁷² (“WFS”) organised by the FAO in 1996. Gathering world leaders, activists and food producers, this international meeting demonstrated to UN human rights agencies that its member States were committed to operationalising the right to food¹⁷³. It is only since the WFS meeting that the movement supporting the embedding of this right in national and international law gained pace, thus developing stronger policy traction to fight hunger. Among its outcomes, the Summit reached a consensus on halving by 2015 the number of people suffering hunger and malnutrition in the world and also reaffirmed

“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”¹⁷⁴.

Moreover, the WFS approved the “Plan of Action for the World Food Summit” which set out quantifiable commitments and actions for world leaders to guarantee the execution of the objectives set in the Rome Declaration.

Following the World Food Summit, various documents have been published to define the normative content of the right to food as a legal concept. The crucial first document addressing precisely the Right to adequate food was General Comment No. 12¹⁷⁵ (“GC12”), drafted and adopted by the UN Committee on Economic, Social and Cultural Rights (“CESCR”) in 1999. Although not legally binding, CESCR’s general comments are drafted to provide a clarification of the rights enshrined in the ICESCR, in order to make national governments responsible and accountable for creating the conditions and realising the progressive fulfilment of the right. In this case, General Comment No. 12 interpreted Article 11 ICESCR, clarifying the normative content of the right in a more concrete way and providing greater detail on the pertinent State obligations - which will be analysed in detail in the next section. Additionally, in 2000 the UN completed this sponsoring operation focused on the right to food with the introduction of two instruments: the UN Millennium Development Goals (“MDGs”) and the creation of the office of the UN Special Rapporteur on the Right to Food. The former included a goal related to ending hunger and malnutrition¹⁷⁶, whereas the second was created by the former UN Commission on Human Rights (now the Human Rights Council) to monitor on a regular basis the implementation course of the right,

¹⁷² Declaration of the FAO World Summit of 16-18 November 2009, WSFS 2009/2, on *Food Security*.

¹⁷³ LAMBEK, CLAEYS (2016: 744).

¹⁷⁴ Report of the FAO World Food Summit of 13-17 November 1996, WFS 96/REP, *World Food Security and World Food Summit Plan of Action*.

¹⁷⁵ General Comment No. 12 of the Committee on Economic, Social and Cultural Rights of 12 May 1999, E/C.12/1999/5, *The Right to Adequate Food (Art. 11.)*.

¹⁷⁶ Resolution of the UN General Assembly of 8 September 2000, A/RES/55/2, *Millennium Declaration*.

Special Rapporteurs are generally independent experts who analyse, advise and publicly report on different issues related to human rights, including food and nutrition. The role of the Special Rapporteur on the Right to Food has been to promote the full realisation of the right, monitoring State compliance to the obligations to respect, protect and fulfil the right to food¹⁷⁷. However, the Special Rapporteur's monitoring and accountability functions will be extensively discussed in Chapter Two.

At the 2002 WFS meeting, world leaders gathered again in Rome at the FAO's headquarter to reaffirm their commitment to enforcing the right to food. In that Summit, they agreed to establish an intergovernmental working group within the FAO designed to draft a set of guidelines aimed at supporting the progressive realisation of the right. Under the purpose to give practical guidance to member States, in 2004 the Council of the FAO drafted the "Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security"¹⁷⁸. The Right to Food Voluntary Guidelines are designed to promote national-level recommendations through which States shall implement the right to food at the domestic level through amendments in legislation or policies to ensure such outcome. Following the Voluntary Guidelines on the Right to Food, the FAO has endorsed other guidelines implicitly related to this right: notably, the 2012 "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security"¹⁷⁹. Under the same context, the UN Human Rights Council has implemented the "Guiding Principles on Extreme Poverty and Human Rights", which also included an entire part dedicated to the right to food of people living in extreme poverty.

Finally, the most recent international document in support of this right is Agenda 2030 for Sustainable Development¹⁸⁰, adopted in September 2015 in New York, which replaced the UN Millenium Development Goals. Agenda 2030 is the most recent "legal-political"¹⁸¹ response to solicit world governments to take further steps to end hunger and secure world food security for all. From a total of 17 Sustainable Development Goals ("SDGs") to be achieved by 2030, it is the relevant SDG2 on "Zero Hunger" that is aimed to address the thorny question of hunger. Under Agenda 2030, the right to food has been reformulated as follows: "*End hunger, achieve food security and improved nutrition and promote sustainable agriculture*" [emphasis added]. In particular, Goal 2 is composed of the following provisions:

¹⁷⁷ BIGLINO et al. (2014: 18).

¹⁷⁸ Voluntary Guidelines of the 127th FAO Council of November 2004, *to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*.

¹⁷⁹ Voluntary Guidelines of Committee on World Food Security of 11 May 2012, CFS 2012/38/2, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*.

¹⁸⁰ Resolution of the UN General Assembly of 25 September 2015, A/RES/70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*.

¹⁸¹ HÄRTEL (2016: 18-19).

2.1 “By 2030, end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round.

2.2 By 2030, end all forms of malnutrition, including achieving, by 2025, the internationally agreed targets on stunting and wasting in children under 5 years of age, and address the nutritional needs of adolescent girls, pregnant and lactating women and older persons.

2.3 By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment.

2.4 By 2030, ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters and that progressively improve land and soil quality.

2.5 By 2020, maintain the genetic diversity of seeds, cultivated plants and farmed and domesticated animals and their related wild species, including through soundly managed and diversified seed and plant banks at the national, regional and international levels, and promote access to and fair and equitable sharing of benefits arising from the utilisation of genetic resources and associated traditional knowledge, as internationally agreed.

2.A Increase investment, including through enhanced international cooperation, in rural infrastructure, agricultural research and extension services, technology development and plant and livestock gene banks in order to enhance agricultural productive capacity in developing countries, in particular least developed countries.

2.B Correct and prevent trade restrictions and distortions in world agricultural markets, including through the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect, in accordance with the mandate of the Doha Development Round.

2.C Adopt measures to ensure the proper functioning of food commodity markets and their derivatives and facilitate timely access to market information, including on food reserves, in order to help limit extreme food price volatility¹⁸².

However, some scholars have critically asserted that Agenda 2030, contrary to the international consensus reached during the past 50 years, did not explicitly recognise food as a human right as the SDGs road map might assume that trade mechanisms will be enough to ensure nutritious and safe food for all¹⁸³.

Despite this, it is possible to conclude remarking that, over the past two decades, the right to food has been intensively defined and continuously

¹⁸² Resolution of the UN General Assembly of 25 September 2015, A/RES/70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*.

¹⁸³ VIVERO POL, SCHUFTAN (2016: 1-5).

elaborated switching “from a little-theorised right to a largely fully elaborated *human right*” with an extensive framework and corresponding State obligations and interpretations applying to several contexts¹⁸⁴. This has been possible mostly thanks to the advocacy action of several key players for increasing the visibility of this right, including NGOs, Civil Society Organisations and UN Agencies. Therefore, the next section will be concentrated on the thorough analysis of the specific content of the right to food, as provided for in General Comment No. 12 CESCR¹⁸⁵.

1.4. Defining the Right to Food

Despite all the official international documents mentioning, directly or indirectly, the right to food and contributing to its gradual evolution, it has been necessary to operationalise a precise framework for defining the right. Against this background, the international law scholar Philip Alston called for a necessary “spelling out [of] the normative implications of the right to food” being convinced that, without such articulation, “the concept of the right to food as a human right [would] continue to be abused for *rhetorical* purposes while being ignored for all *practical* purposes”¹⁸⁶ [emphasis added].

Therefore, following the 1996 World Food Summit, the UN High Commissioner for Human Rights called for a proper interpretation of the notion of the right to food, leading to a series of consultations within the UN to better theorise such a right. This brought to the issuance in 1999 of both the Updated Study on the Right to Food and the CESCR General Comment No. 12. The Updated Study favoured the development of two fundamental ideas that constituted the contemporary interpretation of the right, that is a rights-based approach to food and nutrition, and the ICESCR’s contracting Parties specific obligation to respect, protect and fulfil the human right to adequate food and nutrition. These three obligations will be the real innovative implication determined by General Comment No. 12.

As already claimed in the previous section, General Comment No. 12 is a non-legally binding document, and yet it is an inclusive part of the International Bill of Rights. Therefore, it is to the substance of GC12 that scholars have referred to for the authoritative interpretation of the right to food provided by the United Nations. According to the CESCR, the content of Article 11 ICESCR has provided the normative definition of the right to *adequate* food, that is the following:

“The right to adequate food is realised 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. 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. The

¹⁸⁴ LAMBEK, CLAEYS (2016: 744-789).

¹⁸⁵ General Comment No. 12 of the Committee on Economic, Social and Cultural Rights of 12 May 1999, E/C.12/1999/5, *The Right to Adequate Food (Art. 11.)*.

¹⁸⁶ ALSTON (1984: 173-174); BELLOWS (2017: 15).

right to adequate food will have to be realised progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of Article 11, even in times of natural or other disasters”¹⁸⁷.

The first UN Special Rapporteur – professor Jean Ziegler – has further elaborated this definition on the Right to Food who has defined this right as:

“the right to have regular, permanent and free 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*”¹⁸⁸ [emphasis added].

According to Christian Golay – an expert researcher on ESC rights – Ziegler’s definition differs from General Comment No. 12 because it has introduced the notion of *human dignity*, which is absolutely central to any consistent approach based on human rights¹⁸⁹. However, both definitions have lacked to recognise that the ultimate goal of implementing both food security and the right to food is to achieve not only a healthy, sustainable and safe lifestyle but especially to guarantee a dignified life to all individuals in the world¹⁹⁰ by the generation of well-being and the creation of decent living conditions.

It is yet important to underline that General Comment No. 12 has also involved the food security dimensions of availability, accessibility, adequacy and sustainability, which have contributed to defining the core content of the right:

- The *availability* of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;
Availability refers to the possibilities of either feeding oneself directly from productive land or other natural resources, or purchasing it from the market, presuming well-functioning distribution, processing and market systems.
- *Accessibility* encompasses both economic and physical accessibility:
 - *Economic accessibility* implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised. Economic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. Socially vulnerable

¹⁸⁷ General Comment No. 12 of the Committee on Economic, Social and Cultural Rights of 12 May 1999, E/C.12/1999/5, *The Right to Adequate Food (Art. 11.)*, para 6.

¹⁸⁸ Report by the Special Rapporteur on the Right to Food to the UN Commission on Human Rights of 7 February 2001, E/CN.4/2001/53, *on The Right to Food*, para. 14.

¹⁸⁹ GOLAY (2009: 12).

¹⁹⁰ EIDE (2005: 106).

- groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.
- *Physical accessibility* implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill. Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened.
 - The concept of *adequacy* is particularly significant in relation to the right to food since it serves to underline a number of factors which must be taken into account in determining whether particular foods or diets that are accessible can be considered the most appropriate under given circumstances for the purposes of article 11 of the Covenant. 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. The precise meaning of “adequacy” is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while “*sustainability*” incorporates the notion of long-term availability and accessibility¹⁹¹ [emphasis added].

General Comment No. 12 significance has relied also on the fact that the text further investigated the content of the right indicating: obligations and violations (para. 14-20), implementation criteria for States at the national level (para. 21-28), benchmark and framework legislation (para. 29-30), monitoring rules (para. 31), remedies and accountability (para. 32-35), international obligations for State parties (para. 36-37), States and International Organisations (para. 38-39), and finally for the United Nations and other International Organisations (para. 40-41). It has therefore defined with technical rigour to whom the right to food is addressed and which are the deriving State obligations. The ensuing part, indeed, will further analyse the content of the General Comment with concrete evidence from the text itself.

1.4.1. Whose Right to Food?

First and foremost, paragraph 5 of General Comment No. 12 provided clarifications about to whom the right to food is addressed to:

¹⁹¹ General Comment No. 12 of the Committee on Economic, Social and Cultural Rights of 12 May 1999, E/C.12/1999/5, *The Right to Adequate Food (Art. 11.)*, para. 8, 12, 13, 7.

“Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate food, *a disturbing gap still exists between the standards set in article 11 of the Covenant and the situation prevailing in many parts of the world.* More than 840 million people throughout the world, most of them in developing countries, are chronically hungry; millions of people are suffering from famine as the result of natural disasters, the increasing incidence of civil strife and wars in some regions and the use of food as a political weapon. The Committee observes that while the problems of hunger and malnutrition are often particularly acute in developing countries, *malnutrition, under-nutrition and other problems* which relate to the right to adequate food and the right to freedom from hunger *also exist in some of the most economically developed countries.* Fundamentally, *the roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food,* inter alia because of poverty, by large segments of the world’s population”¹⁹² [emphasis added].

As noted in the text, indeed, not only people living in developing countries have been subjected (and still are) to hunger and malnutrition, but also large parts of the developed population has now begun to experience daily forms of under-nutrition as a consequence of poverty and limited access to adequate food. In this regard, States are designed as the leading actors of this crusade, for which they carry out an ultimate responsibility that is indeed crucial to comply with the provisions articulated in the Covenant. Yet, according to GC12,

“[...] *all members of society* - individuals, families, local communities, non-governmental organisations, civil society organisations, as well as the private business sector - have responsibilities in the realisation of the right to adequate food. The State should provide an environment that facilitates implementation of these responsibilities. The private business sector - national and transnational - should pursue its activities within the framework of a *code of conduct conducive to respect of the right to adequate food,* agreed upon jointly with the Government and civil society”¹⁹³ [emphasis added].

Under this clarification, GC12 has made a step forward as it has expanded the rights holder’s participation, also seeking to introduce and regulate corporate activity and civil society participation for the implementation of the right. Because of their different status and power, however, these two actors have been treated disjointly: CSOs are made by people who hold human rights, while corporations are not. Moreover, the General Comment has institutionalised the involvement of the civil society in the primary purpose and implementation of the human right to food. Indeed, the document has underlined the full compliance of national strategies with the principles of accountability, transparency, people’s participation, decentralisation, legislative capacity and the independence of the judiciary¹⁹⁴. The role of the civil society has been strengthened to uphold the enforcement of the right to food accountable, through mechanisms that hold all the competent authorities

¹⁹² *Ibid.*, para. 5.

¹⁹³ *Ibid.*, para. 20.

¹⁹⁴ *Ibid.*, para. 23.

accountable. And yet, every member of the society – from single individuals to families or local communities, as well as NGOs or private actors – have responsibilities for the implementation of this right. According to Eide, this broad-based responsibility *vis-à-vis* nowadays society has relevant consequences as for the interpretation, realisation, and monitoring of the right to food¹⁹⁵. Apart from a question of ethics, who is responsible for the infringement of the right must be acknowledged. As the perpetuation of hunger automatically hinders the possibility to achieve a zero-hunger world, the relative roles, obligations and the capacity of stakeholders to accomplish their duties must be measured, and their performance tracked and appraised¹⁹⁶.

1.4.2. Deriving State obligations

The obligations resulting from right to food's contextualisation might be subdivided into two broad types: general legal obligations and specific legal obligations.

On the one hand, *general obligations* to realise the right to food derive from Article 2.1. of the ICESCR, and can be divided into three sub-obligations:

- The *obligation to take all appropriate steps*, that must be “deliberate, concrete and targeted”¹⁹⁷, according to CESCR's General Comment No. 3 on the nature of State party obligations within ICESCR. This should imply that every signatory State could decide which are the most appropriate measures to enforce the right to food. In this regard, the FAO has claimed that these should include implementing proper laws or policy measures;
- The *obligation to take steps with a view to progressively achieving the full realisation of the right to food*: this obligation refers to the fact that State parties have a duty to take adequate and effective measures for the implementation of the right without delay. The progressive realisation also includes the principle of non-retrogression, that is not to weaken the degree of protection of a right that has already been achieved;
- The *obligation to take steps through the efforts of States themselves and international assistance, to the maximum use of their available resources*: this obligation should imply that States must use all their maximum available resources and those of the international community to realise the right to food. If a State is not able to meet such requirements, it must demonstrate that it at least sought to deploy all the resources at its disposal to meet a minimum core obligation, recurring also to international cooperation if required – as emphasised in GC12. In the case of the right to food, the minimum core obligation is ensuring “food which is

¹⁹⁵ EIDE (2005: 106-108).

¹⁹⁶ *Ibid.*

¹⁹⁷ General Comment No. 12 of the 20th Session of the Committee on Economic, Social and Cultural Rights of 12 May 1999, E/C.12/1999/5, *The Right to Adequate Food (Art. 11.)*, para. 9.

sufficient, nutritionally adequate and safe, to ensure [people's] freedom from hunger"¹⁹⁸.

Moreover, not only State parties have to *fulfil the right progressively*, but they also must respect such a minimum core obligation to guarantee the most basic level of the right to food. Ensuring freedom from hunger compels member States to

“to provide minimum basic resources to enable individuals to be free from threats to their survival, not to deny access to food and to make sure people do not starve at the very least and to provide food for those who are in danger of starving”¹⁹⁹.

If a State is not able to this minimum level of fulfilment of the right, it is committing a *prima facie* violation of its obligations as stated in ICESCR²⁰⁰.

On the other hand, *specific legal obligations* for State parties are enshrined in General Comment No. 12. Like any other human right, these obligations include three types of obligations: the obligations to *respect*, to *protect* and to *fulfil*. Paragraph 15 of the General Comment No. 12 thus reads:

“[...] The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.

The obligation to *fulfil (facilitate)* means the State must proactively engage in activities intended to strengthen people's access to and utilisation of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly. This obligation also applies for persons who are victims of natural or other disasters”²⁰¹ [emphasis added].

In other words, the first level obligation – *to respect the right to food* – demands State parties not to interfere, both within and beyond their territories, with access to food or to resources of local populations in a way that might prevent them from maintaining their traditions and self-determination. Under this *negative* obligation, States are prevented from threatening the right to food suspending laws or internal policies that ensure people access to food. According to the Hilal Elver – the actual UN Special Rapporteur on the Right to Food – infraction of such obligation might occur if, for instance, a government deliberately decided to evict people from their land, especially if

¹⁹⁸ *Ibid.*, para. 14.

¹⁹⁹ Declaration of the FAO World Summit of 16-18 November 2009, WSFS 2009/2, *on Food Security*.

²⁰⁰ BIGLINO et al. (2014: 20-21).

²⁰¹ General Comment No. 12 of the 20th Session of the Committee on Economic, Social and Cultural Rights of 12 May 1999, E/C.12/1999/5, *The Right to Adequate Food (Art. 11.)*, para. 15.

that land is their only subsistence source, or even if it introduced consciously dangerous ingredients into the food chain²⁰².

Under the second level obligation – *to protect the right to food* – States have a specific *positive* obligation to protect people’s fulfilment of the right to food against third parties infringements, thus regulating the behaviour of non-governmental actors (such as private companies or individuals). In this case, the Special Rapporteur has advanced as an applicable example that the duty to protect might be breached through land eviction or public water contamination. This duty shapes the State not as a provider, but as a protector, which has to intervene when human rights abuses are committed by the corporate private sector, establishing food safety rules and consumer protection measures in order to guarantee that food resources are safe and, indeed, protected²⁰³.

The third level obligation – *to fulfil the right to food* – is further composed of two obligations: to fulfil/*facilitate* and to fulfil/*provide*. The duty to facilitate implies that State parties should take action to enhance people’s autonomous capacity to produce, access and use food and nutrition resources. This might be implemented, for instance, through agrarian reform policies or introducing minimum income measures. Under the duty to provide, instead, States are required to identify food insecure people whose possibility to access food resources is limited due to reasons beyond their control, such as emergencies or natural disasters, and provide them with the resources they need to fulfil the right (*e.g.* through food donations and cash transfers)²⁰⁴.

²⁰² BIGLINO et al. (2014: 21).

²⁰³ BELLOWS (2017: 21).

²⁰⁴ *Ibid.*

Table 3 - The three types of State obligations originating from General Comment No. 12²⁰⁵

LEVEL OF OBLIGATION	EXPLANATION
To respect	Requires States to <i>refrain from interfering</i> directly or indirectly with the enjoyment of rights;
To protect	Requires States to take measures that <i>prevent third parties from interfering</i> with the enjoyment of rights;
To fulfil - <i>To facilitate</i>	Requires States to <i>adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures</i> towards the full realisation of rights;
- <i>To provide</i>	Requires States to <i>provide assistance or services for the realisation of rights directly</i> .

The three levels of State obligations have been incorporated into the “Right to Food Matrix” (see Table 3), a framework developed in 1999 by Eide to identify, classify and analyse the progressive realisation of the right. This matrix sought to provide an analytical framework to summarise the human rights dimension of the right to food, examining whether and how a State fulfils its obligations to respect, protect and fulfil household food security. However, according to Bellows, although revolutionary, the matrix only reflects the perspective of States, omitting that of rights holders/claimants²⁰⁶. Therefore, in her work of 2016, Bellows reformulated the matrix taking into account States parties’ obligations as duty bearers combined with the democratic food sovereignty of right holders (see Table 4)²⁰⁷.

²⁰⁵ *Ibid.*

²⁰⁶ BELLOWS (2017: 23).

²⁰⁷ BELLOWS (2017: 369-383).

Table 4: The “Right to Food Matrix” by W.B. Eide²⁰⁸

<i>Normative principles</i>	Household Food Security				
	<i>Adequate Food</i>			Sustainable <i>supply</i> of adequate food	Stable <i>access</i> to adequate food
	Dietary adequate (quantity, nutritional quality)	Safe for human beings to eat	Culturally acceptable	Environmentally and economically sustainable food systems	Physical and economical access to food within the household’s livelihood
<i>Level of state obligations</i>					
Respect					
Protect					
Fulfil					
Facilitate					
Provide					

Nevertheless, despite General Comment No. 12 has provided an accurate clarification of the exact content of the right, it should be reiterated that the document has no legally binding nature. As a consequence, a recent FAO research showed that only a few countries have taken adequate legislative measures concerning the enforcement of the right to food²⁰⁹. Therefore, not only States should urgently implement constitutional provisions but especially proclaim specific norms. This involves enacting *framework laws* which are the most effective instrument for ensuring the progressive realisation of the right in all its concrete legal implications for States, regional, and international actors. Right to food advocates have recently intensified their action thanks to their alliance with the food sovereignty movement and the closer ties being established with the nutritional constituency, just as much as challenging the rising ‘corporatisation’ of food systems and food value chains. These alliances have proved that a greater understanding of the relevance of adopting an all-encompassing approach to food insecurity has developed.

Finally, particularly relevant is reiterating that proving the evidence of a strong and concrete legal basis for the right to food is aimed mainly at underlining that such a legal basis constitutes the core strength of this right. This judicial excursus, indeed, was designed to demonstrate that it is upon this legal foundation that law- and policymakers should rely on in order to enforce the right. Being one of the most fundamental human rights recognised in numerous international treaties, the State and the international community

²⁰⁸ EIDE (2005: 93).

²⁰⁹ FAO (2019: 10); RAPONI (2017: 109).

should be obliged to enforce the right to food through direct policies and measures determining the proper conditions for ensuring food security. Globally recognised as a human right with a strong legal basis and deriving specific duties, the right to food is a more enforceable concept that national governments can better prosecute and implement by judicial means. This has constituted from the outset the main difference with the notion of food security.

1.5. Food security and Food safety: a preliminary distinction

It is worth concluding the first chapter of this work by outlining the distinction between two intrinsic aspects concerning the protective content of the right to food: food *security* and food *safety*, that is the demand for both quantitative (security) and qualitative (safety) food. To thoroughly investigate the right to food, it is valuable examining these two specific features and to adequately differentiate them.

As mentioned previously, food security regards the quantitative side of food questions. According to the definition provided in 1996 during the World Food Summit, food security has been interpreted initially as *availability* of food; only afterwards has this definition been expanded as *physical* and *economic* access to food that should be guaranteed to all human beings as a necessary but not yet sufficient living condition. By contrast, food safety applies to the quality of produced foods, that is protecting foodstuffs from hygienic-sanitary risks to guarantee an average level of food quality and safety. Having been treated distinctly for a long time, the relative features of food security and food safety have been generally referred to as two different matters, each one unequally developed and extensively separated from the other. In fact, this has privileged the comprehensive development of all historical-legal aspects related to food safety. Despite security issues in general should precede safety concerns, in this case, food safety considerations have been prioritised and valued at all governmental levels with the arrangement of sharp legal instruments.

The prevalence of food quality over availability has favoured the full “juridicalisation” of food safety concerns into a comprehensive law system in continuous and rapid evolution, especially within the European legal framework (*i.e.* EFSA²¹⁰). Indeed, the authentic aim of food safety is to implement a sophisticated ensemble of legal and scientific requirements designed to protect people from hygienic-sanitary emerging risks related to the food chain. As of today, this juridical model has expanded itself significantly, enlarging its field of action from the State level to regional, intra- and supra-national level of intervention under the well-known name of “Food Law”. Therefore, to the present day it has involved aspects of

²¹⁰ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002, 2002/178, *laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety*.

administrative prevention, which have been realised through sanitary bans and strict control measures, but also through the development of a sense of responsibility to be transmitted to producers, certifiers, distributors and consumers, favouring the provisioning of suitable mechanisms for monitoring and controlling the good quality of food²¹¹. There are three principles regulating questions relative to the safety and quality of foods: banning the commercialisation of unsafe foodstuffs, distinguishing between risk management, risk evaluation and products traceability, regulating the responsibility of both distributors and producers²¹², and developing an extensive regulation on food labelling²¹³. To date, this discipline has dedicated a high degree of attention also to protecting consumers from particular categories of food products, meaning the so-called “novel foods” or the GMOs. Because of their specific composition, these products require further controls and information in order to inform consumers correctly about their nutritional safety²¹⁴. As it can be noted, the actual arrangement of food safety validates the increasing inclination to involve consumers directly, to make them responsible and conscious about what they eat and drink. Installing a virtuous nutritional behaviour on consumers’ habits also aims at making them aware of the consequences of their incorrect practices about purchasing and consuming food²¹⁵: not only because of health implications, but especially for the ethical impact of such behaviours on people not having proper access to safe, sustainable and nutritious food.

The complex framework of food safety has thus been qualified as a “real sectional legal system”²¹⁶ with its relative entry-points, namely subjects, organisations, sources, principles and legal situations²¹⁷. Moreover, it is quite significant to remark that food safety law has featured a particularly innovative and open model that favoured its extensive enlargement, stretching from the Nation-State to public and regional organisations, such as the World Trade Organization or the independent European Food Safety Authority, and mixed fora like the FAO Codex Alimentarius Commission²¹⁸. Of utmost importance is involving the consumers as they are the foremost players of such responsibility circuit, which is known to the public under the increasingly widespread expression “from field to fork”. The primary outcome of this open arrangement is the co-existence of numerous sources of law, meaning “international, transnational and national of every kind, of law in book and law in action, of hard law and soft law, of civil law and common law, of public and private law”²¹⁹. Nevertheless, this has also implied that distinct kinds of food safety models have been practised. Just to mention two examples: the

²¹¹ TUCCARI (2018: 229-241); ISONI, TROISI, PIERRI (2018).

²¹² PISANELLO (2008); CANFORA (2009); RUSSO (2014).

²¹³ TUCCARI (2018: 232-233).

²¹⁴ *Ibid.*; COSTATO, RIZZIOLI (2010).

²¹⁵ BELLIGGIANO (2009); BIGLIA, GABBAI (2014).

²¹⁶ BEVILACQUA (2012).

²¹⁷ TUCCARI (2018: 235).

²¹⁸ VITI (2009).

²¹⁹ TUCCARI (2018: 236).

WTO circuit is characterised by the *principle of prevention*, based on the certainty or probability to foresee risks, whereas the European model is based on the *principle of precaution*, in which even the possibility of abstract risk is evaluated, thus entailing even more enforcing rules of protective intervention²²⁰.

However, these implications contributed to demonstrate that food safety law might be a significant instrument for institutional changeover, as well as an additional tool that might be used to tackle food insecurity and structural hunger. From a fundamental perspective, in facts, the human right to food includes *per sé* both the notion of food security – intended as one underlying fundamental condition for human existence – as well as that of food safety – that is, guaranteeing adequate protection from food harmful to health²²¹. The relevance of both food safety and security is due not only to the growing middle classes’ desire to consume high-quality food, but also from the fact that it is only ensuring sufficient, adequate, safe, sustainable and healthy diets that can people be appropriately protected from hunger and malnutrition. Indeed, the case of a diet based merely on flour, or on an excessive consumption of sugary products or high quantities of meat – even of good and controlled quality – highlights that food quality is not enough for respecting an adequate nor nutrient diet. This has demonstrated so far that food security and food safety are strongly intertwined, whereby the first applies to the second and vice versa. It is a fact that food quality questions are more typical of affluent societies, whereas food shortages most often regard the developing countries. Nonetheless, food safety and security are so interconnected and reciprocal that they might create a unique holistic and integrated notion of “food security/safety”²²². It is for this reason that the FAO and the CFS are currently endorsing the “Voluntary Guidelines on Food Systems and Nutrition”²²³. Expected to be published in 2020, these guidelines are aimed at countering the actual political fragmentation between the food, agriculture and health sectors, and to promote responsible and sustainable nutritional behaviours addressing every actor involved in the food industry, including producers, consumers and retailers.

In this regard, a “food security/safety” holistic approach might significantly contribute to reducing hunger and malnutrition through the well-known formula of the “right to *adequate* food/diet”, given that the dimensions of security and safety can be examined under more fluids terms²²⁴ depending on the meaning attributed to the adjective “adequate”²²⁵. Under the literal meaning, an adequate nutrition is based on eating the appropriate quantity of

²²⁰ *Ibid.*

²²¹ HÄRTEL (2018: 59).

²²² TUCCARI (2018: 232-233).

²²³ Voluntary Guidelines of Committee on World Food Security of 14-18 October 2019, CFS 2019/46/2, *Zero Draft of the Voluntary Guidelines on Food Systems and Nutrition*.

²²⁴ RICCI (2012).

²²⁵ BOTTIGLIERI (2014).

good quality food, in view also of respecting the individual's dignity²²⁶, culture, religion, sex and work without discriminations. Under the interpretation of "available", a diet is said to be adequate when permitting more convenient access to food both in economic terms and through an effective distribution process. Finally, adequate might also be interpreted as "accessible", that is a type of diet capable of ensuring enough food for all – especially for the weakest and most unprotected people – whose cost should be stable and should also consider other fundamental values such as health, education and housing.

However, although being complementary, food security and food safety are not to be confused as undifferentiated entities for two reasons. On the one hand, because the two notions rely on two ontologically different assumptions, whereby food security is the object of a "public good", whereas food safety of a "merit good"²²⁷. On the other hand, applying to a precise technical subject – that of outside risks prevention or elimination and compensating any eventual consequential damage – food safety has resulted as a macro-concept that needs to be declined according to the specific issue and context²²⁸.

Nonetheless, the presence of an extensive normative system on food safety is worthless if people are not guaranteed proper and easy access to food. These regulations might contribute significantly to food security, only taking into account the right to food as well as the need for all people in the world to have access to it. Therefore, food safety alone is not able to provide a stable solution to the more general food problem (*i.e.* hunger and malnutrition). On the contrary, it could concretely contribute to tackling food insecurity from a broader perspective if coupled with other specific measures. As long as the joint concept of "food security/safety" will not be formulated concretely with the two disciplines being developed in a complementary way, food safety will merely remain a complex set of technical regulations applicable only to the food value chain of affluent societies. Until that moment, structural hunger will persist, considering that it stems not from quantitative or qualitative unavailability of food, but rather from barriers to gaining access to it for everyone. These obstacles, however, must be removed only through targeted interventions on food policies, but also with the constitutionalisation of the right to food. Implementing these interventions on the governmental level would create the correct balance between the smaller and smaller incomes of producers and the bigger and bigger purchase costs of food products²²⁹, thus finally preventing imbalances in distributing food and ensuring a fair allocation of food in the world.

Therefore, after having sorted out the legal premises of the right to food, this investigation will proceed by analysing the growing and concrete legal evidence about how States practically enacted this right into their judicial systems, which will be analysed in Chapter Two.

²²⁶ ZIEGLER, GOLAY, WAY (2003).

²²⁷ JANNARELLI (2009); AMOROSINO (2010).

²²⁸ RUSSO (2010).

²²⁹ COSTATO (2011).

Chapter Two

How to implement the Right to Food

2.1. *Connecting the Right to Food to Human Rights: a general overview*

Through the previous chapter, this dissertation has covered all the major landmarks that led to a structured codification of the right to food taking into account the international, regional, and domestic level of legal protection of this right. These major steps might be summarised as follows:

- from a generic fight against world hunger to a specific right of access to food;
- from a paternalistic approach to imposing a direct responsibility on governmental institutions;
- from placing the RTF merely within the framework of principles to a concrete recognition based on punctual judicial provisions;
- from a right built around the most disadvantaged peoples, to a right that has been acknowledged to invest humanity as a whole, that is also linked to individual and collective self-determination, thus becoming a fundamental social and human right²³⁰.

This has validated the fact that the strategy for recognising this right has progressively expanded so far. As proved in the international covenants examined beforehand, right to food's beneficiaries are mainly the individuals, meaning both the people in general, and the most vulnerable people (*i.e.* children, people being discriminated because of sex, race, personal or social condition), applying both to the single and to social groups. Being a collective and individual right addressing and encompassing the individual as a whole, international charters should recognise a right of the hungry people *tout court*. However, to achieve such a demanding objective, it is not possible to rely solely on the legal mechanisms strictly linked to the fight against hunger as such.

The methods of accessing food are particularly important in determining the content and the scope of protecting this right, both as regards the powers directly attributed to the individual, and as regards the forms through which public institutions develop the adequate tools to protect it. Regarding its regulatory content, this right must be *available* and *accessible*, as described by many commentators, *in primis* by the RTF Special Rapporteur, professor Ziegler. Adequacy means going beyond the minimalist – although essential – approach of simple *freedom from hunger*. Through safe and adequate food, not only is the body nourished, but especially the *dignity of the person*. Adequacy, therefore, cannot be considered only a quantitative, but qualitative parameter. As noted in the first chapter, in his first address on the right to food to the UN Commission on Human Rights, Ziegler has framed this right as the right of people to have “regular, permanent and unrestricted” access to food

²³⁰ RODOTÀ (2014).

in ways that respect the “cultural traditions” of the people²³¹. Ziegler’s definition has accentuated the dimensions of diversity and dignity, which are essential in order to build a world respectful of multiculturalism. Through this definition, he has validated that the right to food is connected to the dignity and integrity of the person, the respect for cultural diversity, the principle of non-discrimination, the right to free development of the personality, as well as to the right to health – the latter as developed by the WHO, meaning a “state of complete physical, mental and social well-being, and not only as the absence of illness or infirmity”²³². Thus, this right has confirmed its aptitude for being the inescapable point of convergence of multiple legal principles, giving them strong concreteness and thus contributing to the foundation of a new political-institutional environment based on the respect of human rights. The right to food constitutes, indeed, the precondition for the enjoyment of other rights whose fundamentality is inherent in its intrinsic connection with existence, that is the right to life, and with the the value of human dignity, a precondition for guaranteeing freedom, equality, and even the same democratic principles²³³.

The essential inherence of this right to the human dignity is confirmed by its *non-derogability*, being classified among the category of “intangible rights”²³⁴. Unlike other rights which might be suspended or limited under particular conditions, the derogability of all the provisions guaranteeing the right to food should be avoided or, at most, be subjected to extremely rigid conditions²³⁵. Such is the case, for instance, of the limits imposed by the Geneva Convention²³⁶ or the Pact of San José²³⁷.

It should be reminded, in fact, that that all human rights are strongly interconnected. The Declaration of Vienna thus reads²³⁸:

“5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

²³¹ Report by the Special Rapporteur on the Right to Food to the UN Commission on Human Rights of 7 February 2001, E/CN.4/2001/53, *on the Right to Food*, para 14.

²³² Constitution of the World Health Organization, New York, 7 April 1948; Resolution of the UN General Assembly of 17 November 1927, A/RES/131, *Entry into force of the Constitution of the World Health Organization*.

²³³ DRIGO (2016: 119-120).

²³⁴ BOTTIGLIERI (2014); RODOTÀ (2014).

²³⁵ BOTTIGLIERI (2014).

²³⁶ Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949.

²³⁷ Convention of the Organization of American States on the America Convention on Human Rights, San José, 22 November 1969, Art. 27.

²³⁸ Resolution of the UN General Assembly of 12 July 1993, A/CONF.157/23, *Vienna Declaration and Programme of Action*.

6. The efforts of the United Nations system towards the universal respect for, and observance of, human rights and fundamental freedoms for all, contribute to the stability and well-being necessary for peaceful and friendly relations among nations, and to improved conditions for peace and security as well as social and economic development, in conformity with the Charter of the United Nations²³⁹.

Therefore, bearing in mind the principle of universality, indivisibility, and interrelatedness of all human rights²⁴⁰, the right to food has proved to be a perfect exemplification thereof, since it cannot be achieved in isolation, nor can other human rights be enjoyed when violations of the right to food persist. As a consequence of this reasoning, this right is directly connected to: *civil rights* (e.g. the right to life or the right to not be subjected to torture or cruel, inhuman and degrading treatment, or the right to freedom of thought, conscience and religion); but even *social rights* (e.g. right to work and social protection, right to health). But especially, the content of the right to food recalls the so-called *basic rights*, also known as *essential human rights*, that is those rights corresponding to the “essential needs of human beings related to their own biological existence”²⁴¹, whose fulfilment permits the enjoyment of all others rights: therefore, as a set of preconditions for the exercise of every fundamental right, a synthetic formula for identifying the *moral minimum* that should guide the action of individuals, States and companies²⁴².

Thus, it is acknowledged that the promotion and protection of the following set of human rights is particularly relevant to the realisation of the right to food. Within the right to health, as it has been articulated with the *food security/safety* notion, nutrition is an essential component of both the right to food and to health. This can occur, for instance, in the case of pregnant or breastfeeding women who, although receiving pre- and post-natal care, do not have access to nutritious food. The right to life, which is obviously at risk when people suffer starvation, malnutrition, or any illness resulting from scarce access to food. The right to water and to land that – as will be demonstrated later in this section – reciprocally contribute to the realisation of the right to food, ensuring people’s access to land and agricultural production, as well as safe water for both personal and household use. The right to adequate housing, given that one’s basic nutrition is undermined in case of lack of resources for possessing a house. The right to education and to information is directly at stake, affecting in particular the kids and the least alphabetised, considering that lack of food implies the impairment of their learning capacities which may lead them to leave school for working or ignore all relevant news related to food and nutrition. Moreover, this right is relevant as it allows people to comprehend how to respect a safe, sustainable, and nutritious diet. The right to work and to social security enables people to

²³⁹ *Ibid.*, para. 5-6.

²⁴⁰ Declaration of the UN General Assembly of 12 July 1993, A/CONF.157/23, *Vienna Declaration and Programme of Action*.

²⁴¹ FOCARELLI (2012: 463-464).

²⁴² SWAMINATHAN (2013); SHUE (1980: 18-20).

manage a sufficient level of economic independency allowing them not only to have access to sufficient but also adequate and nutritious food. Freedom of association and the right to take part in public affairs is crucial because it permits that everyone's voices and opinions are heard, as well as the respect and protection of both their culture and nutritional habits. Freedom from child labour and the freedom from torture, cruel, inhuman, or degrading treatment, whose fulfilment is utterly necessary for all people, especially the most vulnerable ones (*i.e.* children, women, indigenous peoples, people with disabilities, *etc.*), to realise their right to food. Another crucial question that needs to be addressed is the deprivation or lack of access to adequate food (in prison) of detained people, which is an interesting argument that has been thoroughly examined by several instances, especially the international, regional and national courts. As a consequence of human rights' interrelatedness, the infringement of one of these rights might cause the impairment of the right to food as well. This characteristic has the twofold aim to create additional entry points for fulfilling human rights through several legal mechanisms. Using different mechanisms for protecting this right is not merely a procedural necessity, but it is aimed at widening or restricting the protection of the claim. Therefore, the right to food presents itself as a multi-sectoral and multifaceted right, not endowed with a univocal juridical status, to the extent that to the interpreter it has appeared as a right with "variable geometries"²⁴³.

This is adequately demonstrated, for instance, comparing the CDESCR and the Rome Statute of the International Criminal Court ("ICC"). If the former has addressed the right to food merely in its economic and social components, the second has defined as a "war crime" the act of letting civilians starve²⁴⁴, leading the right to food to be classified among people's most inviolable freedom. In fact, belonging to the individual as a whole, food is certainly a primary civil right of prisoners too.

The right to food thus appears as an inescapable component of the *dignity of the person*, which Article 1 of the Charter of Fundamental Rights of the European Union declares "inviolable"²⁴⁵. In reality, a double characterisation of the right to food might be acknowledged within Article 11 ICESCR itself, inasmuch it requires that States must respect the "fundamental right of every individual to the freedom from hunger", consequently requiring that States assume a positive obligation towards their own citizens, to "[...] adopt [...] all the measures, and among these also concrete programs, that will be necessary" to protect and ensure the right to food²⁴⁶. Yet, although it is the ICESCR to be specifically entitled to protect the right to food in a direct and explicit way,

²⁴³ BOTTIGLIERI (2014: 156).

²⁴⁴ BOTTIGLIERI (2014: 484).

²⁴⁵ Charter of Fundamental Rights of the European Union, Strasbourg, 26 October 2012, Art. 1.

²⁴⁶ Resolution of the UN General Assembly of 16 December 1966, A/RES/2200(XXI)A, *on the International Covenant on Economic, Social and Cultural Rights*, Art. 11.

this does not imply that this right cannot also be protected by the ICCPR²⁴⁷. The Commission on Civil and Political Rights itself pointed out that the right to adequate food might be comprehended within its sphere of protection to be indirectly protected through: the right to life (Art. 6)²⁴⁸; protection against torture or degrading human treatment (Art. 7)²⁴⁹; the right to non-discrimination (Art. 26)²⁵⁰; the right of prisoners to be treated with humanity and dignity (Article 10 para. 1)^{251 252}; the right of minorities to their own culture (Art. 27)^{253 254}. The Covenant has long envisaged both a monitoring and controlling mechanism²⁵⁵, whose existence has indeed allowed a preliminary casuistry on the right to food in the indicated field, in particular with respect to the right to food of prisoners and minorities²⁵⁶.

²⁴⁷ Resolution of the UN General Assembly of 16 December 1966, A/RES/2200(XXI)A-C, *on the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights*.

²⁴⁸ *Ibid.*, Art. 6; General Comment No. 36 of the Human Rights Committee of 30 October 2018, CCPR/C/GC/36, *on article 6 of the International Covenant on Civil and Political Rights, on the right to life*.

²⁴⁹ *Ibid.*, Art. 7; General Comment No. 20 of the Human Rights Committee of 10 March 1992, A/44/40, *on the Prohibition of torture or other cruel, inhuman or degrading treatment or punishment (Article 7)*.

²⁵⁰ Resolution of the UN General Assembly of 16 December 1966, A/RES/2200(XXI)A-C, *on the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights*, Art. 26.

²⁵¹ *Ibid.*, Art. 10.1.

²⁵² This rule has also been extensively interpreted by the Human Rights Committee, in the sense of requiring States to ensure that prisoners, with respect for their dignity, have access to a sufficient level of food, as well as the right to live in healthy places; cfr. GOLAY (2011: 154-155).

²⁵³ Resolution of the UN General Assembly of 16 December 1966, A/RES/2200(XXI)A-C, *on the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights*, Art. 27.

²⁵⁴ This norm has also received a broad interpretation, including also the protection of their traditional activities, such as hunting or fishing or the right to maintain their ways of life and their traditional economic activities, into the rights of minorities and indigenous groups as a whole; cfr. General Comment No. 23 of the Human Rights Committee of 8 April 1994, CCPR/C/21/Rev.1/Add.5, *on the Rights of Minorities (Art. 27)*.

²⁵⁵ The *monitoring* mechanism is executed by examining the periodic reports that States party draft upon the way in which civil and political rights are guaranteed at the national level. The Committee examines each report and directs its recommendations to the State party in the form of “concluding remarks”. The *control* mechanism is implemented, instead, in the manner provided by the Optional Protocol to the International Covenant on Civil and Political Rights which authorises the Committee to receive and consider individual communications.

Cfr. Resolution of the UN General Assembly of 16 December 1966, A/RES/2200(XXI)A-C, *on the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights*.

²⁵⁶ GOLAY (2011: 174-178).

However, despite classifying the right to food into specific categories might be limiting, it is not possible to rely solely on the legal mechanisms strictly linked to the fight against hunger to achieve the demanding objectives posited by this right, primarily because of its limited constitutionalisation. That is why it is necessary to rediscover among the sections of the UDHR and all relevant binding documents the numerous dimensions of the right to food that are otherwise protected. Taking into account the possible classifications of this right is useful especially for its practical reflexes in terms of justiciability and enforceability. Therefore, this confirms and reinforces the need for a broader perspective to efficiently ensure the right to food. In fact, in terms of constitutional justice, qualifying the RTF within broader judicial categories permitted to realise a stronger judicial system for its enforceability.

To this end, the ensuing paragraph will propose a concise rereading of the present right in light of two particular human rights closely linked to it, that is the right to water and the right to land.

2.1.1. An emphasis on Land Rights and the Right to Water

The integral implementation of the right to food, following the way in which it has gradually been structured, is necessary to effectively defend the integrity and autonomy of each person. Only by respecting each person's dignity and diversity is it possible to transfer into the right to food the attitude to make effective an equality that cannot be separated from the materiality of people's lives, which moves precisely from the full recognition of the most essential life needs, together with water. Through the relevance attributed to the relationship between fundamental rights and necessary goods for their satisfaction, the whole person is "constitutionalised", in the sense that its fullness of life is recognised as a real "constitutional value objective"²⁵⁷. Projected in this dimension, food cannot fail to be analysed in its close complementarity with water.

As highlighted beforehand, the human right to food is guaranteed by Article 11 of the ICESCR as part of the right to an adequate standard of living, whereby preventing starvation and guaranteeing access to basic food in a safe, appropriate and adequate quantity and quality are necessary to guarantee freedom from hunger²⁵⁸ and to accomplish the minimum realisation of the right. Related to the rights that permit the fulfilment of an adequate standard of living is, obviously, the *right to water*.

As a matter of facts, water is absolutely indispensable in order to produce food and thus realise the right to food, especially considering that agricultural production is basically based on water. According to world averages, indeed, nearly 70% of overall use of water is used for agriculture, whereas approximately 20% is for industrial use and less than 10% is for domestic

²⁵⁷ RODOTÀ (2014).

²⁵⁸ General Comment No. 12 of the Committee on Economic, Social and Cultural Rights of 12 May 1999, E/C.12/1999/5, *The Right to Adequate Food (Art. 11.)*, para. 14; NARULA (2006).

use²⁵⁹. Yet, in 2017 the number of people lacking access to safe drinking water has diminished, reaching the 29%, whereas the gap for sanitary use of water has reached the significant amount of 55%²⁶⁰. Climate change, population increase, urbanisation, industrial advancement and changing diets have all contributed to creating a growing need for water along the last few decades, consequently making resources' allocation more difficult in terms of distribution and availability. At the same time, water availability has proved not being the primary cause of not having access to water. Evidence demonstrated how this issue pertains more to inefficient and politicised allocation, distribution, and prioritisation, just as much as the phenomenon of lacking access to food. In this regard, the 2006 Human Development Report has argued that water scarcity is not related to physical supply of resources, but rather to poverty and inequality and unequal power relationships, as well as defective water management policies that further impair scarcity²⁶¹. For this reason, it is of timely relevance finding the best practices to ensure a better allocation of water for food distribution for full protection and realisation of every individual's human rights. In this respect, linking together all the connected human rights can be an effective mechanism for achieving an equitable prioritisation of human needs and rights, including food access and distribution, in a way useful for satisfying the most fundamental human necessities of all people²⁶².

The right to water properly said has received substantial political attention from its formal recognition in 2010²⁶³. In that year, the UN General Assembly²⁶⁴ and the UN Human Rights Council²⁶⁵ endorsed formally the existence of a right to water as part of international law. In particular, the resolution of the Human Rights Council provided a solid legal basis for the right to water acknowledging it as an essential part of the right to an adequate standard of living, according to Article 11.1 of the ICESCR²⁶⁶. Despite worldwide consensus evolved about the existence of an international human right to water, debates arose regarding the definition of its exact content. From the one hand, the right might be interpreted under the most limited approach, that is water for survival needs (*i.e.* water for drinking and basic health)²⁶⁷. On the other, a slightly broader approach might be adopted, covering also

²⁵⁹ FAO (2016).

²⁶⁰ UNICEF, WHO (2019).

²⁶¹ UNDP (2006).

²⁶² WINKLER (2017: 123-124).

²⁶³ WINKLER (2017: 127).

²⁶⁴ General Comment No. 15 of the UN Committee on Economic, Social and Cultural Rights (CESCR) of 20 January 2003, E/C.12/2002/11, *The Right to Water (Arts. 11 and 12 of the Covenant)*, para. 3; RIEDEL, ROTHEN (2006: 585-606); GLEICK (1998).

²⁶⁵ Resolution of the UN General Assembly of 28 July 2010, A/RES/64/ 292, *The Human Right to Water and Sanitation*.

²⁶⁶ Resolution of the UN General Assembly of 16 December 1966, A/RES/2200(XXI)A, *on the International Covenant on Economic, Social and Cultural Rights*, Art. 11.

²⁶⁷ WINKLER (2017: 125).

personal and domestic uses of water (*i.e.* personal hygiene and cleaning)²⁶⁸. Yet, General Comment No. 15 has provided clarification upon this issue of interpretation by defining that water is necessary for a broad spectrum of purposes²⁶⁹:

“Water is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life). Nevertheless, priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenants rights²⁷⁰. [...]

“The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water²⁷¹.”

As can be noted, the document has acknowledged all the numerous purposes water is needed for, involving also food production and agriculture²⁷². However, according to Winkler, the formal acknowledgment of the right to water is merely covering a gap in the general context of human rights, as other rights – including the right to food – have been included among the instruments of international human rights law since its establishment²⁷³. In this respect, considering the relevance of water for food production²⁷⁴, the right to food is studied as a potential legal basis for entitling people to water for both agricultural production and nutritional needs. According to the FAO, an individual must assume approximately 3,000 kcal per day in order to achieve a complete, balanced, and nutritious diet: this should be achieved with almost 3,500 litre per day of water²⁷⁵. Nonetheless, it should also be noted that water use beyond these requirements is not purely pertinent from a human rights perspective, as the right to food does not either promotes or protects an unbalanced diet.

²⁶⁸ *Ibid.*

²⁶⁹ General Comment No. 15 of the UN Committee on Economic, Social and Cultural Rights (CESCR) of 20 January 2003, E/C.12/2002/11, *The Right to Water (Arts. 11 and 12 of the Covenant)*, para. 2, 12(A); GLEICK (1998: 491); CAHILL (2006: 392).

²⁷⁰ General Comment No. 15 of the UN Committee on Economic, Social and Cultural Rights (CESCR) of 20 January 2003, E/C.12/2002/11, *The Right to Water (Arts. 11 and 12 of the Covenant)*, para. 6.

²⁷¹ *Ibid.*, para. 10.

²⁷² *Ibid.*, para. 6, 7.

²⁷³ WINKLER (2017).

²⁷⁴ *Ibid.*

²⁷⁵ FALKENMARK, LANNERSTAD (2005: 26).

Furthermore, reliable access to water represents a major resource in terms of agricultural production for obtaining realising the right to food²⁷⁶, especially in those regions where subsistence agriculture is the main source of nutrition and access to markets is restricted²⁷⁷. The majority of people suffering hunger and malnutrition live in the rural areas and depend on subsistence farming²⁷⁸. According to estimates, about 50% of the undernourished people are farmers who rely on water availability to ensure their nourishment, as well as income generation and employment²⁷⁹. Therefore, the most vulnerable people to malnutrition are smallholders and landless people²⁸⁰. For them, ensuring a reliable access to water for agricultural production is essential to secure the right to food and improve their food security²⁸¹.

With hunger and malnutrition being to a considerable extent mostly rural phenomena, the protection of the right to food and to water has naturally become a primary concern for world's stakeholders. The recognition of the right to water has contributed to emphasising the relevance of the right to food itself, whereas conversely the judicial power of the right to food has been intensified by the right to water as well. From a human rights perspective, the international recognition of these rights is of mutual importance for both water and food. This correlation is duly supported by the fact that the FAO's Voluntary Guidelines on the Right to Food addressed how relevant access to water resources is for ensuring the right to food²⁸². Therefore, water and food are of utmost importance for ensuring human survival and the right to an adequate standard of living. However, as General Comment No. 12 thoroughly demonstrated, it is up to State parties to take appropriate measures to fulfil these rights. When governments do not take any such policy options in contexts where people are compelled to producing their own food, ensuring them access to water should be accorded major priority. In these cases, allocation of water should be exercised under the sole principle of human rights protection, ensuring that the principles of non-discrimination, respect for human dignity and equality are observed.

Nonetheless, water is not the only resource that should be regarded to improve the food security of all vulnerable people, given that often socio-economic, climatic, and geographic conditions – such as availability of land – directly affect access to water and to food²⁸³. Desertification, land degradation, pollution, drought are the main drivers threatening people's living conditions.

²⁷⁶ WINKLER (2017).

²⁷⁷ *Ibid.*

²⁷⁸ FAO (2019).

²⁷⁹ MOLDEN (2007: 65).

²⁸⁰ *Ibid.*

²⁸¹ MOLDEN (2007: 71).

²⁸² Voluntary Guidelines of the FAO Council of 22-27 November 2004, CL127/10-Sup.1, to *Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*.

²⁸³ WINKLER (2017).

The foregoing discussion brings us to the strong connection between food and *land rights*. Specifically, this reasoning concerns the contentious phenomenon of “land grab” or “land grabbing”, which namely involves the purchase or long-term lease of large-scale land in foreign countries by investment funds or big economic actors, such as multinational companies or governments, for the cultivation of agricultural products which are then exported to other States or destined for the international market²⁸⁴. This phenomenon takes place especially when such large portion of land, which these big economic actors estimate “unused”, is sold to third parties, who deem to be thus entitled to its acquisition without the consent of the communities that live there and have been using it for ensuring their livelihood for several years. In this way, substantial portions of land are taken away from local populations, with evident prejudice for their living, especially as this phenomenon usually occurs in areas where there is already a serious food issue. As in procedural terms these operations may involve different players and take many forms (land acquisitions, leasing, concessions, or other contractual arrangements), according to the main causes and mechanisms conducting the operation. scholars opted for an all-encompassing notion to describe it, that is “Large-Scale Land Transactions” (“LSLTS”)²⁸⁵.

Although this technique has been long-time practised along history, its use has been intensified following the last global food crisis, thus condemning thousands of smallholders of the Global South to food insecurity conditions. Usually justified with the aim of making investments for the socio-economic development of the host States, this practice seems rather aimed at guaranteeing the food and energy security of foreign States, as well as the profits of private companies, whereas the effects for the local economy are rather scarce or even prejudicial²⁸⁶. In fact, local governments tend to settle for limited benefits – in terms of sales prices or land lease payments or commitments to the use of national workforce – against the benefits guaranteed to the foreign investors, who gain an almost unlimited power to exploit goods. This has resulted in a structural change from subsistence to commercial agriculture, functional to the needs of global markets, but bearing fatal consequences for the well-being and survival of local communities, which often end up being devastated by bloody civil conflicts generated by the measures taken by foreign investors²⁸⁷.

For this reason, land grabbing has been recently criticised *intensively* by many scholars, NGOs, and farmers’ movements for its negative consequences on the local communities. From a human rights perspective, indeed, communities’ rights “cannot be forfeited or traded away in the context of such transactions”²⁸⁸. However, in case of violation, international human rights law is directly implicated. Moreover, the phenomenon of land acquisitions

²⁸⁴ DE SCHUTTER (2011).

²⁸⁵ GOLAY, BIGLINO (2013).

²⁸⁶ MARGULIS (2018).

²⁸⁷ *Ibid.*

²⁸⁸ NARULA (2013).

involved also an associated trend of water grabbing²⁸⁹, being land a “productive, rights-fulfilling asset”²⁹⁰, which allows the fulfilment of many connected human rights, including water.

As noted above, land grabbing emerged promptly during the food crisis of 2007, although issues related to access to land and other natural resources, forced evictions, questions related to security of tenure, agrarian reform and landlessness had already been analysed within the international and regional human rights systems. This issue has been analysed by the United Nations from both a specific human rights perspective, and also within the framework of UN Treaty bodies reports. In particular, the UN Human Rights Council has studied the human rights allegations of land rights by giving such task to a special mandate-holder, that is the Special Rapporteur on the Right to Food²⁹¹. Responding to the propagation of land grabbing cases, Professor Olivier De Schutter has highlighted the magnitude of this issue and its relevance in terms of right to food protection through a report presented to the Human Rights Council on the causes and modalities of LSLTS. In this report, De Schutter also suggested 11 human rights principles to be applied during LSLTS negotiations, so that these procedures at least fulfilled to a set of procedural requirements which could assure human rights obligations’ minimum respect. These requirements mention the informed participation of local communities, the continued application of human rights obligations by States, which should never be deferred, and the compliance with an adequate sharing of benefits deriving from such transactions²⁹². In the words of De Schutter, indeed,

“States would be acting in violation of the human right to food if, by leasing or selling land to investors (whether domestic or foreign), they were depriving the local population of access to productive resources indispensable to their livelihoods. They would also be violating the right to food if they negotiated such agreements without ensuring that this will not result in food insecurity, for instance because this would create a dependency on foreign aid or on increasingly volatile and unpredictable international markets (as large proportions of the food produced as a result of the foreign investment would be shipped to the country of origin of the investor or sold on the international markets), or because the revenues of the most marginal local farmers would decrease as a result of the competition consequent on the arrival of such investors”²⁹³.

Building on the analysis of the Special Rapporteur, also the Advisory Committee of the Human Rights Council addressed its analysis on the protection of lands rights. Acting as the Council’s think-tank, in 2012 the Committee presented a study on the modalities to foster the protection of the

²⁸⁹ MARGULIS (2018).

²⁹⁰ NARULA (2013).

²⁹¹ GOLAY, BIGLINO (2013).

²⁹² GOLAY, BIGLINO (2013: 1636).

²⁹³ Report of the Special Rapporteur on the Right to Food to the UN Human Rights Council of 28 December 2009, A/HRC/13/33/Add.2, *Large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge*.

rights of people working in rural areas²⁹⁴. According to this study, land rights violations are among the most relevant menaces to the right to food, condemning a large number of rural communities to extreme vulnerability, hunger and poverty²⁹⁵. Yet, the Committee suggested three crucial points whose achievement could be relevant to overcome this situation, that is: ensure the proper implementation of the existing international laws regulating land transactions; provide the formal recognition of the right to land in international human rights law; and finally, to elaborate innovative judicial mechanisms on the rights of people working in rural areas. As this investigation on LSLTS had been strongly encouraged by La Via Campesina, the work was complemented by the proposal to issue a Declaration on the Rights of Peasants and Other People Working in the Rural Areas that, taking largely inspiration from the homonymous declaration issued by LVC in 2008, acknowledged – *inter alia* – the rights of peasants to land and territory. This work was further complemented by the adoption of a resolution within the HR Council whose purpose was to inspire further action within the UN itself. Thus, the resolution proposed the establishment of a working group to negotiate and finally present a draft UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (“UNDROP”). After seventeen years of efforts, the advocacy work of the “Grassroots Voices” forum, meaning the world’s rural people gathering together in the bottom-up process of “building alliances, lobbying, and authoring international law” that culminated in the adoption of the Declaration in 2018²⁹⁶.

Composed by 28 articles, the UNDROP primarily claims “the individual and collective rights granted to peasants and all the other people working in rural areas”²⁹⁷ and the linked obligations for States parties to respect, protect and fulfil these rights and take all the necessary measures to ensure their regulation, respect and consolidation²⁹⁸. Taking the perspective of peasants and rural communities, this Declaration acknowledges the “special relationship [...] between peasants [...] and the *land, water and nature* to which they are attached and on which they depend for their livelihood”²⁹⁹, according to the provisions stated by art. 17³⁰⁰.

In line with this specific recognition of land rights is that also the United Nations treaty bodies – that is, committees composed by independent experts who periodically review and monitor States’ fulfilment of the treaties – have

²⁹⁴ Resolution of the Human Rights Council of 14 April 2010, A/HRC/RES/13/4, *on the right to food*.

²⁹⁵ *Ibid.*

²⁹⁶ Resolution of the UN General Assembly of 17 December 2018, A/RES/73/165, *on the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas*.

²⁹⁷ *Ibid.*, art 1.

²⁹⁸ CLAEYS, EDELMAN (2019).

²⁹⁹ Resolution of the UN General Assembly of 17 December 2018, A/RES/73/165, *on the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas*.

³⁰⁰ *Ibid.*, art. 17.

examined their status. The Committee on the Elimination of Racial Discrimination, the CESCR, the CEDAW and the CRC have all highlighted different concerns connected to land grabbing, reviewing concrete cases where LSLTS inflicted internal displacement and evictions on the rural people without compensating them for their livelihood losses, or jeopardised their access to natural resources with consequences on their ability to realise the right to food³⁰¹.

To remain in the cluster of UN Agencies, particularly within the FAO, it is the UN Committee on World Food Security that has addressed special attention to land rights through the adoption of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (“VGGT” or *Land Tenure Guidelines*)³⁰². These have been the result of several years of negotiations among States, peasants’ movements, the CSO and the PSM, involving also the Special Rapp on the RTF. The Land Tenure Guidelines are pivoted around two central concepts: to “identify, record and respect legitimate tenure rights”³⁰³, and to “protect tenure rights holders against forced evictions”³⁰⁴, while at the same time identifying the responsibilities of States to safeguard tenure rights, livelihoods, food security and environmental risks and damages arising from land grabbing³⁰⁵, through the promotion of mechanisms of redistribution³⁰⁶. Besides, not only did the CFS intend to address such questions through the Land Tenure Guidelines, but also with the *Right to Food Guidelines*. Being a key tool in the protection of individuals’ human rights accepted with consensus by all States, the RTF Guidelines acknowledge that the right to food safeguards rural communities’ right to have access to productive resources and/or the means of food production, *including land*³⁰⁷. Its text thus asserts:

“States should pursue inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land use, and, as appropriate, land reform policies, all of which will permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labour, capital and management, and encourage conservation and sustainable management of natural resources, including in marginal areas”³⁰⁸.

[...]

³⁰¹ GOLAY, BIGLINO (2013).

³⁰² Voluntary Guidelines of the Committee on World Food Security of 11 May 2012, CFS 2012/38/2, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*.

³⁰³ *Ibid.*, guideline 3.1.1

³⁰⁴ *Ibid.*, guideline 3.1.2

³⁰⁵ *Ibid.*, guideline 12.6, 12.4

³⁰⁶ *Ibid.*, guideline 15.1.

³⁰⁷ Voluntary Guidelines of the FAO Council of 22-27 November 2004, CL127/10-Sup.1, to *Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*.

³⁰⁸ *Ibid.*, guideline 2.5.

“States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination. Where necessary and appropriate, States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth [...] States should also provide women with secure and equal access to, control over, and benefits from productive resources, including credit, land, water and appropriate technologies”³⁰⁹.

Furthermore, the safeguard of land rights has also been accounted indirectly through some cases-law confronted at the regional level in the human rights mechanisms of Africa and the Americas. These concrete cases³¹⁰ have been regarded with valuable relevance as they disclosed possible entry points for litigations concerning land grabbing violations before human rights Courts. However, these litigations did not directly adjudicate LSLTS questions, but rather other rights connected to it, such as the right to life, to an adequate standard of living, the right to personal integrity and the right to property, thus disclosing additional possible access points for its full judicialisation.

As noted above, this first cluster of mechanisms protecting the right to land is complemented by the fact that access to land and security of tenure are two major component of the right to food as such. Recalling the words of De Schutter and of the CFS with the Guidelines on Land Tenure and on the Right to Food, accessing land is crucial for the numerous rural people who suffer from hunger and rely on agriculture for their livelihood. For this reason, land grabbing phenomena directly threaten the food security of rural communities and all vulnerable people whose survival relies on land tenure. Therefore, the right to food can constitute a strong basis to LSLTS issues in terms of international human rights law. With its strong legal foundation, the human right to food constitutes a crucial judicial element for land rights to be protected and fulfilled by governments, companies, and individuals.

Following this comprehensive analysis on the right to food and its linkages with other relevant rights, such as the right to water and land, this section of the investigation has sought to argue two main considerations. Primarily, to demonstrate that all human rights are strongly intertwined with one another, which is an element that favoured the exchange of judicial entry points for their reciprocal legal adjudication. Thus, the principles of indivisibility, interdependency and interrelatedness of all human rights³¹¹

³⁰⁹ *Ibid.*, guideline 8.1, 8.6.

³¹⁰ Judgement of the Inter-American Court of Human Rights of 31 August 2001, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*; Judgement of the Inter-American Court of Human Rights of 28 November 2007, Case No. 172, *Saramaka People v. Suriname*; Judgement of the Inter-American Court of Human Rights of 27 June 2012, *Kichwa Indigenous People of Sarayaku v. Ecuador*; Judgement of the African Commission on Human and Peoples’ Rights of 4 February 2010, Case 276/2003, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*.

³¹¹ Resolution of the UN General Assembly of 12 July 1993, A/CONF.157/23, *Vienna Declaration and Programme of Action*, Art. 1.

implying that breaching the right to food may impair the fulfilment of other human rights, such as the right to water or to land, but also the right to health, education or life, and *vice versa*. Grounding on this, the scope of this reasoning was to prove that the right to food itself is linked with other human rights, but mostly that this right constitutes the legal basis for other fundamental rights to acquire a stronger protection in terms of human rights doctrine. Benefiting from the legal recognition it deserved in both legally binding and soft law instruments, the right to food has provided an unyielding basis for evaluating the impacts of land grabbing and water availability issues on the food security of affected communities, and also for ensuring the proper protection of their rights.

Nonetheless, according to Focarelli, the fundamental rights to food, water and land continue to be considered less important than civil and political rights. Yet, this given attitude of underestimating fundamental rights should be condemned as well as international crimes, while at present it is considered as such only the violation of the right to food in times of war³¹². In the UN reports, in particular those of the Special Rapporteur De Schutter, there is a strong insistence on the need not to separate the right to food from other fundamental rights, to look at the indivisibility of rights³¹³. The peremptoriness of this approach is strengthened by the refusal of any reductionism, starting with what tends to identify the right to food only with the availability of a minimum package of calories, proteins and other nutrients, which would also imply a reduction also of States obligations³¹⁴.

Therefore, in the following parts, this dissertation will demonstrate how to legally enforce the right to food, benefiting also of the legal entry points of other human rights whose juridical mechanisms are more consolidated and accepted.

2.2. Principles for formal recognition of the Right to Food

The diffusion of a rights-based approach as unique path to fighting hunger and malnutrition – sponsored mainly by the UN and particularly by the FAO as dedicated agency, and the RTF Special Rapporteur – has had the effect to mainstream the implementation of the right to food within formalised legal frameworks. Explicit recognition of this right at the legal level occurred at the three levels applicable in law, that is domestic, regional, and international, implying the possibility to actually violate and thus protect and apply such a right. The establishment of an adequate judicial mechanism should urge States and international organisations to include dedicated provisions into their covenants or constitutions. These may entail several mechanisms, involving mainly two possibilities: (1) comprising the right to food into Constitutions, and/or (2) adopting legislations on the right to food or food security and nutrition, possibly through framework legislation.

³¹² FOCARELLI (2012: 464).

³¹³ DE SCHUTTER (2014).

³¹⁴ RODOTÀ (2014).

In the following section, the analysis will therefore concentrate on how the right to food has been constitutionalised or legalised in the various countries of the world, and then to move on to the regional and international levels of protection.

2.2.1. Domestic implementation procedures

To appeal the breaching of the right to food, it must first be included in an applicable law. The constitutionalisation of the right to adequate food and its relative recognition among the “fundamental” rights within certain constitutions has allowed to better characterise the right and grasp its effectiveness of protection in terms of guarantees. As noted above with the case of land rights, many fundamental rights are indeed covered by para-judisdictional bodies, such as the interregional Commissions that monitor the observance of fundamental rights by individual states that voluntarily adhere to the Conventions for the protection of rights (*i.e.* CESCR *etc.*), which thus provide a different weaker level of protection of human rights. Conversely, the constitutionalisation of the right to food has provided this right with a strongest protection, being constitutions a State’s supreme law, implying also that the right’s enforcement be guaranteed by a constitutional judge, whose rulings have a significant and mandatory legal impact. Representing the most fundamental set of political values and principles governing each State, a Constitution cannot be easily amended and, conversely, any legislative or administrative violation that contradicts a State’s fundamental charter can be nullified through a judicial review procedure³¹⁵. The consideration of the right to food as a right investing the human condition as a whole has enhanced its nature, not only as a social right linked to vulnerability or poverty conditions, but also that of a right linked to self-determination and to the cultural identity of both the community and the individual. It is a right that is a precondition for the enjoyment of other rights whose fundamental character is intrinsically connected with existence, human dignity, and other fundamental values. A process of “universal” constitutionalisation of this right is occurring, which further corresponds to that process of constitutionalisation of the person and of recognition of a global citizenship – as explained by Rodotà³¹⁶ – that constitutes one of the most significant developments in world’s legal systems.

Yet, it should be noted that the formalisation of this right followed a peculiar process of recognition: it has been progressively included following a “horizontalised” path, that is correspondingly to its inclusion in the Constitutions of the various countries of the world³¹⁷. Most recently, there has been a transition in the fight against world hunger, from the classical top-down approach to a horizontal one, where the concerned countries become active players in requiring the inclusion of this right³¹⁸. This observation has been

³¹⁵ DE SCHUTTER (2010a).

³¹⁶ RODOTÀ (2014).

³¹⁷ BOTTIGLIERI (2014).

³¹⁸ *Ibid.*

supported also by the results of a survey promoted by the FAO in 2011³¹⁹, in which it emerges that there are more than 100 Constitutions in the world that enshrine the right to food, according to different protection mechanisms³²⁰. The mechanisms through which States may *constitutionally* recognise it are mainly four:

- 1) *explicit and direct* recognition of the right to food as a self-standing fundamental right;
- 2) *implicit* recognition as part of other fundamental rights in a broad sense³²¹;
- 3) *explicit* recognition as a goal or directive principle of state policy both at national level and at decentralised to facilitate its implementation; and/or
- 4) *indirect* recognition of the right to food through the legal direct applicability of international treaties postulating the right to food, especially of the ICESCR.

In what follows, the analysis will concern how the right to food has been constitutionalised or legalised in the various countries of the world. This review is useful both for the purpose of a better understanding of this right, and for a final comparison with the Italian legal system.

The first way according to which States feature the RTF into their Constitution is its explicit recognition as a self-standing right, which – by avoiding ambiguity of legal interpretation – lays the groundwork for its concrete enforcement and adjudication. The countries which directly recognise the right to food are at least 30, including those which restricted its enforcement to specific groups (*i.e.* the most vulnerable people: children, prisoners, indigenous peoples, etc)³²². Of these, the following nine countries recognise the right to food as an independent right, applicable to everyone: Bolivia (art. 16), Brazil (art. 6), Ecuador (art. 13), Guyana (art. 40), Haiti (art. 22), Kenya (art. 43), and South Africa (art. 27.1), Egypt (art. 79). The following ten countries, by contrast, recognise and apply the right to food merely to some specific categories of the population:

- to protect the children: Brazil (art. 227), Colombia (art. 44), Cuba (art. 9), Guatemala (art. 51), Honduras (art. 123), Mexico (art. 4), Panama (art. 52), Paraguay (art. 54) and South Africa (art. 28.1);
- to protect students: Costa Rica (art. 82);
- to protect prisoners and detainees: South Africa (art. 35.2);
- to protect staff employed by the public administration: Myanmar (art. 26).

The new Tunisian Constitution does not recognize the right to food, if not limited to the right to water (art. 44). five of these countries have constitutional provisions in which the right to food is recognised as part of other human rights. Other constitutions ensure the right to food as part of other human rights, including Belarus (art. 21), Congo (art. 34.1), Malawi (art. 30.2), Moldova (art. 47.1) and Ukraine (art. 48). In the constitution of Brazil,

³¹⁹ KNUTH, VIDAR (2011).

³²⁰ For an updated perspective regarding this data, see FAO's website on "The Right to Food around the Globe".

³²¹ TURA (2018: 59); BOTTIGLIERI (2014).

³²² *Ibid.*

moreover, the right to food is a precondition of another fundamental right, where the right to "national minimum income" (art. 7) is fulfilled only when allowing to adequately satisfy the need for food and other basic needs (housing, clothing, *etc.*); and this is also the case with the Constitution of Suriname (art. 24).

The second possibility for acknowledging this right is through the implicit recognition as part of other fundamental rights in a *broad* sense. Given its connections to many other human rights, as noted above, the right to food is not explicitly recognised in twenty-four constitutions, as terms such as food or nutrition are missing, but they ensure other related fundamental rights such as the right to an adequate standard of living, the right to well-being, the right to a dignified life, the right to development, the right to living standards not below subsistence levels. Rights such as that of a minimum wage, social security for the poor, special childcare and protection, support for motherhood and the rights of the disabled also implicitly protect the right to food. On account of this, a FAO study has found that the constitutions of Algeria, Burundi, Cuba, Cyprus, the Czech Republic, the Dominican Republic, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Indonesia, Iraq, Malawi, Senegal, Peru, Sao Tome and Principe, Seychelles, Syria, Thailand, Togo, Turkey, and Bolivia thus implicitly recognise the right to food³²³.

Thirdly, the right to food can also be enshrined through the "directive principles" of a State, that is "public commitments made by governments to realising economic, social and cultural rights for all citizens without stipulating claims of rights holders"³²⁴. Despite such an instrument does not provide the required legal basis for ensuring the justiciability of this right, it has been often used by Courts as a tool of judicial interpretation³²⁵.

Finally, in those States where the right to food is not covered by any of the ways described above, the obligation to respect it through the direct applicability of international treaties which protects it might arise. Concretely, this implies that there is an obligation to respect and protect the right to food even if the constitution does not provide for an explicit textual reference to it. As a rule, when a state ratifies an international treaty, it should individually determine how to integrate its provisions within the country's specific legal framework. This may vary according to the legal and constitutional system of the State, depending if its system is *monist* or *dualist*, that is if the international obligations can directly become a domestic law through automatic incorporation (*e.g.* France and the Netherlands), or if they need to be implemented through explicit domestic legislation (*e.g.* Italy, UK and Australia)³²⁶. Regardless of the national legal system's type, in some concrete cases the direct applicability of international standards at the domestic level has resulted in the adjudication of the right to food in some countries.

³²³ VIDAR, KIM, CRUZ (2014).

³²⁴ TURA (2018: 61).

³²⁵ BIGLINO (2014).

³²⁶ BOTTIGLIERI (2014); TURA (2018).

The constitutionalisation of this right is obviously relevant, but yet not enough sufficient to realise it concretely, since the most suitable approach should entail more specific provisions which “set out in more detail mechanisms for implementation, assign specific responsibilities, and provide for redress mechanisms in the event of violations”³²⁷. This leads to the second possibility which can be considered for formalising the right to food, that is the adoption of national legislations on the right to food or food security and nutrition, possibly through *framework laws* or *sector-specific legislation*.

Sectoral laws are legislations pertaining other related human rights, whose fulfilment might enhance or facilitate access to food progressive realisation, as noted above with access to water and land. Practically, this has been the case in India, where a legislation on creating entitlements for food subsidies and cash- or in-kind transfers has been passed in 2013, or in Brazil and Peru with the approval of school feeding laws in 2009 and 2013 respectively³²⁸.

Framework laws on the right to food, by contrast, have recently begun to spread in order to contributing not only to make the right operative, but especially to clarifying its general principles³²⁹. It is a legislative technique used to deal with multi-sectoral matters through the definition of the obligations and general principles that the law must implement, while leaving the competent authorities the task of defining specific measures that make such obligations effective, possibly within a determined time limit. Practically, a framework law can define the scope and meaning of the right, determine the relative State obligations for governments and private actors, institutes all necessary institutional mechanisms, thus providing the adequate legal basis for subsidiary legislation and other necessary measures for redress that the competent authorities will need to adopt³³⁰. The CESCR³³¹ itself has recommended the adoption of framework laws as the main tool for implementing an adequate national strategy for ensuring freedom from hunger. Indeed, the development of framework laws has been endorsed in particular by the international consortium on the right to food which, by approving the Right to Food Guidelines, has offered an *ad hoc* methodological instrument for those countries willing to legislate on this question or intend to review their legislations in light of the RTF approach. According to the FAO, indeed, a framework law on food security must satisfy the following criteria: 1) explicit recognition of the right to food as a human right, the objective of the law being the realisation of the right to food, or substantive provisions of the right to food; and 2) incorporation and consideration of at least three human rights principles for the implementation of the law, including

³²⁷ DE SCHUTTER (2012).

³²⁸ VIDAR, KIM, CRUZ (2014); TURA (2018: 63).

³²⁹ TURA (2018: 62).

³³⁰ *Ibid.*

³³¹ General Comment No. 12 of the Committee on Economic, Social and Cultural Rights of 12 May 1999, E/C.12/1999/5, *The Right to Adequate Food (Art. 11.)*, para. 29.

participation, accountability, non-discrimination, transparency, human dignity, empowerment, rule of law, and equality³³².

Framework laws on the right to food, food safety, food sovereignty, nutrition have been developed in numerous other countries, including: Republic of Angola (2010), Armenia (2002), Republic of Azerbaijan (1999), Burkina Faso (2007-2008), Republic of Cabo Verde (2013), Colombia (2009), Republic of the Congo (2008-2009), French Republic (2010), India (2013), Honduras (2010-2011), Kyrgyzstan (2008), Republic of Mozambique (2010), Nicaragua (2009), Panama (2012), Paraguay (2013), Republic of Tajikistan (2010), Turkmenistan (2000), and Tanzania (2011)³³³. In addition to this, the Latin American and Caribbean Parliament (“PARLATINO”) has contributed to making the exercise of right to food fully executive by establishing the “Regional Framework Law on the Right to Food, Food Security and Food Sovereignty” in November 2012, and then reiterated in September 2018³³⁴. Thanks to PARLATINO’s explicit commitment, aimed at heightening the implementation of a human rights-based approach to fighting food insecurity, a considerable number of countries of the region has begun to draft and endorse laws for ensuring the full effectiveness of the right. These include Argentina, Bolivia, Brazil, Ecuador, Costa Rica, Uruguay, Guatemala, Honduras, Nicaragua, Peru, and Venezuela³³⁵.

As can be seen from this overview, the right to food is enshrined at the constitutional level mostly in poor countries, which is in itself a significant fact. However, according to Pizzolato³³⁶, the correlation between the right to food and the Constitution is so close that the former constitutes a premise of the second, as it is with the right to life. In this sense, Rodotà argued that “the right to healthy, safe, adequate food should be considered as one of the most fundamental of fundamental rights”³³⁷, which makes it necessary to reaffirm that food is both a need and the object of a fundamental right. Human dignity itself is conditioned by the outcome of the struggle for liberation from hunger. It therefore seems paradoxical that this right is sometimes considered recent, a new generation right. There is an additional constitutional dimension in it: the need to ensure accessibility to food for future generations and therefore the sustainability of development and the reproducibility of resources³³⁸. Therefore, the right to food framework, although apparently simple, encompasses a plurality of dimensions, which will be seen applied to the concrete situation of Italy and its fundamental charter.

³³² VIDAR, KIM, CRUZ (2014).

³³³ BOTTIGLIERI (2014); VIDAR, KIM, CRUZ (2014); TURA (2018).

³³⁴ Framework law on the right to food, food security and food sovereignty, Panama City, 2018; TURA (2018: 63).

³³⁵ *Ibid.*

³³⁶ PIZZOLATO (2015).

³³⁷ RODOTÀ (2014).

³³⁸ PIZZOLATO (2015).

2.1.1.2. *The case of Italy*

An essential profile for this dissertation is to question also the nature and level of protection of the right to food into our own Country. The Italian Constitution does not foresee any explicit reference to the right to food. Being a *labourist* constitution, most probably the Italian Constituent Assembly deemed that the privileged way to protect a dignified standard of living was given by the right-duty to work. Yet, as explained above, the progressive inclusion into world constitutions of the “duty to feed” might follow two main ways: direct or indirect protection. The Italian Constitution falls within the latter group, as the right to food is recognised indirectly, being mediated by Article 117, which acknowledges the value of international treaties into our legal system, such as the ICESCR. Art. 117 thus reads:

“Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations”³³⁹.

As can be noted, this article mentions also the division of legislative powers between the State and the Regions, distinguishing at its third comma the fields where concurring legislation applies, mentioning “nutrition” as a matter of shared competence.

Nonetheless, it is not only through international treaties that the right to food is introduced into our system. This is partially true, as the RTF is identifiable in the dictation of other explicit rights if an extensive interpretation is applied. Beyond the isolated reference to art. 2, concerning the inviolable rights of men, many provisions of our Constitution might be analysed in light of the right to food approach. These are included in the *Fundamental Principles* and in the first part of the Constitution, including *Title I – Civil Relations*, *Title II – Ethical and Social Rights and Duties*, and *Title III – Economic Rights and Duties*.

In this regard, it should be remembered that among the first steps to guarantee a “free and dignified existence” is ensuring adequate access to the right to food. In fact, prof. Ziegler underlined that having access to food allows that “the dignity of the person is nourished as much as his body”³⁴⁰, meaning that whenever the human dignity is violated extreme hunger or malnutrition conditions (*e.g.* undernutrition or obesity), that is the moment that the human dignity needs to be protected the most. Therefore, the right to (adequate) food should be interpreted as *the right to feed oneself with dignity*³⁴¹. Furthermore, the strong links between the right to food, the principles of equality and solidarity, lead to placing it among the fundamental rights of the person and to consider it in its inseparable link with *social dignity*, the *right to existence*³⁴² and, more generally, with *freedom*.

³³⁹ Constitution of the Italian Republic of 1 January 1948, art. 117.

³⁴⁰ ZIEGLER (2003); ID. (2011).

³⁴¹ BOTTIGLIERI (2016).

³⁴² RODOTÀ (2014).

The framework of rights/duties relating to food and nutrition is further cemented by the Fundamental principles and especially by article 2, in the part in which it contemplates the “inviolable” rights of the men and requires the fulfilment of the “fundamental duties of political, economic and social solidarity”; article 3, both in the part in which it alludes to the “equal social dignity” of citizens, and where it provides for the principle of equality in a substantial sense; artt. 1 and 4, for the aforementioned importance they attribute to the right/duty to work, which is eventually infringed in case of malnutrition. Article 10 is also relevant since it extends to foreigners and refugees the status of right-to-food holders, and art. 11 which distinguishes between a right to food in peacetime and wartime, acknowledging that the use of starvation as warfare technique is considered an international war crime. Promoting the development of culture and scientific and technical research to safeguard the heritage of the Country, art. 9 protects the “cultural landscape dimension”³⁴³ of the right to food (“the foodscape”), which has been particularly enhanced through the recognition of the Mediterranean diet as intangible cultural heritage by UNESCO in 2013³⁴⁴.

By shifting attention to the meaning of the right to food as an opportunity to independently decide on one's diet, other constitutional provisions offer an indirect protection. The first reference is in *Title I*, specifically to art. 13 which allows to derive this prerogative from the sphere of personal liberty and then to artt. 19 and 20 on the freedom of faith which, in conjunction with art. 8, on equality among religious confessions, requires compliance with the so-called religions’ dietary rules³⁴⁵. A further hermeneutic operation would then lead to deduce respect for the food choices of individuals within specific contexts such as prisons, schools, hospitals (artt. 13. 4, 27. 3, 33 and 34, 32) and, more generally, in the workplace³⁴⁶.

In *Title II*, Article 29 establishes the constitutional basis of the duty to protect the right to food within the family, shaping food security as an obligation of the spouses or parents (food support), to whose fulfilment also the State contributes, if necessary (Articles 30 and 31). Yet, the claim to nutrition, being implicit in the same right to life, inevitably follows from the right to health (art. 32) which is dependent and closely related to nutrition, constituting also the basis for food law (see Chapter I). Stating the general rules for education, artt. 33 and 34 protect food and nutrition education in schools, the corresponding freedom of teaching³⁴⁷ and also scientific research concerning food (see also art.9).

Finally, also *Title III* on the regulation of economic relations could be read with a view to guaranteeing the right to food, as well as the provisions on

³⁴³ BOTTIGLIERI (2016).

³⁴⁴ Decision of the 8th Intergovernmental Committee for the safeguarding of the intangible cultural heritage of 7 December 2013, ITH/13/8.COM/Decisions, *Convention for the safeguarding of the intangible cultural heritage*; DENUZZO (2017).

³⁴⁵ CHIZZONITI, TALLACCHINI (2010); BOTTIGLIERI (2016).

³⁴⁶ BOTTIGLIERI (2016); BELLIZZI DI SAN LORENZO (2016: 41-50).

³⁴⁷ BOTTIGLIERI (2016).

labour. The right to having a remuneration sufficient to ensure a free and dignified existence (art. 36) or to measures of social assistance and welfare support establishing the “right to social maintenance and assistance” (art. 38), are often an essential condition to ensure sufficient, nutritious, healthy, sustainable food. In this regard, many countries in the world (from Brazil to the UK), have adopted the “minimum wage” as a measure to combat hunger and poverty³⁴⁸, while the Italian legislation lacked an institution protecting people from absolute poverty so far. It then becomes important to identify the links between interventions against poverty and access to basic food consumption, paying attention, for example, to the so-called “reddito di cittadinanza” [citizens’ income]³⁴⁹ which, in its various forms, provides precisely the necessary resources to ensure the fundamental right to existence³⁵⁰. In turn, the provisions that provide for the possibility, by the law, to address and coordinate the private economic initiative for social purposes (art. 41) and to limit private property “in order to ensure its social function and make it accessible to all” (art. 42), together with the subsequent art. 44 on private ownership of land, can be read in the sense of allowing “redistributive” state interventions aimed at protecting the consumer and smallholders’ access to food. In the same direction, art. 47 which includes among the preferential purposes of saving access to “directly cultivated property”.

Through this particularly extensive interpretation of the Italian Constitution, it can be argued that the right to food has a secure constitutional dimension, although at present still implicit, which entails a duty for the competent institutions to guarantee, at every governmental level, all the profiles for a dignified existence. Moreover, through this review it has been further demonstrated the interrelatedness among human rights for judicial adjudication purposes.

However, despite the links and references on the right to food that can be found in the Constitution, a more effective protection of the right to food should be reached. In fact, building a legal basis of this right through targeted provisions would widen its judicial scope at the regulatory level and prevent its reversibility. Lacking a proper legislative intervention regarding this fundamental right, as of now the work of the legislator results to be necessary even at the Italian level. Occasionally, indeed, the legislator also intervened by eroding competences formally reserved to regional legislative power in order to satisfy the needs of the poorest citizens. In this regard, reference is made to sentence no. 10 of 2010 which saw the Italian Constitutional Court called to rule on the state legislation establishing “a special fund intended to meet the needs primarily of a food nature and subsequently also energy and health of the less well-off citizens” also providing for the concession of the so-called “social card” for all the Italian citizenship being in conditions of greater economic hardship. In that case, some regions have appealed to the

³⁴⁸ BOTTIGLIERI (2016); PIZZOLATO (2015).

³⁴⁹ TRIPODINA (2018: 34-74).

³⁵⁰ RODOTÀ (2014).

Court complaining about the damage to their residual competence on social policies, but the Court has declared the groundlessness of the question because of the particular “purposes” and the policy area affected by the contested intervention³⁵¹. According to the constitutional judges, the legislative intervention covered by this ruling was deemed

“necessary in order to effectively ensure the protection of subjects who, in conditions of extreme need, claim a *fundamental right* which, as strictly inherent to the protection of the *indispensable nucleus* of the *dignity of the human person* [...] must be guaranteed throughout the national territory in a uniform, appropriate and timely manner, by means of a coherent and congruous regulation with respect to this purpose”³⁵² [emphasis added].

Albeit modest, this judgement should be valued for having recognised the existence of a “fundamental right” and of an “indispensable nucleus” of the dignity of the person, which corresponds to a sphere of services attributable to essential levels and destined to conditions of extreme need. The Court expresses itself in terms of “irrepressible constitutional values” that should not be weakened or breached³⁵³. In a subsequent ruling³⁵⁴, the Court fully reiterated these arguments and has rejected the unconstitutional objections concerning the extension of the “purchasing card” programme in light of the effects of the economic crisis that hit Italy. Nevertheless, the main way to guarantee the effective protection of these fundamental needs remains the institutionalisation of a form of “minimum wage”. At the same time, it is necessary to insist on the effective overcoming of purely charitable or assistential solidarity approaches, which prevent the transition to the dimension of *rights*³⁵⁵.

Considering the national panorama, Italy is also where the headquarters of the FAO and the EFSA are, the two most important organisations in terms of food security and food safety at international and European level. For this reason, in 2015 – that is, the year in which the ambitious goal of halving world hunger was set – the city of Milan hosted the Expo, dedicated to the theme “Feeding the Planet, Energy for Life”. Its main aim was discussing and raising awareness about the big theme of how to feed 9 million people expected to inhabit the planet in 2050. Hence, EXPO2015 was sealed by the approval of the so-called “Milan Charter”, a document designed for building and overcoming the challenge of the right to healthy, safe, and nutritious food for all as a fundamental human right. That is, a sort of collective manifesto which was expected to be the real political legacy of Expo2015 recognising the role of food and nutrition for a better quality of life. The resonance of the Milan Charter was such that the issue of food safety was also dealt with at European

³⁵¹ PIZZOLATO (2015); FANO, MCKEON, MONINA (2017).

³⁵² Judgement of the Italian Constitutional Court of 21 October 2010, Case No. 10/2010 [author’s own translation].

³⁵³ *Ibid.*

³⁵⁴ Judgement of the Italian Constitutional Court of 26 February 2013, Case No. 62/2013.

³⁵⁵ RODOTÀ (2014).

level. In fact, the European Parliament has therefore approved the resolution entitled “Expo Milano 2015: Feeding the planet, energy for life”, with which it has shown interest in issues related to food, sustainable development, and energy, noting the inseparable link between them.

As food is a matter of concurrent competence between the State and the regions, the Milan Charter has also been ratified by various Italian regions (Abruzzo, Umbria, Emilia-Romagna, Molise, Basilicata)³⁵⁶, which have stated the willingness to adopt a series of significant actions with a strong institutional impact to achieve the right to food at the regional level. Following the signing of the Milan Charter, the region of Abruzzo has included in its regional statute a provision specifically dedicated to the right to adequate food, whereas other regions Lombardy, Veneto, Piedmont, Emilia-Romagna³⁵⁷ have adopted policy measures to protect the right of access to food, sometimes involving also the civil society, in order to reduce the phenomenon of food waste. When analysing rights like the one in question, it is important to take into account also the provisions included in the regional statutes, which certainly represent a fundamental aspect to protect fundamental rights effectively. If, on the one hand, a process of constitutionalisation of the person is undergoing at the global level with the establishment of a “global citizenship”³⁵⁸, involving also the universal constitutionalisation of the right to food; on the other, the territorial dimension of food security also should be recognised its relevance. It is the *prismatic lens* through which to “read” and understand the dimension of human rights³⁵⁹. Traditionally, the effective recognition of a right passes through its enforceability in the Courts. However, faced with complex situations and rights with a fluid and polymorphic social nature, such as the right to food, it is important to note how it can (and is) implemented also in ways that go beyond the traditional patterns of justice, thanks to a process of protection that not only affects all levels of government, but that comes from below, also involving civil society according to a model of social solidarity that art. 2 defends, implementing that horizontal subsidiarity recognised and guaranteed by art. 118.2 of the Constitution. Therefore, in a context of subsidiarity and solidarity that we could define widespread, the role of local authorities is of primary importance for implementing this right, since it allows to implement concrete measures with widespread diffusion, helping to make up for profiles of difficult legal justice³⁶⁰.

2.2.2. International and regional implementation procedures

Although the implementation of the right to food at the domestic level is the most significant, there are regional and international accountability

³⁵⁶ DRIGO (2016).

³⁵⁷ *Ibid.*

³⁵⁸ RODOTÀ (2014).

³⁵⁹ DRIGO (2016).

³⁶⁰ *Ibid.*

mechanisms that complement national mechanisms. Therefore, besides national legislations and sector-specific covenants, meaning those referring to particularly vulnerable categories of beneficiaries (*i.e.* CEDAW, CRC *etc.*), the right to food has also been “regionalised”. As noted already in Chapter I, it has been recognised in the three main regional human rights protection systems: the inter-American, African, and European system. Assuming a variety of forms, these regional tools allowed to compare how food security and the different nutritional traditions convened with the sharing of best practices, offering an innovative approach to the realisation of the right. Regional and international mechanisms are particularly important when national remedies are not available nor effective. For this reason, these will be analysed below, focusing on the inter-American, African, European levels, to proceed then by better scrutinising the international level, with particular reference to the United Nations treaty bodies. This paragraph will also entail focusing on the relative mechanisms designed for monitoring these regional human rights treaties, which also play a relevant role in terms of right-to-food protection.

2.2.2.1. *The Inter-American System*

The Inter-American system of protection of human rights is organised within of the Organization of American States³⁶¹ (“OAS”), and is equipped with four instruments which directly or indirectly recognise the right to food. These are: Charter of Organisation of American States³⁶², American Declaration of the Rights and Duties of Man³⁶³ (“American Declaration”), American Convention on Human Rights³⁶⁴ (“Pact of San José”), and the Additional Protocol to the American Convention on Human Rights³⁶⁵. The former, that is the Charter of Organization of American States, explicitly mentioned the word “nutrition” in art. 34. The American Declaration of the Rights and Duties of Man where the right to food is implicitly protected through the right to the preservation of health and to well-being (art. XI). The American Convention on Human Rights (“Pact of San José”) which, including mainly civil and political rights, indirectly protects the right to food through the commitment undertaken by States to develop the protection of human

³⁶¹ The members of the OAS are all 35 States which have ratified the OAS Charter, that is: Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Canada Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Vincent and the Grenadines, St. Kitts and Nevis, Suriname, The Bahamas, Trinidad and Tobago, United States, Uruguay, and Venezuela.

³⁶² Charter of the Organization of American States, Bogotá, 30 April 1948.

³⁶³ Convention of the 9th International Conference of American States on the American Declaration of the Rights and Duties of Man, Bogotá, April 1948.

³⁶⁴ Convention of the Organization of American States on the American Convention on Human Rights, San José, 22 November 1969.

³⁶⁵ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, San Salvador, 17 November 1988.

rights (art. 26) and rights interdependent on the right to food such as the right to life (art. 4), the right to dignity (art. 11), the right to property and its social function (art. 21), the right to work (art. 45), the right to education (art. 49). The Additional Protocol to the American Convention, also known as the Protocol of San Salvador, which explicitly recognises the right to food at art. 12. In light of these official documents, however, the bodies responsible for the application of human rights protection, including the right to food, are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

The Inter-American Commission on Human Rights (“IACHR”) is the quasi-judicial mechanism created in 1959 by the Organization of American States for the promotion, protection and monitoring of human rights recognised in OAS Member States. It should be stressed that one of the particularities of the Inter-American Commission is that it can receive individual applicants’ petitions, whereas the Court can receive only States’ requests. The Inter-American Commission has jurisdiction on violations of the American Convention, but also on petitions grounded on the Protocol of San Salvador.

The Inter-American Court of Human Rights, by contrast, is the judicial mechanism of the OAS and has the task of interpreting and applying the provisions contained in the American Convention on Human Rights. As noted above, only State parties and the Commission itself are entitled to submit petitions to the Court, implying that no individual petition procedure is accepted. Both these mechanisms, the Commission and the Court, can be appealed only under certain conditions: admissibility criteria include that the domestic remedies have been exhausted and that the petition’s subject is not pending in another international proceeding.

For the purpose of this analysis, however, the right to food cannot be appealed either before the Commission or before the Court. Nonetheless, the Court has addressed right to food petitions’ through interpretation of other relevant rights, such as the right to life and private property, aiming in particular at protecting the most vulnerable people and of indigenous communities³⁶⁶. One of the judgement where the Court intervened was *Instituto de Reeducaciòn del Menor v. Paraguay*³⁶⁷, in which the Court interpreting the American Convention in the light of the Declaration on the Rights of the Child concluded that Paraguay had violated the right to life and rights of children consecrated in the Convention, because children in detention did not have access to adequate food.

³⁶⁶ BOTTIGLIERI (2014: 104); BIGLINO (2014: 33-34).

³⁶⁷ Judgement of the Inter-American Court of Human Rights of 2 September 2004, *"Instituto de Reeducaciòn del Menor" v. Paraguay*.

2.2.2.2. *The African regional System*

Human rights at African regional level are comprehended in three main instruments: the African Charter on Human and Peoples' Rights³⁶⁸ ("African Charter"), African Charter on the Rights and Welfare of the Child³⁶⁹ ("African Children's Charter"), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa³⁷⁰ ("Maputo Protocol").

The former, that is the African Charter, is an international convention adopted by African countries in the framework of the Organization of African Unity, which was born in 1963 and replaced in 2002 by the African Union. Through this Charter, African states have not simply adapted the fundamental principles of the UDHR to the African culture, but also placed human rights on the same level with the rights of African peoples. Despite the African Charter does not mention the right to food explicitly, it mentions the supply of food in the context of the individual's obligations to the family. However, according to doctrine observes, the right to food as such can be claimed on the basis of the right to dignity (art.5), right to health (art.16), right to the existence of peoples and right to development (Art.21). Furthermore, with reference made by art. 60 to other International Charters on Human Rights, African Union's member parties are indirectly obliged to respect the rights to adequate nutrition of children and women.

The African Charter on the Rights and Welfare of the Child protects the civil and social rights of children, attributing States a correlative obligation to give them effect. The Charter is particularly explicit regarding the right to food, which is consecrated in artt. 14 and 20, and is protected indirectly through the recognition of related rights, such as the right to life of all children, including refugees, separated or deported minors.

Finally, the so-called Maputo Protocol concerning women's rights is equally explicit in guaranteeing the protection of the right to food and access to resources for women (art.15), and in identifying measures that make this and other rights effective, especially in areas where African women are normally victims of discriminations. The Charter takes into account, in particular, the woman's right to food during marriage (art. 6), divorce (art. 7), succession (art. 21) and access to justice (art. 8). Moreover, the protection of women's right to food is completed by the right to health (art.14), to social protection (art.13), and a special right for protection in cases of extreme difficulty.

Two are the mechanisms making the rights proclaimed in the African Charters effective: the African Commission on Human and Peoples' Rights,

³⁶⁸ Convention of the Organization of African Unity on the African Charter on Human and Peoples' Rights, Nairobi, 27 June 1981.

³⁶⁹ Convention of the Organization of African Unity on the African Charter on the Rights and Welfare of the Child, Addis Ababa, 11 July 1990.

³⁷⁰ Convention of the Assembly of the African Union on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Maputo, 11 July 2003.

and the African Court on Human and Peoples' Rights. The former has quasi-judicial powers, whereas the latter is the regions' judicial mechanism.

The African Commission was established in 1984 under art. 30 of the African Charter and is tasked with implementing and defending human rights in the African region. It can receive petitions by everyone, including single individuals, groups, NGOs and States, considered that the admissibility criteria – mentioned above in the case of inter-American mechanisms – are respected. Conversely, the Commission is itself entitled to submitting petitions to the African Court. Particularly noteworthy is that several ESC rights are directly included in the African Charter, thus paving the way for acknowledging indirectly other ESC rights, including the right to food.

The African Court, on the other hand, is the most recent regional judicial institutions, having been established in 1988 and being operational since 2006. It has the task of interpreting and applying the African Charter and its Protocols as well as “any other relevant human rights instrument ratified by the states concerned”. The African Commission, States Parties, and intergovernmental bodies are entitled to submit communications to it. This automatically implies the exclusion of single individuals from submitting requests to the court, but States may issue an optional declaration enabling the Court to receive petitions from those individuals and NGOs having observer status before the African Commission. However, as of now, the African Court has not yet examined cases related to the right to food³⁷¹. Despite this, having judicial powers and competence not only over violations of the African regional covenants but also of international human rights treaties, the African Court is to be regarded particular attention as its decisions might progressively expand.

Therefore, it has been demonstrated that the regional mechanisms monitoring that regional human rights treaties are implemented are recognised a significant role in protecting the right to food. Yet, the level of protection given to ESC rights depends on the type of effectiveness of the decisions of these bodies: in fact, they can make often recommendations to States and condemn them to a specific *modus facendi*, in addition to a monetary penalty.

2.2.2.3. *The European Union and the Right to Food*

Unlike the international and American and African regional regulatory framework, the European panorama has not revealed any provision expressly dedicated to guaranteeing the right to food. At the European level this right is not explicitly recognised either in the Council of Europe or in the European Union itself: the doctrine has hypothesised that in the post-war process of elaborating the protection of human rights, the European states had believed that, once the right to work and social security had been protected, no apparent reason required the need to guarantee the right to food as such, which could be indirectly be guaranteed through the full protection of the right to work and

³⁷¹ BIGLINO (2014: 34).

to social security³⁷². However, today even in Europe the link between subsistence and work seems to have broken: for this reason, it is increasingly necessary to reflect on guarantees that allow the unemployed to not see their existence, their dignity and identity be affected by waning living conditions. The most recent doctrine has therefore posed the problem of identifying the legal foundations of the right to food also on a European scale, both within European Union and the Council of Europe³⁷³.

At the European Union level, the right to food is not explicitly recognised by the Treaties³⁷⁴. As noted already in the first chapter, in fact, despite having established one of the most advanced food laws in the world, the EU qualifies food merely as a commodity, rather than as a vital need: it has thus taken the stance of consumer rights, rather than human rights. Therefore, it is not access to food by every person that is the EU's goal in the field of nutrition, but ensuring that the food consumed is safe for consumers' health, with a view to ensuring also an effective functioning of the internal market³⁷⁵.

At the Council of Europe level, the distinction between social rights and civil and political rights is applied to human rights protection³⁷⁶. For this reason, there are two broad legislative instruments which might be relied upon to embryonically ensure the right to food: the European Convention on Human Rights³⁷⁷ ("ECHR") and the European Social Charter³⁷⁸ ("ESC"). In accordance with the interpretation of the jurisprudence and the reflections of the doctrine, none of these documents does protect expressly the right to food. However, the provisions of art. 2 of the Convention³⁷⁹ on the right to life, as well as art. 4 on the rights to employment and to proper income, art. 12 on social protection, and art. 13 on social and medical assistance of the ESC³⁸⁰, can nevertheless be regarded as ensuring indirectly the protection and enjoyment of the right to food also on a European scale³⁸¹. It must however be remarked that whilst the rights of the Convention are expressly protected by the European Court of Human Rights ("ECtHR"), those guaranteed by the ESC may not be invoked before the European Court³⁸².

Yet, the absence of explicit references to the abovementioned right within the Council of Europe risked becoming increasingly striking. For this reason, in 2013 the Parliamentary Assembly of the Council of Europe has

³⁷² DRIGO (2016).

³⁷³ *Ibid.*

³⁷⁴ *Ibid.*

³⁷⁵ GUSMAI (2015).

³⁷⁶ GRIECO, MUSSO (2017: 373-398).

³⁷⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, Strasbourg, November 1950.

³⁷⁸ European Social Charter, Strasbourg, 03 May 1996.

³⁷⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, Strasbourg, November 1950, art. 2.

³⁸⁰ European Social Charter, Strasbourg, 03 May 1996, art. 4, 12, 13; DRIGO (2016: 15-16).

³⁸¹ DRIGO (2016).

³⁸² GRIECO, MUSSO (2017: 373-398).

accomplished a major step forward the recognition of the right to food adopting the Resolution no. 1957 entitled “Food security: a permanent challenge that affects everyone”³⁸³. Although constituting a soft-law instrument, this resolution has represented an important and by now due opening of the Council of Europe’s legislation to a right that risked being “new” only for European citizens. It undoubtedly represents a worthy step since, for the first time, it referred expressly to the right to food in the European context, finally qualifying food as “our most basic need and right”³⁸⁴ as well as a “fundamental right”³⁸⁵. Moreover, it has highlighted the perceived need for greater homogeneity in the national level protection of the right to food by the States party to the Council of Europe. It is interesting to note that the right to food is defined as “fundamental human right”, that is neither only “human right” nor only a “fundamental right”. Moreover, given that “if we cannot secure access to sufficient, safe and nutritious food for present and future generations, our health, development and fundamental rights are hampered”, the resolution requested a concrete commitment from States. Hence, it lists some measures that should be enacted by member States in order to ensure food security. These entail many transversal questions, such as the sustainability of food production to be achieved through agricultural and environmental law, the responsible consumption and the improvement of food safety, accessibility of food resources, and other regulatory issues related to consumer law, right to health, right to development of peoples, *et cetera*. Thus, finally the “right to a food” has appeared in the European vocabulary which, together with the “right to have access to clean water”, the States are called to guarantee fully and effectively. This resolution, in fact, constitutes a soft law document, meaning a recommendation without legally binding value. To give greater effect to its guidelines, it is necessary that the individual countries incorporate them into the national regulatory context, by constitutionalising the right or adopting framework laws. Although being a simple act of orientation with no binding legal value for States, this resolution is equally relevant, not only because it has been adopted by the political body of the Council, but above all because it has introduced the concept of the right to adequate food in the European vocabulary. Furthermore, the European Court of Human Rights, which normally takes into account the guidelines of the Assembly will henceforth be able to avail itself of this new orientation in carrying out its functions, and possibly will interpret the Charter in an evolutionary way, providing an “oriented interpretation”³⁸⁶ including this *new* right.

Nevertheless, there is yet another way through which contextualise the relevance of the right to food and food security at the European level: focusing

³⁸³ Resolution of the Parliamentary Assembly of the Council of Europe of 3 October 2013, No. 1957 (2013), *Food security: a permanent challenge that affects everyone*.

³⁸⁴ *Ibid.*, para 2.

³⁸⁵ *Ibid.*, para 5-10.

³⁸⁶ GRIECO, MUSSO (2017: 373-398).

on the increasing role of the EU as international actor³⁸⁷. Throughout the years, the EU has developed a strong presence on the global arena, intervening mainly through two channels: the European diplomatic service, that is the European External Action Service (“EEAS”), and the humanitarian aid response mechanism, exercised by the Directorate-General for European Civil Protection and Humanitarian Aid Operations (“DG ECHO”).

Through the latter, in particular, the EU has been able to ensure its assistance intervention in many different countries and fields, including food assistance, nutrition, water, sanitation and hygiene, health, emergency shelter, disaster risk reduction, gender and age-sensitive aid. With food and nutrition assistance accounting nearly one third of the total EU humanitarian financial plan, since 2010 the EU has worked to develop its humanitarian food assistance policy, thus being able to support and bring relief to more than 100 million people living under malnutrition conditions³⁸⁸. Moreover, by joining the Food Assistance Convention and launching in 2016 the “Global Network against Food Crises” together with the FAO and WFP, the EU has achieved the goal of being one of the world’s biggest donors in this field, thus obtaining a prominent role along the “humanitarian-development-peace nexus”³⁸⁹. Food assistance may involve a number of concrete interventions for enabling vulnerable and food insecure populations with access to food during critical times³⁹⁰. It may involve the direct supply of food, but also the issuance of cash transfers and vouchers, or supplying the beneficiaries with seeds and toolkits to allow them to produce their own livelihood in a sustainable way. Yet, these programmes are generally implemented mainly by UN agencies, especially by the World Food Programme, which indeed was the fourth-largest donor to the agency in 2019³⁹¹.

With regard to these developments, it seems inadmissible that the EU has not developed a clear political and legislative direction towards the recognition of the right to food, for at least two reasons. On the one hand, in line with the principle of equality, it is not coherent to fight against the hunger and poverty of those who live in the South of the world and not against the hunger and poverty of citizens or all the people who live in the European soil. On the other hand, because it is discriminatory to combat hunger and malnutrition of vulnerable people living in underdeveloped countries, and not to fight and protect it when they enter Europe as refugees or as immigrants. In light of these latter elements, the EU should strive to develop more effective

³⁸⁷ BOTTIGLIERI (2014).

³⁸⁸ EUROPEAN COMMISSION (2013).

³⁸⁹ Resolution of the UN General Assembly of 21 December 2016, A/RES/71/243, *Quadrennial comprehensive policy review of operational activities for development of the United Nations system*; Report of the Secretary-General to the UN General Assembly of 18 January 2018, A/72/707, *Peacebuilding and Sustaining Peace*; Report of the Secretary-General to the UN General Assembly of 11 July 2017, A/72/124, *Repositioning the United Nations development system to deliver on the 2030 Agenda: ensuring a better future for all*; HOWE (2019).

³⁹⁰ OMAMO, GENTILINI, SANDSTRÖM (2010: 4).

³⁹¹ For more details, see WFP’s website section dedicated to “Contributions by year”.

policies and programmatic actions, as well as the adoption of a stronger legislative line in this regard.

2.2.2.4. *The role of the United Nations bodies*

Since the establishment of the United Nations, its role has been to promote the respect for human rights and international solidarity mechanisms, and to do so according to the provisions enshrined in international human rights treaties, thus making the UN specialised agencies and bodies a focal point for their realisation. This responsibility towards human rights realisation involved also the right to food, given that many UN agencies are given the mandate to promote it.

This is also the case of UN human rights treaties, which are indeed complemented by the establishment of independent oversight bodies whose role is to monitor the State parties' implementation of the treaties' provisions. Composed by independent experts, these committees are referred to as "treaty bodies" and are assigned the task to review the regular reports submitted by States, NGOs, international organisations and other bodies to monitor their compliance with the treaties and then issue "concluding observations" to report States' progress, and issue recommendations for the ensuing periodic reporting cycle³⁹². To complement the action of these committees, each treaty body can adopt "general comment" or "general recommendations", where the rights and provisions mentioned in the treaty are better articulated and clarified, providing also guidance on how these rights can be realised. A key example in this regard is the General Comment No. 12, through which the CESCR has implemented the relative properties and content of the right to food. As anticipated in the first chapter of this work, the UN treaty bodies which have mentioned the right to food are:

- the *Committee on Economic, Social and Cultural Rights*, monitoring the ICESCR International Covenant on Economic, Social and Cultural Rights³⁹³;
- the *Human Rights Committee*, monitoring the ICCPR International Covenant on Civil and Political Rights³⁹⁴;
- the *Committee on the Elimination of Racial Discrimination*, monitoring the International Convention on the Elimination of All Forms of Racial Discrimination³⁹⁵;

³⁹² BIGLINO (2014).

³⁹³ Resolution of the UN General Assembly of 16 December 1966, A/RES/2200(XXI)A, *International Covenant on Economic, Social and Cultural Rights*.

³⁹⁴ Resolution of the UN General Assembly of 16 December 1966, A/RES/2200(XXI)B, *International Covenant on Civil and Political Rights*.

³⁹⁵ Resolution of the UN General Assembly of 21 December 1965, A/RES/2106(XX), *International Convention on the Elimination of All Forms of Racial Discrimination*.

- the *Committee on the Elimination of Discrimination against Women*, monitoring the CEDAW Convention on the Elimination of All Forms of Discrimination against Women³⁹⁶;
- the *Committee on the Rights of the Child*, monitoring the CRC Convention on the Rights of the Child³⁹⁷;
- the *Committee against Torture*, monitoring the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³⁹⁸.

In case of violations of the rights provided for in these treaties, the Committees are entitled to receiving individuals or collective complaints, known as “communications”, and issue relevant recommendations. In this regard, the UN General Assembly in 2013 has contributed to enhancing the enforceability of socio-economic rights by adopting the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights³⁹⁹ (“OP-ICESCR”). The entry into force of this Optional Protocol is relevant for having introduced a proper individual complaint and inquiry mechanism, that the ICESCR lacked for a long time⁴⁰⁰. Through this Optional Protocol, it has been possible to facilitate the justiciability of the ICESCR by allowing complaint and inquiry procedures on ESC rights, including art. 11 explicitly mentioning the right to food. As specified with other bodies, admissibility criteria are to be respected, including that domestic remedies have been exhausted, and that the complaint is submitted under the authority of a State member of the OP-ICESCR. After having examined the complaint, the ICESCR will adopt non-binding views and recommendations to avoid that further harm is caused to the victims of the presumed violation. Although non-binding, the measures provided by the OP-ICESCR are relevant by stressing once again that ESC rights are justiciable human rights, and are interrelated with all other human rights. Moreover, adopting the mechanism of individual complaints, ICESCR’s decisions will enhance the awareness *vis-à-vis* the right to food, enabling also a more adequate decision-making and the development of concrete remedies and effective programmes at the national level.

³⁹⁶ Resolution of the UN General Assembly of 18 December 1979, A/RES/34/180, *Convention on the Elimination of All Forms of Discrimination against Women*.

³⁹⁷ Resolution of the UN General Assembly of 20 November 1989, A/RES/44/25, *Convention on the Rights of the Child*.

³⁹⁸ Resolution of the UN General Assembly of 10 December 1989, A/RES/39/46, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

³⁹⁹ Resolution of the UN General Assembly of 10 December 2008, A/RES/63/117, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*.

⁴⁰⁰ FERGUSON (2018).

2.2.2.4.1. The Food and Agriculture Organization and the Committee on World Food Security

Among the array of global governance agencies fostering the right to food, this section discusses its most specialised and active promoter within the UN system has obviously been the Food and Agriculture Organization (“FAO”). Dedicated to rural and agricultural development, the mandate of the FAO is indeed to work for improving people’s levels of nutrition and standards of living, to enhance food distribution and agricultural productivity, to enhance the lives of rural communities, in order to “ensure humanity’s freedom from hunger”⁴⁰¹. As enshrined in Article 1 of its Constitution, these goals are to be achieved through three main functions, which – in synthesis – entail the sharing of all information related to food, nutrition and agriculture, in order to share policy expertise and provide an international forum for promoting dialogue and the exchange of best practices, also deploying such knowledge through standard-setting and field work. Nevertheless, as such field presence has never been the Organisation’s main priority, the FAO has become known for being a “knowledge organisation” with a “fundamental and unique” role for the management of food and agriculture knowledge with a “mandate as a global broker of essential information and data”⁴⁰². Therefore, its work is to support its State parties to design food security laws, policies, and programs; conduct projects and program at country level and set international standards for ensuring nutrition for all; and thus, contribute to the development of a global debate on world food security. Furthermore, on a yearly basis the FAO publishes “The State of Food Insecurity in the World” (“SOFI”), a fundamental report concerning the world food situation, which every year is focused on a particular theme. Dedicated to “safeguarding against economic slowdowns and downturns”, the SOFI of 2019 acknowledged that more than 820 million people in the world are still hungry, and for the first time reported also the issue of moderate food insecurity. With nearly over 2 billion people not having regular access to safe, nutritious and sufficient food, including 8% of the population in Northern America and Europe, the immense challenge of achieving the Zero Hunger target by 2030 became considerably more demanding⁴⁰³.

Over the last two decades, the FAO has gradually increased its focus and action for realising the human right to food, setting the stage for developing a global normative culture oriented at promoting this right. Its advocacy work and expertise have been instrumental for codifying this right developing both its normative and programmatic content. Many are indeed the constitutive steps that brought to the affirmation of the right to food at the global level to which the FAO has strongly contributed. From the Rome Declaration on World Food Security to the 1996 World Food Summit Declaration, where the

⁴⁰¹ Constitution of the Food and Agriculture Organization of the United Nations, Rome, 16 October 1945.

⁴⁰² SHAW (2009: 110-112); ANTHES, DE SCHUTTER (2018: 262).

⁴⁰³ FAO, IFAD, UNICEF, WFP, WHO (2019).

FAO has been the first institution to call on member States to acknowledge food as a human right, to enhance its key role for the adoption of CESCR's General Comment No. 12 in 1999, or for drawing a difference between food security and right to food during the 2002 Declaration of the World Food Summit. A work that has been finalised by the issuance in 2004 of the Right to Food Guidelines, and more recently by the "Rome Declaration on Nutrition and its Framework for Action"⁴⁰⁴, adopted in 2014 at the Second International Conference on Nutrition.

In 2006, moreover, the FAO has established a dedicated unit for this right, that is the *Right to Food Unit* (now, *Right to Food Team*), has been critical for mainstreaming such an approach and favour the development of technical and practical tools for the national implementation and monitoring of this right⁴⁰⁵. In this regard, the Organisation together with the Right to Food Team have developed a "methodological toolbox" for furthering the country's domestic realisation of the Right to Food Guidelines, which include: (1) Guide on legislating for the right to food; (2) Methods to monitor the human right to adequate food; (3) Guide to conducting a right to food assessment; (4) Right to food curriculum outline; (5) Budget work to advance the right to food. To further assist countries to adopt national policies and legislations in this field, the RTF Team has also recently focused its activities to the "Parliamentary Front against Hunger" which are gradually emerging in Africa, Asia, Latin America and the Caribbean, and also in Europe⁴⁰⁶. The members of this "alliance" recently gathered at the first Global Parliamentary Summit against Hunger and Malnutrition organised in 2018 in Madrid, where over 200 parliamentarians discussed about how the Parliamentary Fronts have introduced a blueprint that has guided governments through awareness and capacity development to foster domestic implementation procedures⁴⁰⁷. Furthermore, despite the budget constraints weakening the scope of the RTF Unit, some renewed commitment has emerged thanks to a group of State parties to the FAO which established the "Group of Friends of the Right to Food". Composed by 16 FAO member States⁴⁰⁸ and boasting the RTF Special Rapporteur's support and participation, this group has sought to promote dialogue among the FAO and its member States to renew their commitment towards strengthening the right to food on a longer-term perspective, in an effort to revitalise the focus on food security into the FAO.

The work of the FAO is further supplemented by the technical expertise of the Committee on World Food Security ("CFS"). Established in 1974 as an intergovernmental body for global discussion on food security and nutrition

⁴⁰⁴ Rome Declaration on Nutrition of the Second International Conference on Nutrition, Rome, 19-21 November 2014; Resolution of the UN General Assembly of 1 April 2016, A/RES/70/259, *United Nations Decade of Action on Nutrition (2016-2025)*.

⁴⁰⁵ ANTHES, DE SCHUTTER (2018: 264).

⁴⁰⁶ FAO, IFAD, UNICEF, WFP, WHO (2019).

⁴⁰⁷ *Ibid.*

⁴⁰⁸ The members of the Group of Friends of the Right to Food are: Argentina, Brazil, Costa Rica, Czech Republic, Dominican Republic, Egypt, France, Germany, Hungary, Indonesia, Italy, Norway, Spain, South Africa, Switzerland and Portugal.

issues within the FAO, the CFS has been transformed in 2009 into the foremost inclusive intergovernmental and autonomous platform at the UN level dedicated to food security and nutrition, whose activities participate world governments, international organisations, the academia, representatives of the private sector and of civil society, under the auspices of FAO, IFAD and WFP⁴⁰⁹. In particular, the civil society and the private sector – who are separately represented by the Civil-Society Mechanism (“CSM”) and the Private-Sector Mechanism (“PSM”) – are both accredited as full participants, not simple observers⁴¹⁰. Its structure is completed by a group of independent experts, that is the High-Level Panel of Experts (“HLPE”), whose role is to provide technical advices for deliberating on contentious issues. The actual CFS configuration is actually the consequence of an ambitious reform enacted following the global food crisis, which was characterised by “an unprecedentedly inclusive and transparent process by UN standards”⁴¹¹. Thus, the CFS moved from an ineffectual body inside the FAO, into an efficient technical forum for discussing world food security and nutrition’s questions, whose right to food mandate had been reinforced⁴¹². In line with the reform process, the CFS also rediscovered its active policy-making competences, which led to negotiating and then endorsing the Right to Food Guidelines and to adopt in 2020 the Voluntary Guidelines on Food Systems and Nutrition⁴¹³, and also facilitating the adoption of guidelines inspired by the right to food⁴¹⁴. In fact, the CFS is entitled to deliberate on food and nutrition issues from a human rights perspective, where food is acknowledged as a real unalienable right. To ensure that such a perspective is privileged, the CFS has finally given voice to those most affected by food insecurity, including smallholders, peasants, fisherfolks, pastoralists, indigenous communities, agricultural workers, landless peoples, urban poor, consumers, women, and the youth in general⁴¹⁵.

As demonstrated through this review, FAO’s commitment towards combating hunger by mainstreaming a right to food approach was considerable from the late 1990s to the late 2000s⁴¹⁶. As of now, however, the Organisation is experiencing a period of retrenchment in this regard. Due to increasing budget constraints and occasional lack of country’s political

⁴⁰⁹ McKEON (2017a).

⁴¹⁰ *Ibid.*

⁴¹¹ *Ibid.*

⁴¹² *Ibid.*

⁴¹³ Voluntary Guidelines of the Committee on World Food Security of 14-18 October 2019, CFS 2019/46/2, *Zero Draft of the Voluntary Guidelines on Food Systems and Nutrition*.

⁴¹⁴ Voluntary Guidelines of the Committee on World Food Security of 11 May 2012, CFS 2012/38/2, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*; CFS Framework for Action for Food Security and Nutrition in Protracted Crises (FFA), Rome, 13 October 2015.

⁴¹⁵ McKEON (2017a).

⁴¹⁶ ANTHES, DE SCHUTTER (2018).

intervention, the gap between the organisation’s rhetoric and institutional action is widening over recent years. Despite progress has been made with the promotion of a rights-based approach and the CFS reform, the FAO has failed to fully integrate the right to food both in its workstream and in that of its member States. Lacking a proper integration of the right to food as a cross-cutting theme in its Strategic Framework, entailing collaboration among its internal divisions, the FAO has further restricted its mandate to a simple knowledge and technical organisation devoted to setting standards. Moreover, observing its most recent areas of interest, it appears that priority has shifted towards the matter of sustainable food system’s promotion, rather than sponsoring a proper right to food approach. Additionally, treating food as a human right should also be the main objective of the three Rome-based Agencies (“RBAs”) as a whole. As UN agencies tasked with food security issues, the FAO, the WFP and IFAD all have human rights mandates⁴¹⁷, whose role is to sustain, implement and monitor the introduction of a regulatory framework focused on the right to food at country level. To ensure the diffusion and realisation of the notion of *food as a human right*, it is thus necessary that the UN system, through the RBAs action, go beyond certain fledgling rights-based regional initiatives, to systematically strengthen a cooperative action aimed promoting the right to food, thus fighting hunger on a worldwide level.

- *The FAO Right to Food Guidelines: success or failure?*

As noted above, a critical step for the necessary elaboration of international consensus over the mainstreaming a *human right to food* has been the adoption of the so-called “Right to Food Guidelines”. Yet, the awareness of needing a concrete set of guidelines designed to practically assist world governments throughout the adoption of national strategies and legislations dates back to the Declaration of the 2002 “World Food Summit: five years later”⁴¹⁸ held by the FAO. Following the 1996 WFS, FAO member States gathered again to give an adequate follow-up to the requests made five years before. The final document of this Summit contained the invitation (par. 10) to the FAO Council:

“to establish at its One Hundred and Twenty-third Session an Intergovernmental Working Group, with the particularization of stakeholders, in the context of the WFS follow-up, to elaborate, in a period of two years, a set of voluntary guidelines to support Member States’ efforts to achieve the progressive realization of the right to adequate food in the context of national food security; we ask the n close collaboration with relevant treaty bodies, agencies and programs of the UN System, to assist the Intergovernmental

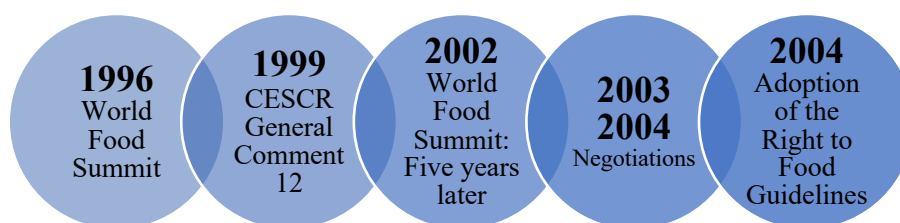
⁴¹⁷ FAO (2019).

⁴¹⁸ Report of the FAO World Food Summit: five years later of 10-13 June 2002, WFS 02/A/57/499, *International Alliance Against Hunger*.

Working Group, which shall report on its work to the Committee on World Food Security⁴¹⁹.

On the basis of this invitation, an intergovernmental working group was established which, during the fourth session of the FAO Council of September 2004, developed the Right to Food Guidelines, which were finally approved by all its member States, thus sealing their commitment to realise a world free from hunger. Particularly noteworthy is that, driven by an alliance of governments, civil society organisations and UN agencies, the Guidelines were negotiated through a participatory process within the CFS and adopted unanimously by all FAO member States at the Council. The approval of the RTF Guidelines represented the occasion for a return of the right to food onto the international scene's focus, to be understood not only as a moral imperative, but as a binding fundamental human right.

Table 5: Highlights leading to the adoption of the right to food guidelines



The Guidelines constitute a sort of *code of conduct* which provides practical indications on the actions to be taken to eradicate hunger and achieve the right to proper nutrition. The indications contained in the Guidelines are addressed to all States of the international community, including those that have not adhered to the international covenants tackling the right to food. Although these provisions do not obviously create legal constraints on States parties, they certainly constitute a fundamental practical guide for States and all subjects involved to interpret and build on international treaty law focusing on right to food realisation⁴²⁰. Beginning with the agreed definition of food security, its content presents customisable policy guidance for nineteen areas of action conducive to the realisation of the right to food, which are the following: *Democracy, good governance, human rights and the rule of law; Economic development policies; Strategies; Market systems; Institutions; Stakeholders; Legal framework; Access to resources and assets (Labour, Land, Water, Genetic resources for food and agriculture, Sustainability, Services); Food safety and consumer protection; Nutrition; Education and awareness raising; National financial resources; Support for vulnerable groups; Safety nets; International food aid; Natural and human-made*

⁴¹⁹ *Ibid.*, para 10.

⁴²⁰ CRESSWELL RIOL (2017).

*disasters; Monitoring, indicators and benchmarks; National human rights institutions; International dimension*⁴²¹.

As can be noted, in practice the Guidelines are the synthesis of all international documents on the right to food, and also a crucial tool for facilitating their implementation. Another important innovation introduced by this document is that it finally underlined the international dimension of the issue of making food accessible for all, thus overcoming the simple relationship between the State and the citizen, and also identifying the so-called *extraterritorial responsibilities* thereof (e.g. international trade, food aids, etc.). Of particular interest in relation to the right to food rule of law, institutions and legal mechanisms are Guideline no. 1 and 5, together with Guideline no. 9 and no. 10 on the necessary legislative measures for distributing safe food.

Moreover, the adoption of the RTF Guidelines initiated the Organisation's shift towards the dissemination of the Human-Rights Based Approach ("HRBA") to food and nutrition that the FAO had just introduced. The HRBA is a methodology based on human rights characteristics – interrelatedness, universality, inalienability, indivisibility, interdependence, progressive realisation, non-retrogression and equity⁴²² – that has been popularised by the FAO for advocacy purposes through the acronym "PANTHER", that is *Participation, Accountability, Non-discrimination, Transparency, Human dignity, Empowerment and Rule of law*. The background behind this approach is to give voice to those who traditionally lack power, meaning the vulnerable, marginalised, discriminated peoples. Hence, the main aim of adopting an HRBA is to enable everyone to claim its human rights and to provide effective legal recourse and remedy mechanisms in order to give redress, when these are violated⁴²³.

Since their approval, the Right to Food Guidelines have contributed to creating toolkits and policy guidance to support States and all international stakeholders with right to food implementation. Building on such a pivotal and ever relevant text, the understanding of this right's meaning and content has deepened, as well as the knowledge on the steps that States should enact to make it effective. Therefore, as of today, the only remaining challenge is to transform this understanding into concrete actions on the ground. To ensure this, the imperative for the future steps cannot but be to achieve what is indicated in the Voluntary Guidelines, that is:

⁴²¹ Voluntary Guidelines of the FAO Council of 22-27 November 2004, CL127/10-Sup.1, *to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*.

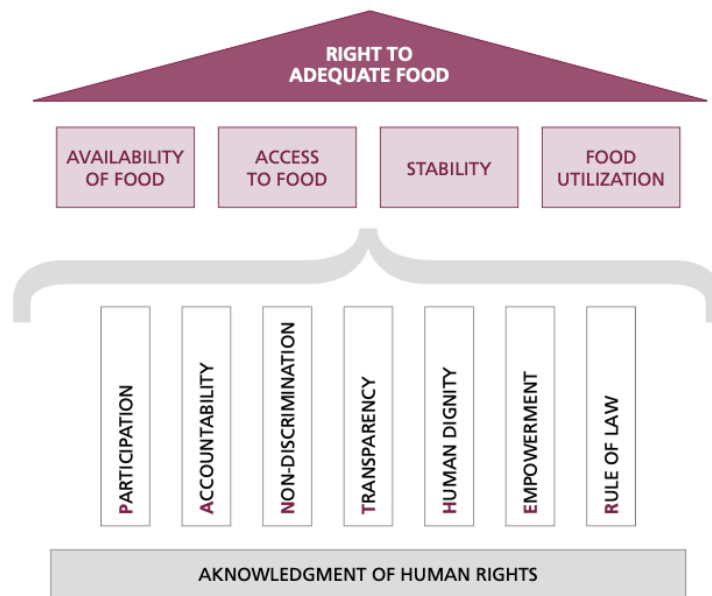
⁴²² Resolution of the UN General Assembly of 12 July 1993, A/CONF.157/23, *Vienna Declaration and Programme of Action*.

⁴²³ CRESSWELL RIOL (2017).

“Striving to ensure that every child, woman and man enjoy adequate food on a regular basis is not only a moral imperative and an investment with enormous economic returns; it also signifies the realization of a basic human right”⁴²⁴.

It can be noted that, since their adoption, the RTF Guidelines have favoured that significant legislative and judicial developments occurred in several countries. Following their approval, in the last ten years an increasing number of countries have directly or indirectly recognised the right to food in their constitutions and legal framework, according to different legal protection mechanisms⁴²⁵. Nevertheless, since 2004 not all States around the world have taken actions towards the effective development of a culture where the right to food is intended as a fundamental human right, and yet compared to the total amount of FAO member States, the percentage remains low⁴²⁶. For this reason, a broad consensus has spread concerning the need to enhance the efforts at all levels for enabling the RTF Guidelines to be deployed effectively to further the mainstreaming of the right to food.

Figure 2 - PANTHER and the Right to Food



⁴²⁴ Voluntary Guidelines of the FAO Council of 22-27 November 2004, CL127/10-Sup.1, to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

⁴²⁵ KNUTH, VIDAR (2011); BOTTIGLIERI (2014).

⁴²⁶ VIDAR, KIM, CRUZ (2014: 13).

2.2.2.4.2. *The UN Council on Human Rights*

In addition to the priority role played by the FAO, the UN Council on Human Rights is also of particular importance among the main bodies of the UN system dealing with the right to food.

As subsidiary body of the United Nations General Assembly, the UN Council on Human Rights is based in Geneva, where it was established in 2006 by the UN General Assembly⁴²⁷ to replace the former UN Commission on Human Rights, taking on its mandate to strengthen the promotion and fulfilment of human rights in the world and address any violation thereof. It is competent to promote the general respect and defence of the rights of every man without any distinction, and to examine violations, specifically those that are flagrant and systematic in nature, of these rights⁴²⁸. The Council gathered several times in order to address and discuss fundamental issues concerning the safeguarding and protection of human rights, mainly addressing some particular contexts. The documents issued by the Board are ascribable to the category of soft law, and therefore are not suitable for creating legal obligations upon States. Despite this limit, they are undoubtedly of political importance and can also contribute to the process of forming real international standards, both customary and pactitional. Over the years, there have been several occasions on which the Council has taken decisions concerning the right to food: in 2008 with the publication of a resolution dedicated to the analysis of the world food crisis⁴²⁹, which was then supplemented by three further resolutions addressing the right to food in general⁴³⁰, the linkages between human rights and access to water⁴³¹, and focusing on the negative impacts of the worsening of the food crisis towards the fulfilment of the right to food⁴³². Subsequently, the Council re-considered the issue of the right to food many other times, including recently in 2019 with a specific resolution that, recalling the major steps that brought to the establishment of a right to food notion, once again calls upon member States, UN Agencies and all competent stakeholders to take action to address the realisation of this relevant right at all levels⁴³³.

⁴²⁷ Resolution of the UN General Assembly of 15 March 2006, A/RES/60/251, *Human Rights Council*.

⁴²⁸ *Ibid.*

⁴²⁹ Report of the Human Rights Council of 22 May 2008, A/HRC/S-7/2, *The negative impact on the realization of the right to food of the worsening of the world food crisis, caused inter alia by the soaring food prices*.

⁴³⁰ Resolution of the Human Rights Council of 26 March 2009, A/HRC/RES/10/12, *The right to food*.

⁴³¹ Resolution of the Human Rights Council of 12 October 2009, A/HRC/RES/12/8, *Human rights and access to safe drinking water and sanitation*.

⁴³² Resolution of the Human Rights Council of 12/10/2009, A/HRC/RES/12/10, *Follow-up to the seventh special session of the Human Rights Council on the negative impact of the worsening of the world food crisis on the realization of the right to food for all*.

⁴³³ Resolution of the Human Rights Council of 21 March 2019, A/HRC/RES/40/7, *The right to food*.

In order to valid its recommendations, the Council issues the *Universal Periodic Review* mechanism, to review the human rights situation of UN Member States, and can also receive both individual and collective complaints procedures to signal human rights violations. Among its mechanisms, the Human Rights Council can also establish *UN Special Procedures* which are composed by special rapporteurs and representatives, independent experts and working groups that review, control, and support the promotion of human rights at the global level. Their mandates generally involve the analysis of specific situations in different countries or some particularly important human rights issues.

After having outlined the role of the UN Human Rights Council in protecting the right to food, the analysis will focus on the activity of the Special Rapporteur on the Right to Food, scrutinising its *modus operandi*. Following the analysis of his mandate, an assessment on the contribution of the Special Rapporteur to the promotion and protection of the right to food will be provided, in the attempt to highlight the positive aspects and the critical issues that characterise his mandate.

2.2.2.4.3. *The mandate of the UN Special Rapporteur on the Right to Food*

Specific mechanisms have been set up by the United Nations to examine specific situations in different countries or some particularly important human rights issues. Among these special figures of experts, the Special Rapporteurs are positions held on an honorary basis and characterised by absolute independence to investigate and publicly present a detailed report on a specific country or a determined human right. One of these “special procedures” acquired particular importance among the United Nations bodies responsible for the right to food: the Special Rapporteur on the Right to Food. The Special Rapporteur on the Right to Food represents one of the main competent mandate-holders within the United Nations system regarding the right to food. Originally established in 2000 by the then Commission on Human Rights for an initial period of three years, this figure was confirmed and its mandate extended in 2007 by the Human Rights Council⁴³⁴. From that moment, this figure has been renewed in 2008 and 2014 with a relative expansion of tasks.

The mandate of the Special Rapporteur is to constantly monitor and promote the enjoyment of the right to food within all UN Member States, taking into account the cultural traditions and dynamics of national food production. To fulfil his tasks, the Special Rapporteur can intervene in three ways. Primarily, he can conduct *country missions* to directly evaluate the internal situation in the interested countries and promote actions to improve the situation. To do so, the Rapporteur is required to engage with representatives of the governments, the civil society, or international

⁴³⁴ Resolution of the UN Commission on Human Rights of 17 April 2000, E/CN.4/RES/2000/10, *The right to food*; Resolution of the Human Rights Council of 27 September 2009, A/HRC/RES/6/2, *Mandate of the Special Rapporteur on the right to food*.

organisations, participating to relevant international meetings and policy forums – mainly of academic and scientific nature – which are deemed influential for the development and the execution of the right to food in international law and politics. In addition to this, he can also issue *communications* to Governments after a presumed right to food violation has been reported by individuals or groups, which can take the form of “urgent appeals” or “letters of allegation”. Finally, he can submit *annual reports* to the UN Human Rights Council and the General Assembly, whose aim is to describe the relevance of the theme of accessing food, and which occasionally may also pertain certain sub-topics that he deemed of particular importance, such as the thematic report on the Global Food Crisis of 2008.

Since June 2014, Ms. Hilal Elver has held this position, previously occupied by Jean Ziegler, in the period 2000-2008, and by Olivier de Schutter, from 2008 to 2014. During their mandates, these Rapporteurs have visited several countries, especially the most vulnerable⁴³⁵, which are later complemented by a correlated country mission report that the Special Rapporteurs issue to the interested State to make recommendations and support them for realising equitable access to food for all its citizens. Among the previous RTF Rapporteurs’ reports, the most important can be deemed Ziegler’s report to the General Assembly on the Definition of the right to food⁴³⁶, and De Schutter’s reports to the Human Rights Council on Access to justice and the right to food⁴³⁷. On the other side, Hilal Elver has focused its scope on the connection between right to food and nutrition⁴³⁸, introducing gender-related perspective in the fulfilment of her mandate⁴³⁹, and also investigating on how to realise the right to food within the capacity of the UN Agenda 2030 and the achievement of the SDGs⁴⁴⁰.

Furthermore, bearing in mind the interrelatedness among human rights, the right to food has been addressed by many other special procedure mandate-holders, including the Special Rapporteurs on adequate housing, health, migrants, indigenous people, and human rights and counter-terrorism, as well as the independent expert on the effects of foreign debt and the Representative of the Secretary- General on internally displaced persons⁴⁴¹. Despite this, Special rapporteurs’ advocacy instruments are not judicial nor

⁴³⁵ For a detailed list, see OHCHR’s website section dedicated to “Country visits - Right to Food”.

⁴³⁶ Report of the UN General Assembly of 23 July 2001, A/56/210, *Preliminary report of the Special Rapporteur of the Commission on Human Rights on the right to food*, Jean Ziegler.

⁴³⁷ Report of the UN General Assembly of 7 August 2013, A/68/288, *Interim report of the Special Rapporteur on the right to food*.

⁴³⁸ Report of the UN General Assembly 3 August 2016, A/71/282, *Interim report of the Special Rapporteur on the right to food*.

⁴³⁹ Report of the Human Rights Council of 14 December 2015, A/HRC/31/51, *Report of the Special Rapporteur on the right to food*.

⁴⁴⁰ Report of the UN General Assembly of 15 July 2019, A/74/164, *Interim report of the Special Rapporteur on the right to food*.

⁴⁴¹ BIGLINO (2014).

quasi-judicial; therefore, their communications or recommendations do not hold States constrained in terms of action. Nevertheless, its actions are deemed anyway relevant for holding member States accountable and orient their governments to take appropriate measures. This holds true especially in so far as the communications procedure can be started regardless of the admissibility criteria, that were instead required for the abovementioned regional Commissions or Courts, thus enabling a more immediate action.

2.3. Challenging the realisation of the Right to Food

Along this dissertation, it has been reaffirmed several times that suffering hunger represents an outrage and a violation of human dignity, and thus it is everyone's right to have access to safe, sufficient and nutritious food, in line with the right to adequate food and the fundamental right to be free from hunger. In order to enable every individual to fully develop and maintain his/her physical and mental capacities, all competent stakeholders are required to adopt urgent measures at all levels for the elimination of hunger and malnutrition. Despite this long-repeated premise on the responsibility of States to promote adequate policies for addressing food security, still many are the challenges towards achieving such an ambitious objective. Given the complex nature of food insecurity, a combination of diverse factors may favour its recurrence. In addition to natural disasters, a complex set of human-made actions may negatively impact food and nutrition security, such as global financial and economic crisis, volatility in commodity prices, conflicts, but also environmental degradation, desertification, and the impact of global climate change. Therefore, the present part of the dissertation will seek to explore the relationship between the right to food and trade, climate change and food loss and waste.

2.3.1. Market rules and hunger

Since the Uruguay Round, many researchers have confronted with great scholarly curiosity the arduous relationship between human rights obligations and international trade law. This has particularly regarded the obligations stemming from the major human rights instruments protecting the right to food, especially the ICESCR, and the rules of the most relevant international trade organisation, the WTO. Although the impact between the two has been said to be unidirectional, meaning that it is just trade law impacting on the enjoyment of human rights⁴⁴², the fundamental incompatibilities occurring between these regimes are twofold. From the one side, trade agreements openly promote the liberalisation of international trade, free competition, and the reduction of trade barriers to spur economic development. On the other, the right to food is based on a human rights-based approach which values the individual to fulfil its fundamental needs respecting human dignity and

⁴⁴² FERGUSON (2018).

promotes local food systems and shorter food value-chains⁴⁴³. Grounding on this, researchers, Special Rapporteurs, and human rights advocates have questioned the occurrence of a potential conflict of norms between international trade rules on agriculture and human rights, impacting on the enjoyment of the right to food for rights' holders⁴⁴⁴. This statement holds true especially as long as States are required to comply with their obligations under one regime when stipulating an agreement with another⁴⁴⁵. This implies that ICESCR' State parties should respect its descending human rights obligations also when ratifying WTO's agreements, whose *raison d'être* is its reverse: the one trying to protect people's fundamental rights with dignity, the other advancing international trade relations, to remove all barriers in the market, possibly enhancing human development and well-being as a side-effect⁴⁴⁶. Notwithstanding the significance that trade instruments have on food and agricultural production, analysing WTO agreements – especially, the Agreement on Agriculture (“AOA”) – it can be noted that no mention to the right to food is ever made⁴⁴⁷. Conversely, the AoA mentions food security in its preamble, comprising it among the Non-Trade Concerns that its members should address. Yet, this small step – albeit formal – has not been complemented by effective actions, as many disproportions in terms of trade conditions can still be observed between developed and developing countries⁴⁴⁸, thus negatively impacting on the possibility of harmonisation between trade and right to food.

As argued by Prof. De Schutter in the report on his mission to the WTO, trade arrangements should be designed in order to contribute as well to the implementation of human rights, in particular of the right to food⁴⁴⁹. To fulfil this objective, according to De Schutter, the competition between developing countries' farmers against industrialised ones should be eased, and trade agreements should strengthen agriculture's special role, acknowledging that agricultural products are more than mere commodities, but fundamental means of livelihood⁴⁵⁰. Grounding on this elaboration, trade agreements would become more compatible with States obligations to fulfil the right to food.

On the contrary, however, other scholars argue that the alleged tension between trade and human rights derives from a “clash of underlying values”⁴⁵¹

⁴⁴³ Voluntary Guidelines of the Committee on World Food Security of 14-18 October 2019, CFS 2019/46/2, *Zero Draft of the Voluntary Guidelines on Food Systems and Nutrition*.

⁴⁴⁴ FERGUSON (2018).

⁴⁴⁵ DE SCHUTTER (2009).

⁴⁴⁶ FERGUSON (2018).

⁴⁴⁷ *Ibid.*

⁴⁴⁸ *Ibid.*

⁴⁴⁹ Report of the Human Rights Council of 4 February 2009 A/HRC/10/5/Add.2, *Report of the Special Rapporteur on the right to food, Olivier De Schutter – Mission to the World Trade Organization*.

⁴⁵⁰ DE SCHUTTER (2009).

⁴⁵¹ FERGUSON (2018).

and that, grounding on the *ethos* and scope of the two, actually there is no conflict of norms. This can be proved by the fact that the international trade system is based around the notion of comparative advantage and competition, whereby “unequal accretion of gains globally and negative outcomes for some individuals are implicitly accepted”⁴⁵². Yet, also people’s fundamental needs and rights are equally relevant in terms of macroeconomic growth⁴⁵³. Nevertheless, despite the reasoning based on the finding that there is no technical conflict is theoretically correct, it should not automatically imply that the rules in question are harmonious, or neither that international trade provisions are supportive of the right to food and States’ relative obligations. However, it is once again State’s lack of political will that cause trade rules neglect the right to food, especially given the weaker compliance pull of this right with respect to other international legal norms. Yet, the predictions that in the next future serious environmental challenges will threaten food production, likewise the expected increase in world population growth, will involve to even more efficiently organise and distribute food production⁴⁵⁴. Therefore, such challenges highlight that States parties are called to determine their stance during trade negotiations compliant with national programmes addressing the right to food, as well as the urge that right to food concerns are seriously regarded into multilateral trade agreements.

2.3.2. Food Loss and Waste and food insecurity

Among the current issues challenging the achievement of food security for all, it is necessary considering also the challenge posed by Food Loss and Waste (“FLW”), which directly impacts on right to food realisation having a severe environmental, economic, and social impact. Not only chronic hunger rising at the global level (821 million people in 2019⁴⁵⁵), and world populations is expected to increase to 9.7 billion by 2050 with an estimated relative rise of 60% in food demand⁴⁵⁶, but also an estimated to a third of all food produced for human consumption is lost or wasted along the food chain⁴⁵⁷. With an equivalent of 1.3 billion tonnes/year of food that is lost or wasted, this amount proves that FLW affects food security and the sustainability of food systems, which are already *broken*⁴⁵⁸ food systems, according to the FAO. Affecting the accessibility, availability and distribution of resources, the occurrence of FLW constitutes a failure of the food system, thus infringing the right to food. Conversely, Article 11 ICESCR requires States to ensure that food production, conservation and distribution methods are improved in order to ensure the most efficient development and use of

⁴⁵² *Ibid.*

⁴⁵³ *Ibid.*

⁴⁵⁴ UN (2019).

⁴⁵⁵ FAO, IFAD, UNICEF, WFP, WHO (2019)

⁴⁵⁶ FAO (2018a).

⁴⁵⁷ HLPE (2014).

⁴⁵⁸ *Ibid.*

natural resources⁴⁵⁹, implying that only a small amount of food is lost or wasted.

Therefore, it is commonly believed that the issue of FLW should be targeted as critical issues to be confronted with specific programmes both from a legal and a policy standpoint at all levels within the broader framework of right to food protection. This section will thus focus on some concrete examples of the viable solutions to FLW that have been provided at the international, regional and national level.

The theme of FLW has been addressed by some relevant initiatives presented at the international level. Firstly, it has been addressed within the context of Agenda 2030, through SDG2 on the challenge of ending hunger by 2030 through the promotion of a responsible use of resources, but additionally through SDG12.3, which thus reads:

“[b]y 2030, halve per capital global *food waste* at the retail and consumer levels and reduce *food losses* along production and supply chains, including post-harvest losses”⁴⁶⁰ [emphasis added].

Moreover, this theme has been discussed also within the context of the 21st session of the Conference of the Parties to the UN Framework Convention on Climate Change held in Paris in 2015⁴⁶¹, whereby FLW reduction was presented as a necessary requirement to tackle climate change. Additionally, also the FAO is working tirelessly for mainstreaming global awareness towards FLW, in order to encourage its member States for developing appropriate policies and sensitise world consumers to changing their shopping habits and consumption behaviours.

At the regional level, reference can be made to the Asia-Pacific Economic Cooperation (“APEC”) Action Plan for Reducing Food Loss and Waste⁴⁶² adopted in 2014, or to the Regional Alliance for Food Loss and Waste Reduction⁴⁶³ established by the Community of Latin American and Caribbean States (“CELAC”). Taking into account the recommendations issued by the SDGs and grounding on the Communication on Circular Economy made by the European Commission, in 2016 the EU has also launched its Platform on Food Losses and Waste to support its member countries to prevent food waste, manage food donations, and share best practices regarding monitoring and implementation mechanisms.

At national level, this issue has been properly addressed especially by two countries in particular. France has been the first country in the world to adopt a law concerning FLW prevention. Adopted in 2016 by the National

⁴⁵⁹ Resolution of the UN General Assembly of 16 December 1966, A/RES/2200(XXI)A, *International Covenant on Economic, Social and Cultural Rights*, Art. 11.2a.

⁴⁶⁰ Resolution of the UN General Assembly of 25 September 2015, A/RES/70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*, Target 12.3.

⁴⁶¹ Paris Agreement, Paris, 22 April 2016.

⁴⁶² Action Plan of APEC of 20-21 August 2014, *for Reducing Food Loss and Waste*.

⁴⁶³ FAO (2018a).

Assembly, the “Loi 2016-138”⁴⁶⁴ has introduced the duty for supermarkets to donate unsold food to charities and food banks or for feeding animals, instead of throwing it away or destroying it to reduce FLW amounts⁴⁶⁵. Following the example of France, Italy has been the second country to endorse a law specifically challenging food waste. Approved in 2016, the so-called “Legge Gadda”⁴⁶⁶ has the merit of having eliminated the bureaucratic obstacles halting food donations, introducing new measures aimed at encouraging the donation of unsold food and favouring the development of a particular sensitivity to the theme⁴⁶⁷. The anti-waste law has favoured the recovery of unsold food and allowed to improve the quality of the food donated to the neediest people of the country through a series of incentives, such as the reduction of the waste tax. The *Legge Gadda* also strengthened the role of education which, through food education projects or communication campaigns, has made the consumer more responsible and involved in the process of combating FLW.

The examples provided above illustrate that an awareness towards FLW is spreading globally, and yet further improvements can be made grounding on a right to food perspective.

2.3.3. *Feeding the world in times of climate change*

It is impossible not to mention climate change when listing the questions directly challenging the achievement of the right to food. Yet, food and agricultural production are both a driver of climate change and an impacted sector. Agriculture is indeed responsible for nearly 35% of greenhouse gas emissions globally⁴⁶⁸. Yet, with increasing temperatures, soil erosion, growing sea levels, extreme natural events, climate change is harming food security in many ways, threatening also the content of the right to food and communities’ traditions.

The growing consensus that climate change exacerbates hunger has led to greater efforts towards finding new ways to feed the world. According to prof. Anne Saab, the approach that has prevailed over the issue of feeding the world in times of climate change has been influenced by neoliberal principles, in line with the dominant contemporary global food regime. At the same time, in opposition to it, a current driven mainly by food sovereignty movements has developed aiming at countering neoliberal solutions to hunger. Indirectly reflecting the wider contemporary debate on how to govern the global food system, thus presenting a different understanding of hunger, and proposing contradictory solutions to feed the world. In particular, these two narratives

⁴⁶⁴ Loi du 11 février 2016, No. 138/2016, *Lutte contre le gaspillage alimentaire*.

⁴⁶⁵ FERRANDO, MANSUY (2018).

⁴⁶⁶ Legge del 19 agosto 2016, No. 166/2016, *Disposizioni concernenti la donazione e la distribuzione di prodotti alimentari e farmaceutici a fini di solidarietà sociale e per la limitazione degli sprechi*.

⁴⁶⁷ FERRANDO, MANSUY (2018).

⁴⁶⁸ FAO, IFAD, UNICEF, WFP, WHO (2019)

presented opposite perspectives especially as for the use of climate-ready seeds⁴⁶⁹.

From the one side, the neoliberal narrative has advised to increase food production through agricultural biotechnologies with private sector seed companies taking on a leading role⁴⁷⁰. This has become particularly evident as the number of patent applications for allegedly “climate-resilient” crops have considerably grown, and also as the vast majority of these patent applications are filed by a handful of large private seed companies⁴⁷¹. By contrast, on the other hand, the narrative promoted by the food sovereignty movement has promoted greater access to and distribution of available food and, above all, is determined to contest the technological solutions backed by the neoliberal narrative. To further express its commitment to advocating for an approach respectful of the right to food, ... have started protests against large seeds companies, such as Monsanto, under the fierce claim for “No seed patents!”⁴⁷².

Yet, despite these opposite standpoints, scholars have agreed upon the fact that climate change is a complementary problem to food insecurity⁴⁷³. Therefore, it is global leaders and international organisations’ responsibility to arrange effective methods that protect the environment and its inhabitants, also within a right to food perspective. In this sense, since 2014 the FAO has been promoting an integrated approach based on *agroecology* as the most sustainable solution to face the interconnected challenges of zero hunger and climate change⁴⁷⁴. Although not a new concept, agroecology is an approach aimed at tackling climate change and the challenges faced by food systems through the dissemination and co-creation of knowledge⁴⁷⁵. With family farmers, including smallholder farmers, indigenous peoples, fisher folks, mountain farmers and pastoralists at its heart, agroecology seeks to transform food and agriculture systems, thus incorporating the transformative approach required by Agenda 2030⁴⁷⁶. Based on the widespread consensus among a wide range of actors supporting it as a key solution to achieving a sustainable and hunger-free world, the FAO has committed itself to adding strength to agroecology⁴⁷⁷. Opening the Regional Symposium on Agroecology for Europe and Central Asia held in Budapest in 2016, the FAO former DG Graziano Da Silva has expressed his full support forward this approach, stating: “The future of agriculture is not input-intensive but knowledge-intensive. We need the integrated approach that agroecology can offer”⁴⁷⁸.

⁴⁶⁹ SAAB (2018: 288-301).

⁴⁷⁰ *Ibid.*

⁴⁷¹ *Ibid.*

⁴⁷² *Ibid.*

⁴⁷³ FAO (2018b).

⁴⁷⁴ FAO (2018c).

⁴⁷⁵ *Ibid.*

⁴⁷⁶ *Ibid.*

⁴⁷⁷ *Ibid.*

⁴⁷⁸ Declaration of FAO Director-General José Graziano da Silva, Budapest, 24 November 2016.

Responding to many of the SDGs targets⁴⁷⁹, this multi-sectoral approach is thus contributing to the achievement of the Paris Climate Agreement⁴⁸⁰, the Convention on Biological Diversity⁴⁸¹, and the United Nations Convention to Combat Desertification⁴⁸².

Finally, having taken into consideration the challenges that threaten the realisation of the human right to food, it seems now appropriate to bring the discussion to assess how this right has been enforced judicially examining some concrete exemplary cases pertaining to the legal category of all relevant dimensions.

⁴⁷⁹ FAO (2018c).

⁴⁸⁰ Paris Agreement, Paris, 22 April 2016.

⁴⁸¹ Convention on Biological Diversity, Rio de Janeiro, 5 June 1992.

⁴⁸² United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Paris, 14 October 1994.

Chapter Three

Legal adjudication of the Right to Food in practice

3.1. A premise on the justiciability of Economic, Social and Cultural Rights

Ratifying the international treaties recognising the right to food, and/or including this right into domestic constitutions or adopted relative legislation, States are compelled to respecting the corresponding obligations deriving from the recognition of the right to food. The obligation to respect, protect and fulfil the right to food, as enshrined in General Comment No. 12⁴⁸³, should bind States to respect it and to be held accountable in case these obligations are not encountered. Recognising the justiciability of the right to food is the major chance for ensuring States' accountability towards this right. With regards to the right to food, justiciability has been defined by the FAO as:

“The possibility of a human right, recognized in general and abstract terms, to be invoked before a judicial or quasi-judicial body that can: first, determine, in a particular concrete case presented before it, if the human right has, or has not, been violated; and second, decide on the appropriate measures to be taken in the case of violation”⁴⁸⁴.

As highlighted by this definition, justiciability is realised through legal adjudication, that is the possibility of invoking this right before courts which are entitled to define its content and the relative measures to remedy violations in concrete litigation, acknowledging the right to food as a *justiciable right*⁴⁸⁵. Three are the preconditions for ensuring the justiciability of economic, social and cultural rights in general, and of the right to food in particular: the existence for rights holders of an appropriate legal basis ensuring the articulation of the claim within the legal system; the responsiveness of judges to finding the adequate means to address the right's violations; and, finally, their capability of devising the most effective remedies for the alleged violation⁴⁸⁶.

Although strongly contested, the justiciability of economic, social and cultural rights has been officialised in many relevant documents, primarily in the UDHR, which postulates that:

“Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted to him by the constitution or law”⁴⁸⁷.

⁴⁸³General Comment No. 12 of the Committee on Economic, Social and Cultural Rights of 12 May 1999, E/C.12/1999/5, *The Right to Adequate Food (Art. 11.)*.

⁴⁸⁴VIDAR, KIM, CRUZ (2014).

⁴⁸⁵COURTIS (2008).

⁴⁸⁶BIGLINO (2014: 22).

⁴⁸⁷Resolution of the United Nations General Assembly of 10 December 1948, A/RES/217 (III), *on the Universal Declaration of Human Rights*, Art. 8.

With particular regard to the right to food, the basis for its justiciability has been enshrined in General Comment No. 12:

“Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies including those provided by quasi-judicial mechanisms”⁴⁸⁸.

Nonetheless, many scholars have reiterated the difficulty of litigating economic, social and cultural rights, including the right to food, as a consequence of the enduring debate concerning the justiciability of these rights. Following the adoption in 1966 of the ICCPR and the ICESCR, which led to the relative distinction between civil and political rights, and economic, social and cultural rights (“ESC”), an ideological divide has developed, introducing a different understanding of the abovementioned rights. Deemed too imprecise to be adjudicated, too demanding in terms of resources and of “progressive realisation”, ESC rights have been regarded with caution by judges. On the one hand, they feared that providing legal adjudication to these rights would involve invading policy areas generally reserved to designated subdivisions of the government. On the other, controversies could also rise as regards the capacity of courts to pronounce adequate judgements to remedy such violations, and that the remedies would actually be enforced and respected. The latter concern derives from the lack of political will generally affecting governments when dealing with rights entailing positive obligations. As a consequence of the dispute presented above, many detractors have targeted the right to food as being a non-justiciable right. And yet, the institutional constraints claimed on the justiciability of ESC rights are to be reconsidered in light of two factors: firstly, civil and political rights also require the implementation of precise measures and policies, and are as vague as ESC rights; secondly, courts *can*, and actually *do* adjudicate socio-economic rights. Indeed, although limited in quantity, over the last years, a noticeable number of case-law concerning the right to food has been judged by legal courts and enforced with concrete measures.

This considered, the dispute around economic, social and cultural rights’ justiciability remains one of the thorniest legal issues in recent years. It should be noted, in particular, that the legal applicability of this category of rights does not depend merely on the availability of resources, as it raises a more demanding issue related to the lack of States’ political will. Governments inaction, however, cannot be exceeded unless international guarantee mechanisms for evaluating compliance with human rights standards are established. In this regard, the degree of incisiveness of such guarantee mechanisms, aimed at ensuring that States respect and fulfil the obligations they contracted, depends on the category of the claimed rights: whilst the application of civil and political rights requires only negative obligations to

⁴⁸⁸ General Comment No. 12 of the Committee on Economic, Social and Cultural Rights of 12 May 1999, E/C.12/1999/5, *The Right to Adequate Food (Art. 11.)*, para. 32.

the contracting States, ESC rights, by contrast, inevitably require a positive behaviour. On account of this, as of today, second generations rights – such as the right to food – have merely required the submission of periodic reports to assess the implementation of the contracted obligations and eventually the adoption of derogatory measures as sole guarantee mechanisms.

Recently, however, it seems that also ESC rights are beginning to develop their justiciability, both direct and indirect⁴⁸⁹. The entry into force in 2013 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights⁴⁹⁰ is a clear example of this. The latter, for instance, has been recognised by the Italian government through an ad-hoc law⁴⁹¹ which explicitly ratifies and makes this agreement executive within the Italian jurisdiction. As already noted, the OP-ICESCR is a relevant instrument, as it enables individuals or groups of individuals to present a communication against the State for violation of the economic, social and cultural rights recognised in the ICESCR. Its sole limit, however, is not to provide any sanctioning system against the defaulting State, even if the violation of the individual's right is ascertained⁴⁹². In this regard, it should be sorted out whether it is possible to establish a specific role for national and international judges in the protection and promotion of the right to food; and, in case the answer is affirmative, to what extent can the judiciary authority intervene to remedy the alleged violations in terms of legislation. The relevance of courts' as regards the consolidation of ESC rights' justiciability has been further confirmed, as explained below:

“[National judges] constitute the most effective way to implement human rights since they are composed of independent judges than executives; operate according to a process perceived as legitimate by citizens and victims of human rights violations; due to their familiarity with the context in which they operate, they are able to offer those jurisprudential solutions that are politically more acceptable and legally more effective than the intervention of internationally renowned courts”⁴⁹³.

Therefore, instead of questioning *whether* ESC rights can be adjudicated, critics should reverse the query to *how* these rights should be adjudicated⁴⁹⁴. Indeed, recurring to legal instruments represents the possibility for judges to develop new avenues and creative forms of adjudication in order to execute the right to food. That is clearly reflected in a relevant study published by the International Development Law Organization (“IDLO”), which has revealed more than 60 cases implicating States' inability to guarantee: the right to be

⁴⁸⁹ COURTIS (2007); ALICINO (2016).

⁴⁹⁰ Resolution of the UN General Assembly of 10 December 2008, A/RES/63/117, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*.

⁴⁹¹ Legge del 3 ottobre 2014, No. 152/2014, *Ratifica ed esecuzione del Protocollo facoltativo relativo al Patto internazionale sui diritti economici, sociali e culturali*.

⁴⁹² MORINI (2017: 35-47).

⁴⁹³ RINELLA, OKORONKO (2015).

⁴⁹⁴ BIGLINO (2014: 23).

free from hunger, the means to produce or procure food, and the protection of vulnerable, marginalised and disadvantaged peoples⁴⁹⁵.

Once the legal basis of the right to food is well defined, individuals are to be ensured the procedural instruments to petition courts and achieve adequate compensation for any violation of the right, according to the *right to an effective remedy*, as referred to beforehand mentioning art. 8 UDHR. This requires the identification of the feasible legal venues for claiming the right before a court in line with the legal system and constitutional tradition of the given country which might imply both judicial and non-judicial avenues available at the national, regional or international level, including human rights institutions. Regardless of the authority and relevance of the chosen legal avenue for adjudicating a right to food claim, all instruments are influential as to shape the work of international organisations, including especially UN Agencies and NGOs, in their advocacy efforts, as well as to influence international, regional and national courts' positioning towards adjudicating right to food claims.

On account of this, the following section will examine some selected cases which have been claimed before courts in Asia, Africa, Latin America, and Europe concerning the right to food. These cases have been chosen expressly based on prominent issues involved in them, such as the justiciability of the fundamental contents of the right to food and the of the corresponding obligations of States presented hereabove.

3.2. *From justiciability to justice...*

To provide an a detailed perspective on how right to food litigations have been adjudicated in concrete case-law raised before courts, this section will analyse the relevant jurisprudence. The cases analysed below regard especially those events where national institutions lacked to enact the adequate measures to ensure citizens' minimum levels of subsistence, that is to ensure the fundamental right to be free from hunger. Ensuring freedom from hunger is the minimum level obligation that States should respect to realise the right to food. Yet, as these examples will demonstrate, not few have been the situations in which courts have been called to settle failures to ensure such "minimum level obligations" related to the right to food. Underlying the critical role that the effective judicialisation of the right to food would imply, the following section will examine the jurisprudence stemming from cases adjudicated before supranational courts – that is, Nicaragua, Ecuador and Nigeria – and before domestic ones – including, India, Nepal, Brazil, Kenya and South Africa. These cases have been selected on the basis of their relevance with respect to the core contents of the right to food and the corresponding States' obligations, as well as for having provided innovative entry-points and interpretation towards its legal actualisation.

⁴⁹⁵ *Ibid.*

3.2.1. Right to Food claims before supranational courts

It is possible to recognise cases where the right to food has been claimed in some litigations brought in front of supranational courts. However, it should be pointed out that, in the majority of cases, the right to food was not the main thematic focus, but yet marginal or addition to violations of other rights.

This was the case in the so-called *SERAC v. Nigeria*⁴⁹⁶ litigation, where the claimed rights' violations were many, including the right to health, the right to dispose of wealth and natural resources, the right to a clean environment and family rights, and also the right to food, due to its disregard towards the territory of an indigenous population, the Ogoni. This interesting case has been claimed before the African Commission by some NGOs, that is Social and Economic Rights Action Center ("SERAC") and the Center for Economic and Social Rights, which accused the military government of Nigeria to have jeopardised the right to food of the Ogoni indigenous community facilitating the operations of some oil corporations in the Ogoniland. The petitioners thus argued that:

"The Nigerian government destroyed and threatened Ogoni food sources through a variety of means. The government participated in irresponsible oil development that poisoned much of the soil and water upon which Ogoni farming and fishing depended. In their raids on villages, Nigerian security forces have destroyed crops and killed farm animals. The security forces have created a state of terror and insecurity that made it impossible for many Ogoni villagers to return to their fields and animals. The destruction of farmlands, rivers, crops, and animals created malnutrition and starvation among certain Ogoni communities"⁴⁹⁷.

As a consequence of its irresponsible behaviour towards the oil companies' actions in the Ogoni territory, the government was also held responsible for the contamination of air, water, and soil of this indigenous community. The African Commission declared that Nigeria had also violated the right to food of the Ogoni, as it lacked to adequately protect their human rights, including that their food sources be not destroyed. Therefore, the Commission ultimately declared that not only the right to life, health and to property of the Ogoni's had been violated by the government of Nigeria, but also the right to food. The latter – as reminded by the Commission – is indirectly protected under the African Charter by art. 4 on the right to life, art. 16 on the right to health, and art. 22 on the right to economic, social and cultural development. In light of this, the African Commission thus motivated its conclusion:

"The right to food requires that the Nigerian Government should not destroy or contaminate food sources. The government has destroyed food sources through its security forces and State Oil Company and through terror, has created significant obstacles to Ogoni communities trying to feed themselves. The

⁴⁹⁶ Judgement of the African Commission on Human and People's Rights of 27 May 2002, Communication No. 155/96, *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria*.

⁴⁹⁷ *Ibid.*, para. 9.

Nigerian Government, hence, is in violation of the right to food of the Ogonis” [emphasis added]⁴⁹⁸.

In order to compensate the damage, the Commission ultimately required Nigeria to compensate the population, to restore contaminated or damaged soils and rivers⁴⁹⁹, but also to inform the community about the effects of the oil operations on health and the environment. Furthermore, looking to the future, the government has been urged to conduct assessments about the social and ecological impact that potential future oil projects may cause on the native population⁵⁰⁰. The importance of this case lies in having contributed significantly to recognising human rights interrelatedness, specifically regarding the fact that oil extraction and processing have serious consequences on a number of human rights (life, housing, health, food, water, *etc.*), which consequently resulted in far-reaching damages to the Ogoni indigenous people’s lands and livelihoods.

Another case of major significance was *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*⁵⁰¹, which was brought before the Inter-American Court of Human Rights in 2001 by a leader of this indigenous community, claiming that the government of Nicaragua had failed its duty to adequately demarcate and protect the Community’s ancestral territory and natural resources. The government, indeed, had an imminent concession of approximately 62,000 hectares of tropical forest – that is, the *Mayagna Awas* territory – to a public company for the development of some commercial activities. On this basis, the case was brought before the Inter-American Commission of Human Rights, which further submitted the case to the Court which accepted the claim, acknowledging the state of Nicaragua guilty for not having protected the right to judicial protection and property of this people. Although this litigation primarily pertains indigenous peoples’ rights, it should be pointed out that these include also land rights and access to natural resources, which also include food. Related to this is the fact that this case represented the first instance where the IACHR Court issued a judgement in favour of indigenous’ peoples’ right to ancestral land. This judgment is an essential step and a crucial precedent for safeguarding indigenous rights in Latin America, given the historical and ongoing subjugation of indigenous peoples in the region.

Similarly, the case *Kichwa Indigenous People of Sarayaku v. Ecuador*⁵⁰² was filed in 2012 before the Inter-American Court of Human Rights, because an Argentinean company was authorised by Ecuador to commence exploration activities within the Sarayaku’s territory without previously

⁴⁹⁸ *Ibid.*, para. 65-66.

⁴⁹⁹ *Ibid.*, para. 70-72.

⁵⁰⁰ *Ibid.*, para. 71.

⁵⁰¹ Judgement of the Inter-American Court of Human Rights of 31 August 2001, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*.

⁵⁰² Judgement of the Inter-American Court of Human Rights of 27 June 2012, *Kichwa Indigenous People of Sarayaku v. Ecuador*.

sorting out the consensus of the concerned community⁵⁰³. Provided that the exploitation was planned to take place in areas used by the community for hunting, fishing and food gathering⁵⁰⁴, the Interamerican court was referred to that, *inter alia*, the oil exploitation would have seriously harmed the food security of the members of the community. Finally, the Court concluded that this concession hampered many rights of the indigenous community, including their rights to communal property and to consultation, as well as the right to life, to cultural identity and personal integrity⁵⁰⁵, and marginally also the right to food. As specified above, these cases are not strictly focused on violations of the right to food, and yet are a primary step towards the justiciability of ESC rights in general. Conversely, the ensuing paragraph will concentrate on domestic litigations whose judgements are more pertinent to the right to food.

3.2.2. *The Right to Food before national courts*

3.2.2.1. *The “Right to Food case” in India: PUCL v. Union of India*

Within the panorama of countries taking effective action towards the execution of the right to food, India has displayed with no doubt the most far reaching and exemplary judicial response to food security issues under its legal framework and constitution. As the country was facing repeated famines-related deaths occurring in areas affected by chronic drought, in 2001 the Indian Constitutional Court was called upon to judging the public interest petition *People’s Union for Civil Liberties v. Union of India*⁵⁰⁶. Resulting as the most cited and valid litigation regarding the right to food, not surprisingly this case became known as the “Right to Food Case”⁵⁰⁷. Hereafter, the investigation will focus on an analysis of such case, previously providing a brief overview of the background in which the litigation occurred.

Around 2001, some regions of the country – including the Rajasthan state – were suffering for the third year in a row from severe droughts and subsequent famines, damaging the affected communities which the State failed to support with minimum food distribution. Confronted with this unbearable and protracted situation, the Rajasthan group of the esteemed human rights organisation People Union for Civil Liberties (“PUCL”) filed a public interest petition before the Indian Supreme Court. With the Writ Petition (Civil) No. 196, the petitioners alleged that the State had not provided adequate drought and famine relief to the affected communities subject to drought and severe hunger conditions. By not adequately responding to the drought and starvation situation, PUCL representatives argued that both the central government and the state of Rajasthan had breached the right to food

⁵⁰³ *Ibid.*

⁵⁰⁴ *Ibid.*, para. 174.

⁵⁰⁵ GOLAY, KARIMOVA, TRUSCAN (2013).

⁵⁰⁶ Judgement of the Supreme Court of India of 30 November 2001, Writ Petition (Civil) No.196, *People’s Union for Civil Liberties v. Union of India & Others*.

⁵⁰⁷ BIRCHFIELD, CORSI (2010); DUROJAYE, CHILEMBA (2017: 267); TURA (2018: 65).

and the corresponding duty to provide the affected community with food relief distribution schemes whose release is required during famines. In particular, while people were dying from hunger and starvation, it was discovered that huge tonnes of grain stocks were lying unused inside governments' warehouses. Not only such a surplus was not being delivered to all needy families, but worse it was left deteriorating because of scarce storage facilities, thus worsening the government's inaction and negligence towards the food crisis⁵⁰⁸. Alleging the government of inadequate drought relief and grounding on the criticality of food for survival, PUCL claimants demanded that the right to food should have been implicitly recognised in the Indian Constitution as a direct implication of the right to life, according to art. 21, and also that food distribution programmes be enforced⁵⁰⁹. Therefore, the Supreme Court finally validated that the government had failed its mandate to provide relief to its population during famine times by not distributing these abundant food stocks among its poor communities. On account of this, the Court found that at the roots of the famine was not lack of resources, but yet "ineptitudes and failure to apply legislation and policies in force"⁵¹⁰. In order to provide adequate remedies, the Court has issued several *interim* orders, requiring the government to execute in actual terms the existing laws and programmes, as "what is important is that the food must reach the hungry"⁵¹¹. To ensure that this principle be respected, the judges have complemented the interim orders with precise measures to guarantee the realisation of the vulnerable peoples' right to food protection, which have been welcomed as real "tool for action"⁵¹². These actions included that Indian regions ensured the Mid-day Meal Scheme for all children attending public schools of government-assisted school programs, the implementation of the Employment Assurance Scheme, the Integrated Child Development Scheme, the National Benefit Maternity Scheme for pregnant women, the National Old Age Pension Scheme for people over 65 years, the National Family Benefit Scheme, and also that no food surplus was wasted anymore⁵¹³. Through these provisions, other questions complementary to food issues have indirectly been addressed, such as urban poverty, workers' and maternity rights, thus broadening the litigation's scope and sphere of action.

Grounding on such interim orders, the PUCL judgement has contributed to the finalisation of specific laws addressing hunger and, in particular, to the adoption of the National Food Security Act ("NFSA") in 2013. The latter not

⁵⁰⁸ Judgement of the Supreme Court of India of 30 November 2001, Writ Petition (Civil) No.196, *People's Union for Civil Liberties v. Union of India & Others*, para. 11.

⁵⁰⁹ *Ibid.*, para. 49-50.

⁵¹⁰ GAURI, BRINKS (2010).

⁵¹¹ Judgement of the Supreme Court of India of 30 November 2001, Writ Petition (Civil) No.196, *People's Union for Civil Liberties v. Union of India & Others*.

⁵¹² *Ibid.*

⁵¹³ *Ibid.*; TURA (2018).

only incorporated many provisions included in the abovementioned interim orders⁵¹⁴, but also contributed to creating a clear legal framework *vis-à-vis* the distribution of food assistance, as well as providing guidance on how to issue complaints in case of food shortages⁵¹⁵. This case has been given special attention as it finally led to confirming that the right to life includes the right to food for enabling all citizens not only to conduct a dignified life⁵¹⁶, but especially to allow the vulnerable ones to switch from simple beneficiaries to “stakeholders of justiciable rights”⁵¹⁷. Moreover, with this petition it has also been possible to make the state more accountable and transparent, as it enabled people to claim their rights more easily⁵¹⁸: this has confirmed that the judicialisation of the right to food has positively contributed to realising food rights in actual terms.

Before moving on to the following cases, it is worth noticing that, within Asia, also Nepal has moved forward for right to food judicialisation. First and foremost, the Constitution of Nepal does recognise the right to food, explicitly mentioning it at art. 36:

“(1) Every citizen shall have the right relating to food.

(2) Every citizen shall have the right to be safe from the state of being in danger of life from the scarcity of food.

(3) Every citizen shall have the right to food sovereignty in accordance with law”⁵¹⁹.

In this country, the right to food has been claimed twice before the Supreme Court. The first instance was presented with the *Kumar Basnet v. Prime Minister & Others*⁵²⁰ case, where the claimants filed a writ to ask the Supreme Court to call upon the Nepalese government to assist and distribute food to those citizens living under hunger conditions in several areas of the country. Yet, the court did not finally issue the order requested by the petitioners, despite clearly stating that the protection of life was a government’s responsibility⁵²¹. Conversely, the second litigation involving right to food violations occurred in 2008 through the case *Prakash Mani Sharma and others on behalf of Forum for Protection of Public Interest (Pro Public) v. Government of Nepal*⁵²². In this petition, the claimants argued before the

⁵¹⁴ *Ibid.*

⁵¹⁵ *Ibid.*

⁵¹⁶ General Comment No. 9 of the Committee on Economic, Social and Cultural Rights of 4 February 2008, E/C.12/GC/19, *The Right to Social Security (Art. 9)*.

⁵¹⁷ HUMAN RIGHTS LAW NETWORK (2007).

⁵¹⁸ DUROJAYE, CHILEMBA (2017: 270).

⁵¹⁹ Constitution of Nepal of 20 September 2015, Art. 36.

⁵²⁰ Judgement of the Supreme Court of Nepal of 23 February 2011, *Madhav Kumar Basnet v. Government of Nepal*.

⁵²¹ LANGFORD, BHATTARAI (2011); BIGLINO (2014).

⁵²² Judgement of the Supreme Court of Nepal of 4 June 2008, Writ No. 064, *Prakash Mani Sharma and others on behalf of Forum for Protection of Public Interest (Pro Public) v. Government of Nepal*.

Supreme Court that food scarcities and inefficient distribution of food, caused the dissemination of chronic hunger and disease in some Nepalese regions. In light of this, they demanded that adequate legislations and legal framework be adopted, as well as that adequate food distribution schemes and other related tools be implemented⁵²³. With its final judgement, the Supreme Court ultimately required the government to immediately distribute food in the affected regions, and most importantly it declared the right to food as being a fundamental human right whose fulfilment is necessary for ensuring everyone a dignified life, and that the State has a duty to ensure its realisation⁵²⁴.

3.2.2.2. Cases from Latin America and Africa

Other exemplary case-law addressing the judicialisation of the right to food have occurred in Latin America, especially in Brazil, and in Africa, including in Nigeria, Kenya, and South Africa. Therefore, this section will provide an in-depth analysis of how judges have responded to these.

As regards *Brazil*, a necessary premise is required as over the years this country has developed one of the most far-reaching legislation complying to the right to food. This process has started with the “Fome Zero” [Zero Hunger] governmental programme launched in 2003 by the former president Lula da Silva to combat hunger and poverty in his country and continued with the adoption of the “Brazil’s Lei Orgânica de Segurança Alimentar e Nutricional” [National Food and Nutrition Security Framework Law]. This was then followed by the establishment of a National Rapporteur on the Right to Food, Water, and Rural Land, mandated to monitor, promote and protect this right. Finally, such a process has been finalised by the amendment of the Brazilian constitution in 2010 with the integration of a constitutional provision enshrining the *right to food for children and teenagers* as an explicitly protected right according to art. 227, which thus read:

“It is the duty of the family, of society, and of the State to ensure children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, in addition to safeguarding them against all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression”⁵²⁵.

Moreover, compliance with such judicial apparatus is supervised by two specialised bodies: the Standing Commission on the Human Right to Adequate Food, and the Special Commission to Monitor Violations of the Human Right to Adequate Food⁵²⁶. In light of this, indeed, after his mission to Brazil, the Special Rapporteur on the Right to Food has pointed at this country as an example for effectiveness of right to food implementation.

⁵²³ BIGLINO (2014).

⁵²⁴ ADHIKARI (2011).

⁵²⁵ BULTRINI, VIDAR, KNUTH (2009).

⁵²⁶ TURA (2018).

Despite setting up such an all-encompassing framework, Brazilian judges have been required as well to adjudicate cases regarding the failure of the State to ensure the right to food. A significant litigation has been the one filed against the Municipality of Maceió in 2007 involving the violation of the rights and the deteriorating living conditions of nearly 1.500 families living in the Orla Lagunar favelas. Known as the *Maceió* case⁵²⁷, this litigation was issued before Brazil's domestic court, after that the National Rapporteur on the Right to Food, Water, and Rural Land noticed that the families residing in such a favelas in the city of Maceió were living in "extreme poverty, used mud and plastic sheeting for housing, lacked basic infrastructure and adequate sanitation, and children suffered from severe malnutrition"⁵²⁸, whose only food source was garbage dump and small-scale fishing⁵²⁹. Failing to protect this vulnerable community, the national policies in place for hunger and poverty proved to be inadequate and insufficiently financed⁵³⁰. Grounding on this, some functionaries from the State Public Ministry filed this public interest litigation against the city of Maceió asking the Court that the fundamental rights to food, life and well-being of the communities living in that area be enacted. Delivering a considerably sharp judgment reinforced by both international and domestic provisions enshrining the right to food, the Court responded to this petition declaring the municipality responsible for having violated and jeopardised the human rights of the Orla Lagunar peoples and requiring the district to remedy the breach⁵³¹.

Inspiration on right to food judicialisation has been provided also by the Kenyan legal system, where this right has been addressed through the right to housing. The litigation that will be analysed below is *Ibrahim Sangor Osman v. Minister of State for Provincial Administration & Internal Security*⁵³², which was submitted before the Kenyan High Court by about a thousand citizens who had been forced out of their houses on public land⁵³³. Not only these people's houses were subsequently demolished, eventually destroying also the all the materials and family goods⁵³⁴, but they were not given an alternative lodging. After the eviction, the High Court acknowledged that the people moved to a situation "where there was no single basic necessity of life"⁵³⁵, as they were obliged to live and sleep in the open without proper accommodation, nutrition, water, sanitation and access to medical services. Grounding on this, the Court accepted the claim contended by the petitioners, and declared that the right to life and to food had been violated within the

⁵²⁷ Judgement of the Capital Court of Justice of 12 March 2007, Action No 4.830/07, *2a Vara da Infância e Juventude de Maceió*.

⁵²⁸ BIGLINO (2014).

⁵²⁹ DE SCHUTTER (2010a).

⁵³⁰ BIGLINO (2014).

⁵³¹ TURA (2018).

⁵³² Judgement of the High Court of Kenya of 16 November 2011, *Ibrahim Sangor Osman v. Minister of State for Provincial Administration & Internal Security*.

⁵³³ *Ibid.*, para. 12, 13; TURA (2018: 69).

⁵³⁴ *Ibid.*, para. 8.

⁵³⁵ *Ibid.*

denial of the right to adequate housing. It is noteworthy that the judges founded their decision on both the relative provisions stated in the Constitution of Kenya, the ICESCR and the African Charter, specifying that any international treaty ratified by Kenya is part of the national law⁵³⁶. By issuing a mandatory injunction, the government was ultimately ordered to give back the land from which the claimants were displaced and to rebuild their homes and/or provide alternative accommodations, as well as to avoid any similar behaviour in the future.

Finally, another case that is worth noticing has been claimed before the High Court of South Africa regarding the judicial safeguard of fishing as a source of livelihood. That is the *Kenneth George and Others v. Minister of Environmental Affairs & Tourism (South Africa)*⁵³⁷ case on the protection of fishing as a basis for nourishment of the community. This case was submitted by a handful of people and organisations representing around 5.000 fishermen⁵³⁸, who contested a legislation on marine resources (*i.e.* the Marine Living Resources Act). The latter was adopted by the province of Cape of Good Hope, and it introduced a quota system for fishing in a given year dividing it into commercial licenses, thus limiting and burdening the community's access to the sea and its products⁵³⁹. The litigation was supported by some NGOs which, in 2004, launched a class action against the South African Minister of Environmental Affairs and Tourism in order to bring the claim before the High Court alleging the violation of the right to food. Following lengthy negotiations, the Court acknowledged that the abovementioned law limited the people's right to survival and deteriorated their nutritional status by restricting the access to marine resources, which conversely constituted the fishermen's communities' primary means of subsistence and nutrition⁵⁴⁰. Therefore, the Court ultimately repealed the law, thus enabling the fishing communities to fish and sell their products, provided that also the government would have adopted a new framework respectful of the fishermen's communities' income necessities:

“Such a framework should take into account international and national legal obligations and policy directives to accommodate the socio-economic rights of these fishers and to ensure equitable access to marine resources for those fishers”⁵⁴¹.

In light of this, this ruling has acquired particular relevance as it represented the first judicial pronouncement on the right to food in South Africa. This is also because South Africa is part to the various international and regional

⁵³⁶ TURA (2018).

⁵³⁷ Judgement of the High Court of South Africa of 2 May 2007, *Kenneth George and Others v. Minister of Environmental Affairs & Tourism (South Africa)*.

⁵³⁸ DUROJAYE, CHILEMBA (2017: 272).

⁵³⁹ GOLAY (2009).

⁵⁴⁰ BIGLINO (2014); TURA (2018).

⁵⁴¹ Judgement of the High Court of South Africa of 2 May 2007, *Kenneth George and Others v. Minister of Environmental Affairs & Tourism (South Africa)*, para. 8.

agreements recognising the right to food, but also as its Constitution explicitly includes the right to food at art. 27, 28 referring to the children, and art. 35 as regards arrested, detained and accused persons. In addition to this, further efforts towards food rights have been made by the South African government with the issuance of related laws and domestic policies, such as the Social Security programme, the Household Food Production programme (“One Home, One Garden”), the Integrated Food Security Strategy, National Policy on Food and Nutrition Security, and the National School Nutrition Programme and Food for All Programme⁵⁴².

3.3. Which remedies are applied to right to food violations?

In order to make effective the judicial enforcement of the right to food, it is crucial that meaningful remedies are applied, so that the people who have been subject to food violations, are enabled to receive adequate reparation. Remedies are often mentioned in domestic constitutions, and most notably has been provided for also in General Comment No. 12 on the right to food, which thus reads:

“32. Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of *restitution, compensation, satisfaction or guarantees of non-repetition*. National Ombudsmen and human rights commissions should address violations of the right to food.

33. The incorporation in the domestic legal order of international instruments recognizing the right to food, or recognition of their applicability, can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. Courts would then be empowered to adjudicate violations of the core content of the right to food by direct reference to obligations under the Covenant.

34. Judges and other members of the legal profession are invited to pay greater attention to violations of the right to food in the exercise of their functions.

35. States parties should respect and protect the work of human rights advocates and other members of civil society who assist vulnerable groups in the realization of their right to adequate food” [emphasis added]⁵⁴³.

In this regard, also the FAO Guide on Legislating for the Right to Food has provided an explanatory list of the alleged remedies that can be enacted in front of right to food violations:

“*Restitution of the right: e.g.* implementing an entitlement, restoring access to means of subsistence, removing unsafe food from the market).

⁵⁴² DUROJAYE, CHILEMBA (2017: 272).

⁵⁴³ General Comment No. 12 of the Committee on Economic, Social and Cultural Rights of 12 May 1999, E/C.12/1999/5, *The Right to Adequate Food (Art. 11.)*, para. 36.

Cessation of the violation or guarantees of non-repetition: *e.g.* stopping logging activity, barring mining in a certain area to prevent further interference with the right to food;

Rehabilitation: *e.g.* carrying out a thorough and effective investigation for establishing liability of state officials or bodies as well as of private actors for acts or omissions that have led to a grave violation of the right to food such as starvation deaths or a death caused by unsafe food; rehabilitation is generally combined with compensation for the damage suffered from the violation of the right;

Compensation, in kind or in cash, for the (material and moral) damage caused by the violation of the right to food: *e.g.* offering alternative land suitable for agriculture in case of an eviction necessary for using the relevant land for another compelling public interest or compensating a loss of harvest due to an unregulated industrial activity; and

Ordering of *systemic remedies* that have as their orientation the mitigation or amelioration of patterns of entrenched rights, violations or the need to reorganize government programs, *etc.*: *e.g.* reforming legislation detrimental to right to food such as laws pertaining to oil deregulation or mining, and setting programs for gender equality in order to prospectively redress and prevent future violations”⁵⁴⁴.

It should be noted, however, that the availability of judicial remedies might be confronted to the country’s legal, political, and social system where the litigation is submitted. Related to this, the following section will provide some practical examples, taking inspiration from the cases-law presented above, in order to analyse how determined legal courts have responded to right to food litigations.

3.3.1. Remedies issued by domestic courts

As noted while introducing this paragraph dedicated to remedies, many constitutions include provisions on how to provide adequate reparation in case of a fundamental’s right breach. With reference to the litigations discussed previously, this is the case, for instance, of the Constitution of India, which clarifies that:

“[The] Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and *certiorari* which may be appropriate for the enforcement of any of the rights conferred by this Part”⁵⁴⁵.

The Constitution of South Africa in another example thereof, as it enables the judiciary with sufficient power to decide, stating that: “when deciding a constitutional matter within its power, a court may make any order that is just and equitable”⁵⁴⁶. Whilst some constitutions offer guidance regarding the question of remedies, many are the cases where conventional measures are

⁵⁴⁴ BULTRINI, VIDAR, KNUTH (2009).

⁵⁴⁵ Constitution of the Republic of India of 1950, Art. 32.2.

⁵⁴⁶ Constitution of the Republic of South Africa of 1996, Section 172.1(b).

applied: that is, *compensation, restitution, declarations, and detailed orders*. Nonetheless, it might also occur that courts are required to ‘forge new tools’ and formulate innovative and creative remedies so as to efficiently achieve the enforcement of the claim.

Among the remedies delivered in the cases examined beforehand, there are some examples of detailed orders or *structural remedies*, that is a certain typology of reparations dispensed to confront the root causes of structural phenomena, especially when dealing with governmental inaction or resistance⁵⁴⁷. This category comprehends two alternatives through which tackle the matter in question: issuing *interim orders*, or *mandatory injunctions*.

The former, in particular, are issued even in case of a pending or appealed judgement, as the idea behind these orders is the need to take immediate action because of the urgent nature of the case. Interim orders have been issued, indeed, during the *PUCL v. Union of India* litigation, which is still an ongoing case, as no final judgement has been pronounced yet⁵⁴⁸. This case was characterised by the fact that the population of several regions of the country were suffering malnutrition and starvation, despite significant amount of food stocks were available, and yet not distributed. Therefore, such a situation required direct intervention with measures which could provide immediate relief to the vulnerable population. Upon this premise, the Supreme Court of India, indeed, delivered more than one hundred court orders characterised by an extensive and detailed scope⁵⁴⁹. These measures included, *inter alia*, the redefinition of constitutionally protected legislations and domestic policies concerning nutrition, as well as guidance on how to implement these schemes⁵⁵⁰, and also the distribution of mid-day meals for all children attending public schools of government-assisted school programs⁵⁵¹. Moreover, over the years, these orders have been complemented by other actions, that is:

- having doubled the distribution of both grain and financial support within the Food for Work programme;
- the obligation for ration shops to remain open and provide grain to all the families with an income below the poverty line, and for the government to offer a more concrete support to the latter
- and last but not least, the introduction of a ration card for free grain for the most vulnerable people in the country, *i.e.* elderly, widows, and disabled people⁵⁵².

⁵⁴⁷ BIGLINO (2014); TURA (2018).

⁵⁴⁸ DUROJAYE, CHILEMBA (2017).

⁵⁴⁹ BIGLINO (2014: 53).

⁵⁵⁰ HUMAN RIGHTS LAW NETWORK (2007).

⁵⁵¹ Judgement of the Supreme Court of India of 30 November 2001, Writ Petition (Civil) No.196, *People’s Union for Civil Liberties v. Union of India & Others*.

⁵⁵² DUROJAYE, CHILEMBA (2017).

It will be evident that these orders had a particular impact, not only for their practical meaning, but especially for having contributed significantly to defining and realising the right to food in India in actual terms⁵⁵³.

On the other hand, mandatory orders have been issued in the cases examined above before the Kenyan and the Brazilian courts. In the former, that is the *Ibrahim Sangor Osman* case, the State was required by the court to compensate the damage it provided, by returning the land back to the evicted families, rebuilding their houses or, eventually, offering them an alternative accommodation⁵⁵⁴. Moreover, these orders have been complemented by assigning damages to the claimants (compensation)⁵⁵⁵, but mostly by issuing a permanent injunction addressed to the State, expressly aimed at preventing it from committing similar actions in the future (guarantee of non-petition)⁵⁵⁶. Conversely, in the *Maceió* municipality case, not only the government was required to implement and extend welfare measures also to the affected community within 60 days, but it was also directly involved in finding adequate reparations to the breach inflicted to them. The court urged the municipality to submit proposals to adopt programmes and policies respectful of the Orla Lagunar peoples. Among others, these included especially measures designed to protect the children living in the favelas (shelter, nurseries, school enrolment, and so on), and involved also the establishment of a multidisciplinary commission to study the socio-economic contexts where these children lived, together with the creation of a contingency plan in case the municipality's budget lacked resources to ensure the implementation of the proposals.

3.3.2. Remedies issued by supranational bodies

The main difference between domestic and international bodies, as clarified throughout the whole dissertation, relies on the possibility for the former to issue binding remedies, whilst the second are quasi-judicial bodies which generally do *recommend* remedies to the interested parties with no binding legal effect. This notwithstanding, this section will anyway present which recommendations have been issued in the cases examined above judged by regional courts, such as in particular the Inter-American Court of Human Rights and the African Commission.

The former has offered some noteworthy examples of remedial options at the regional level, releasing both traditional remedies (*i.e.* monetary compensation), and innovative ones, such as restitution, rehabilitation, apologies, memorials, guarantees of non-repetition, legislative reform, training programs, and community development schemes⁵⁵⁷. Specifically, in the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* case, which

⁵⁵³ BIRCHFIELD, CORSI (2010).

⁵⁵⁴ Judgement of the High Court of Kenya of 16 November 2011, *Ibrahim Sangor Osman v. Minister of State for Provincial Administration & Internal Security*.

⁵⁵⁵ *Ibid.*, para. 20, 21.

⁵⁵⁶ *Ibid.*

⁵⁵⁷ BIGLINO (2014).

regarded the breach of indigenous communities' land rights and the relative infringement also of food security, the Court required that the indigenous' lands be delimited and demarcated. Such measures were aimed at facilitating that indigenous' right to land be protected according to the indigenous' customary values, establishing also adequate legislations and mechanisms at the domestic level to prevent the State from repeating any similar conduct in the future⁵⁵⁸. Another interesting case brought before the Inter-American Court is *Kichwa Indigenous People of Sarayaku v. Ecuador*. In this litigation, the court ordered that the oil exploration activities in the Sarayaku land be stopped⁵⁵⁹, that its community be previously consulted in case of future extraction projects⁵⁶⁰, and most obviously that the state provided monetary compensation for both physical and non-physical impairments⁵⁶¹. In addition to that, particularly noteworthy was that the court required that the State introduced training programmes to be addressed at governments' functionaries, including legal and military officers working in indigenous territories, focused on the indigenous peoples' human rights.

As regards the African Commissions' judgement providing remedies to human rights impairments, the case *Serac v. Nigeria* might be recalled. As above, also this litigation regarded violations on some indigenous peoples' rights due to oil extraction processes. In this case, the government of Nigeria was called by the Commission to suspend the attacks towards the Ogonis, to offer compensation to the victims, but also to remedy to the damaged soils and rivers⁵⁶². Besides, the African Commission also required that impact assessments about the social and ecological effects be executed before new oil projects be made, examining also the health and environmental risks that such processes inflict on the native populations and their lands. In this regard, arguing that the Nigerian government breached the Ogoni's people right to freely dispose of its natural wealth and resources *by issuing oil concessions on Ogoni lands*, the Commission held that:

“in all their dealing with the oil consortiums, the government did not involve the Ogoni communities in the decisions that affected the development of the Ogoniland”⁵⁶³.

Grounding on this, the Commission thus required to adequately inform the indigenous people in the future about the potential consequences of oil operations, and hence to regularly include them in the decision-making

⁵⁵⁸ Judgement of the Inter-American Court of Human Rights of 31 August 2001, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*.

⁵⁵⁹ Judgement of the Inter-American Court of Human Rights of 27 June 2012, *Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 341.

⁵⁶⁰ *Ibid.*

⁵⁶¹ *Ibid.*, para. 323, 341(8).

⁵⁶² Judgement of the African Commission on Human and People's Rights of 27 May 2002, Communication No. 155/96, *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria*, para. 70-72.

⁵⁶³ *Ibid.*, para. 58.

process leading to such choices⁵⁶⁴. Therefore, this case too demonstrated what kind of remedies can be pronounced by quasi-judicial bodies at the regional level, such as the African Commission, to compensate human rights violations.

3.4. ...To manifest violation: analysing State Food Crimes

To appropriately complete this investigation on the legal protection of the right to food, it seems crucial to add some final considerations on the cases where the implementation of this right has been restricted by the government itself.

As pointed out by the most recent SOFI published by the FAO in 2019, the full realisation of food security at the global level still remains an unmet challenge for both affluent and non-affluent countries with hunger rising from 777 million in 2015 to 821 million food insecure people in 2019⁵⁶⁵. This number encompasses the entire spectre of food insecurity phenomena, from hunger to malnutrition, with starvation being the most evident representation of right to food violations. Protracted conflict, socio-political instability and extreme weather events are the main causes of hunger in the world's most affected countries. Along with factors such as population growth, shocks to global food supply and weak governance, as well as the lack of adequate international cooperation, conflict is a major source of food crises. It seems clear that the cumulative force of these factors together with human interference underlie at the basis of the outbreak of famines. Governments should, conversely, guarantee the respect for the right to food, especially in contexts of acute food insecurity. As demonstrated throughout the whole dissertation, there are many branches of international law that regulate how to guarantee the right to food in situations of conflict, catastrophe and emergency: these are, human rights law, international humanitarian law, and international criminal law. Nonetheless, there have been cases throughout history, where the States and their governments have infringed the respect for the right to food and, worse, have used hunger and starvation as a warfare tactic. Perfect example thereof are the conflicts currently undergoing in Afghanistan, Central African Republic, Iraq, South Sudan, Somalia, Syria, and Yemen. In such contexts, food is being used as a weapon by both States and adversary armed militias, which are destroying or poisoning crops, blocking relief supplies and moving people from their homes depriving them of their livelihoods⁵⁶⁶.

Yet, state-sponsored starvation has been publicly recognised under international criminal law as a crime against humanity:

⁵⁶⁴ *Ibid.*, para. 71.

⁵⁶⁵ FAO, IFAD, UNICEF, WFP, WHO (2019).

⁵⁶⁶ ELVER (2018: 210).

“Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions”⁵⁶⁷.

Deliberately preventing people from having access to food and water first and foremost represent a breach of the right to food, but may also be invoked as a war crime according to the Geneva Convention⁵⁶⁸, or a crime against humanity according to the Rome Statute of the International Criminal Court, thus imposing individual criminal responsibility. In this regard, art. 7.1 of the Rome Statute clarifies which behaviours are to be considered as “crimes against humanity”: it thus enumerates a series of actions “directed against any civilian population”⁵⁶⁹ that can be characterised as such, including murder, extermination, enslavement, deportation, torture, rape, persecution, enforced disappearance of persons, apartheid, and “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”⁵⁷⁰. As can be noted, the text of the article does not mention hunger as a specific crime against humanity and yet its last provision allows for a more comprehensive list of crimes against humanity, which could eventually comprehend also hunger as inhuman act⁵⁷¹. Moreover, to be classified as crime against humanity, the action has to satisfy two components: first, the accused must deliberately perpetrate the acts necessary to accomplish the specific offence (*i.e.* intentionality of the act); second, it must involve a “widespread and systematic attack” directed against the civilian population⁵⁷². Grounding on this, the second requirement is fulfilled *de facto* as famines and starvation are necessarily widespread and systematic actions. Conversely, the first requirement, *intentionality*, has to be purposely demonstrated:

“The deliberate use of starvation as a weapon constitutes a crime if there is sufficient evidence of an intentional or reckless effort to block certain groups from access to food under conditions of conflict or hardship”⁵⁷³.

In this respect, famine can be regarded as an intentional crime against humanity when, for instance, acts of omission are carried out, or even when the government blocks humanitarian assistance, or fails to implement the relevant laws or international rescue systems to be activated in case of conflict or famine conditions. This has been specifically the case in some countries, which have been studied by several scholars⁵⁷⁴, given that state-induced starvation is definitely been deemed as an interesting theme within the

⁵⁶⁷ Rome Statute of the International Criminal Court, Rome, 17 July 1998, Art 8, para 2(b)(xxv).

⁵⁶⁸ Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949.

⁵⁶⁹ Rome Statute of the International Criminal Court, Rome, 17 July 1998, Art 7.1.

⁵⁷⁰ *Ibid.*

⁵⁷¹ ELVER (2018).

⁵⁷² Rome Statute of the International Criminal Court, Rome, 17 July 1998, Art 7.1.

⁵⁷³ ELVER (2018: 214).

⁵⁷⁴ MARCUS (2003); JAPPAH, SMITH (2012); KEARNEY (2013).

academic debate. Strictly related to this is prof. Rhoda Howard-Hassmann's contribution, who has recently conducted a relevant research, to demonstrate how state-induced food deprivation has been utilised particularly in North Korea, Venezuela, and Zimbabwe, thus contending that famines ought to be considered crimes against humanity.

3.4.1. State-induced famines in North Korea, Venezuela, and Zimbabwe

Drawing inspiration from what Howard-Hassmann explained thoroughly in her book, this section will concentrate on three case-studies where the states and their leaders have deliberately committed food crimes, that is deprived their citizens from food to which they previously had access to. Food deprivation and human induced famine have been utilised with greater frequency in the past decades by three countries in particular, which have neglected their citizens' right to food and to have access to adequate nutrition. The claimed countries are the Democratic Popular Republic of Korea ("DPRK" or North Korea), Venezuela, and Zimbabwe: that is, three contemporary countries from different world's regions and with diverse political systems, having as common factor to be experiencing State-sponsored right to food abuses. In particular, the analysis takes into account State food crimes taking place from 1990s to 2015 in these three countries, leading to different levels of violation depending on the severity of the abuse and the applied food policies: thus, North Korea is probably the most severe case, resulting in hunger leading to major starvation, followed by Zimbabwe with massive malnutrition, and then Venezuela, characterised by inconsistent food policies causing relevant food shortages.

The case of DPRK is the most severe as food insecurity and malnutrition are persistent and widespread, disproportionately harming the most vulnerable, especially women and children. Cyclic natural calamities have limited crop productivity, poor industrialisation and lack of quality inputs hinder food production. An assessment conducted by the WFP and FAO in 2019 concluded that nearly 10.1 million people (*i.e.* 40% of the population) are in urgent need of food assistance and that the country's uncovered food shortage is expected to reach a level of about 1.36 million tons⁵⁷⁵. The reasons of this chronic condition are to be found in the political situation affecting the country ever since its creation in 1948. As noted above, North Korea is ruled by the dynastic dictatorship of the Kim family, who has shaped the country's socio-economic policies upon the Soviet Union's collectivisation model, based on the abolition of private property and markets⁵⁷⁶. As a consequence of this, DPRK's citizens experienced a severe famine in 1990s, which then protracted its effects with persistent malnutrition harming the country in the following years. This is because, due to the policies adopted, based on the distribution of minimal food rations provided by the State, citizens have been

⁵⁷⁵ FAO, WFP (2019).

⁵⁷⁶ HOWARD-HASSMANN (2017).

forced to depend on the State for their food needs⁵⁷⁷. In DPRK, food has been explicitly used as a tool to force citizens to rely entirely on the State. Deprived of all rights, even risking prison if they attempted to travel in search of food both within the country and abroad as refugees, North Korean citizens have been reduced to mere inhabitants of their own country. This example is the one resembling the most to the term *faminogenesis*⁵⁷⁸, where food shortages are created either intentionally, as a means of perpetrating genocide, or through the insistence of continuing flawed policies that only perpetuate malnutrition and deprivation.

Venezuela, by contrast, is an example of exacerbating food insecurity because of inconsistent and incompetent socio-economic and political choices, mainly due to the introduction of controls on staple foods prices. This country was ruled by Hugo Chávez from 1999, and then by Nicolás Maduro until nowadays, despite social turmoil and pressures from the opposition have questioned the stability of the latter's presidency and deepened the economic and humanitarian emergency crisis⁵⁷⁹. As of today, indeed, the country is affected by significant levels of corruption, combined with economic recession, and unprecedented levels of malnutrition, especially among children under five⁵⁸⁰: according to the FAO, undernourishment is on the rise in Venezuela, increasing from 6.8% in 2012-2014 to 21.2 in 2016-2018, that is nearly 6.8 million undernourished people⁵⁸¹.

The case of Zimbabwe in the 2000s did not result in extensive famine, and yet some policies enacted by President Robert Mugabe, who ruled the country from the country's independence in 1980 until 2017, created the basis for the perpetration of some food crimes, as half the country was left in chronic food insecurity. Around 2000s, Mugabe started to encourage a "land invasions" policy of white-owned farms, which were to be redistributed to landless peasants or war veterans. These farms were a relevant source of the country's food production. Yet, not only such land invasions were violent, with killings and tortures, but were also assigned to president Mugabe's cronies, who in many cases did not farm the land at all. Deprived of a relevant source for the country's food supply and also of their property rights, the food security of Zimbabwe's citizens was affected by such irresponsible actions⁵⁸².

Particularly relevant for the purpose of this analysis is observing that the institutional system in place at the moment of the violation is a regime, that is a type of government determining a limited enjoyment of civil and political rights upon their citizens. North Korea, an Asian country ruled by the dictatorial communist regime led by the Kim's dynasty; followed by

⁵⁷⁷ *Ibid.*

⁵⁷⁸ MARCUS (2003).

⁵⁷⁹ In 2019, the president of Venezuela's National Assembly, Juan Guaidó, has declared himself President of the Bolivarian Republic of Venezuela, urging the public and the military to support him: at present, the country remains at a political impasse; cfr. BRICEÑO-RUIZ (2019); CANDIA (2019).

⁵⁸⁰ FAO, IFAD, UNICEF, WFP, WHO (2019).

⁵⁸¹ *Ibid.*

⁵⁸² HOWARD-HASSMANN (2017); ID. (2010: 898-920).

Zimbabwe, ruled by President Robert Mugabe's personalist authoritarian regime; and finally, Venezuela, an increasingly authoritarian populist regime formerly ruled by Hugo Chávez, and then succeeded by Nicolás Maduro. Diverse but yet similar regimes, being all characterised by having functioning governments in place, not being implied in any explicit military conflict, and all actively limiting the application of rule of law and of civil and political rights. The latter are absolutely crucial for ensuring the enforcement of domestic policies directed at protecting citizens' right to food. In these three countries, by contrast, have been turned into mere inhabitants of the state, that is citizens merely in a passive sense⁵⁸³, whereas an active citizenship is characterised by "the right to have rights"⁵⁸⁴, by the possibility of intervening in the public sphere and being able to influence state policies accordingly. Conversely, in a totalitarian government like DPRK, the citizens are simply *rightless*, resulting in being absolutely unable to contribute in any way to the political life of their country, while in Zimbabwe or Venezuela, the free expression of citizenship has been progressively limited. Moreover, none of these countries is endowed of an independent judiciary capable of protecting its citizens from the governments: it has never existed in North Korea, whereas it has been progressively intimidated and corrupted in Zimbabwe and Venezuela. Thus, deprived also of the possibility to appeal to an independent judiciary, the citizens result as complete victims of the regimes, passively subject to the government's decision to restrict all access to food. Grounding on this, citizens' lack of civil and political rights is a major factor contributing to the perpetration of right to food denial in these countries.

Given that the effective affirmation of the right to food depends on the expanded exercise of civil and political rights, citizens are obliged to depend on the international instruments to solicit their leaders to effectively ensure the right to food. As said above, these include international law provisions, both international humanitarian law and international criminal law, as well as sanctions, foreign aid, advocacy actions by non-governmental and civil-society's organisations. Nevertheless, despite a consistent institutional framework for enforcing the right to food has been developed and can be applied, its tools have proved unsuccessful as regards these three countries. The basis for that is, indeed, that State's hold a sovereign right to reject, ignore, or evade the international community's demands.

This has been the case when in 2013 the UN Human Rights Council has created the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea⁵⁸⁵, to refer to the ICC and the HRC itself of the crimes against humanity perpetrated by the Kim dynasty, including

⁵⁸³ *Ibid.*

⁵⁸⁴ *Ibid.*

⁵⁸⁵ Resolution of the UN Human Rights Council of 14 July 2013, A/HRC/RES/22/13, *Situation of human rights in the Democratic People's Republic of Korea.*

“violations of the right to food and related aspects of the right to life”⁵⁸⁶. As described in the final considerations of the Commission’s written report, indeed:

“The rights to food, freedom from hunger and to life in the context of the Democratic People’s Republic of Korea cannot be reduced to a narrow discussion of food shortages and access to a commodity. The State has used food as a means of control over the population. It has prioritized those whom the authorities believe to be crucial in maintaining the regime over those deemed expendable”⁵⁸⁷.

[...]

“The State’s monopolization of access to food has been used as an important means to enforce political loyalty. The distribution of food has prioritized those who are useful to the survival of the current political system at the expense of those deemed to be expendable. Citizens’ complete dependence on the State led to one of the worst cases of famine in recent history. The authorities have only recently come to tolerate the fact that markets can no longer be fully suppressed. Instead of fully embracing reforms to realize the right to food, however, the Democratic People’s Republic of Korea maintains a system of inefficient economic production and discriminatory resource allocation that inevitably produces more unnecessary starvation among its citizens”⁵⁸⁸.

Similarly, Venezuela has withdrawn from the Inter-American Commission of Human Rights⁵⁸⁹ and has disregarded recommendations made by the Organisation of American States regarding its breach of civil and political rights, including of the right to food. On account of the latest political events occurred last year in Venezuela⁵⁹⁰, the HRC has constituted an *ad-hoc* mission on this – Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela⁵⁹¹ – aimed at conducting a one-year evaluation on human rights violations perpetrated since 2014 in the country. Whereas, the African Union has been particularly lenient towards Zimbabwe, as it welcomed president Mugabe as “one of the grand old men of the liberation struggle against colonialism”⁵⁹², instead of urging him to stop human rights violations against Zimbabweans.

On the other side, even a stronger tool – that is, sanctions – has proven to be weak: as for Venezuela and Zimbabwe, the sanctions have simply been ignored; whereas, the situation is slightly more complicated in DPRK given that the country is subject to sanctions since 2009, not as penalty for its right to food abuses, but for the development of its nuclear weapons programme.

⁵⁸⁶ Report of the UN Human Rights Council of 7 February 2014, A/HRC/25/63, *Report of the commission of inquiry on human rights in the Democratic People’s Republic of Korea*.

⁵⁸⁷ *Ibid.*, para. 46.

⁵⁸⁸ *Ibid.*, para. 81.

⁵⁸⁹ KORNBLITH (2013: 52).

⁵⁹⁰ HOWARD-HASSMANN (2017).

⁵⁹¹ Resolution of the Human Rights Council of 27 September 2019, A/HRC/RES/42/25, *Situation of human rights in the Bolivarian Republic of Venezuela*.

⁵⁹² HOWARD-HASSMANN (2017).

Regarding this, it is quite evident that the international actors, *in primis* the UN Security Council, are more concerned about an eventual escalation of the nuclear programme, rather than the country's worsening food situation. Foreign aid, especially food relief programmes, has been manipulated as well, by both North Korea and Zimbabwe: in the first instance, the nuclear programme was utilised to manipulate donor nations to deliver food aid, whose funds provided budgetary support to the country, allowing to transfer such funding to the nuclear program⁵⁹³; while Mugabe distributed such aid only to its supporters, denying it to the opposition⁵⁹⁴. Lastly, a *right to de-development* should also be recognised, meaning that governments are not compelled to accepting the IMF's recommendations or the World Bank's development aid to be invested for spurring the domestic economy⁵⁹⁵. Upon these premises, it is significant to reiterate that States' are guaranteed the sovereign right to preserve determined socio-economic policies, as well as the sovereign right to repeatedly infringe human rights.

Although food crimes and state-provoked starvation are forbidden according to international law, this review has proved that the instruments currently in place are not sufficient *to protect citizens from governments that violate human rights, even when such violations reach the level of crimes against humanity*. Moreover, there has never been an appeal for establishing a mechanism to initiate an international criminal trial against those governments accused of having denied their citizens' right to food⁵⁹⁶. This is partly due to the legal and political difficulties related to demonstrating the intentionality and the evidence of the alleged breach thereof⁵⁹⁷: this is even the reason why the countries examined above have been able to breach the right to food – and other human rights – with almost complete impunity. Yet, it is true that over the last years, a certain number of legal and normative instruments have developed, such as the Human Rights-Based Approach as a consolidated key tool for development, the establishment of the ICC, as well as the introduction of relevant conventions, including the Rome Statute, the CEDAW, the CRC, *etc.* That said, however, since the notion of right to food as justiciable right finally entered the judicial lexicon, it is probably the case to strengthen its normative value, raising it from the range of *soft* right, to that of a legally enforceable human right.

3.4.2. Alternatives for ensuring right to food protection

Grounding on the overall context presented above, it must, however, be pointed out that these kinds of crises have contributed to creating full-fledged humanitarian emergencies which, to be properly confronted, often require the intervention of other international actors under the principles of international

⁵⁹³ HOWARD-HASSMANN (2012).

⁵⁹⁴ HOWARD-HASSMANN (2010).

⁵⁹⁵ HOWARD-HASSMANN (2017).

⁵⁹⁶ MARCUS (2003).

⁵⁹⁷ *Ibid.*

humanitarian law. While it is noted that the justiciability of the right to food is the most appropriate tool for ensuring the legal protection of this right, it must also be acknowledged that sometimes, especially in such emergency contexts, the legal adjudication is often not sufficient to remedy the violation, or rather it is not really applicable because of the emergency itself. To stick within Howard-Hassmann's study, this has been the case of Venezuela, for instance, where the recent deterioration of the political situation has provoked the outbreak of an authentic humanitarian crisis, making the emergency intervention absolutely necessary.

The enjoyment of the right to food remains illusory for some millions of people around the world, precisely 821 million⁵⁹⁸. Legal and political efforts towards this right do not prevent a substantial number of people, especially children, women, rural dwellers, from being food insecure. Therefore, whenever legislations and judicial intervention fail to adequately compensate people's protection of food rights, the intervention of third parties is deemed necessary. Reference is made to Non-Governmental Organisations which nowadays are required even more often to respond to crisis situations – whether they are environmental, resulting from conflicts or protracted crisis, or extreme weather conditions – offering punctual humanitarian emergency response. Emergency aid plays a prominent role where States themselves are not able or reluctant to provide and respect their citizens' most fundamental needs. In many of today's conflicts, world governments are essentially demanding the humanitarian system to provide the basic functions that states should guarantee instead⁵⁹⁹.

As of today, for instance, the WFP is partnering with more than a thousand NGOs globally, through which the UN agency is being able to deliver its humanitarian programmes, from mere emergency food distribution to longer-term activities, in a timelier manner⁶⁰⁰. Amongst these, it is worth recalling an Italian organisation, INTERSOS, whose intervention in Nigeria will be briefly examined below as a successful example of emergency aid in the context of a severe humanitarian emergency.

Founded in 1992, INTERSOS is an independent non-profit humanitarian organisation based in Italy, committed to assisting the victims of natural disasters and armed conflicts. Its activities are based on the principles of solidarity, justice, human dignity, equality of rights and opportunities, and respect for diversity and coexistence, paying particular attention to the most vulnerable and unprotected people. With missions in 19 countries⁶⁰¹, INTERSOS is partnering with the major institutions and international and

⁵⁹⁸ FAO, IFAD, UNICEF, WFP, WHO (2019).

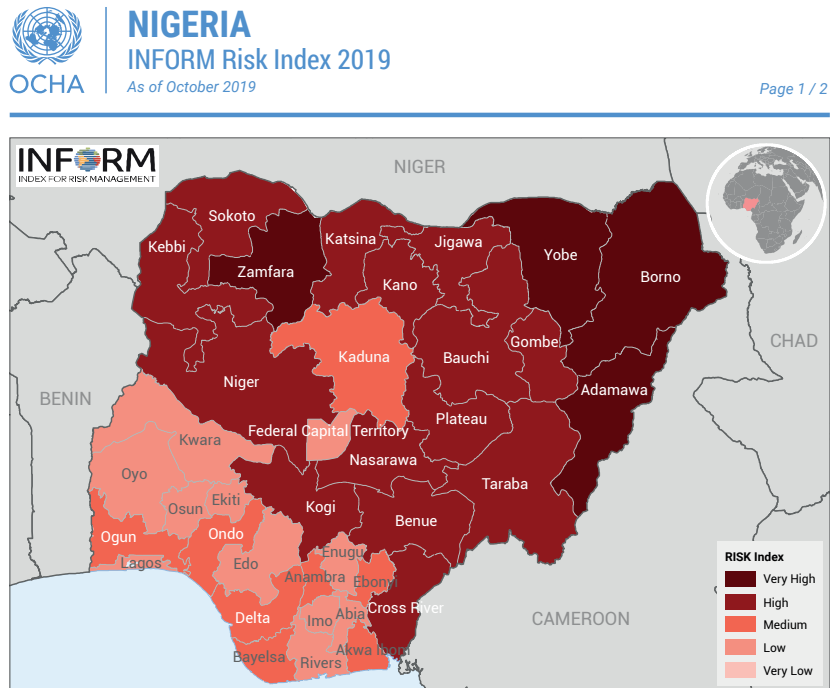
⁵⁹⁹ ELVER (2018).

⁶⁰⁰ For more details, see WFP's website section dedicated to "Non-governmental organizations".

⁶⁰¹ In 2019, INTERSOS has worked in 19 countries, that is: Afghanistan, Burkina Faso, Cameroon, Central African Republic, Chad, Democratic Republic of Congo, Greece, Iraq, Italy, Jordan, Lebanon, Libya, Niger, Nigeria, Somalia, South Sudan, Syria, Venezuela, Yemen.

European agencies to accomplish such demanding objectives. Nigeria is one of the countries where INTERSOS intervenes, due to the humanitarian crisis that has developed in the country, having its epicentre in the states of Yobe, Adamawa and Borno. Of the nearly 3 million displaced people in these areas, 80% are located in the state of Borno. Almost three years of occupation by the Boko Haram armed group and the subsequent military operation, launched by the Nigerian army in January 2016 to bring these states back under government control, have produced massive population movements and have had a devastating impact on the population. For almost three years, in the areas controlled by Boko Haram, the community has not had access to any services, in particular, medical assistance, the supply of medicines, social and educational services. The instability of the area and the constant attacks of armed groups have blocked food production and crops, emptying the markets and leaving 3.9 million people in food insecurity. Malnutrition between women and children has reached an extreme incidence, especially among the displaced people who, fleeing to the forest to save themselves, found homes and activities wholly destroyed. Much of the displaced population survives only thanks to humanitarian aid.

Figure 3 - Map of Nigeria



INTEROS has been present in Nigeria since the beginning of 2016 and has started its intervention in the state of Borno to create emergency shelters for displaced people. In order to ensure food security and to support the fight against malnutrition, especially of children, distributions of food and supplementary nutrition were provided, reaching 308,345 beneficiaries in 2018. INTEROS' mission has also implemented life-saving activities with a focus on primary health and nutrition, including neonatal and maternal care and an emergency response mechanism to combat infant mortality caused by acute malnutrition. The intervention of INTEROS started in 2016 with an ECHO-funded project aimed at implementing a Cash-Based Transfers ("CBT") in Maiduguri, Borno State. The project was carried out following an agreement with Red Rose, an experienced Cash Transfer Platform, to transfer cash to 1000 most vulnerable beneficiary households. With an average number of 8 individuals per family at the peak of the crisis, the project aimed at reaching 8000 people in total. The mechanism used was e-vouchers (electronic cards) that were topped up by Red Rose. The cards were issued locally by the beneficiaries to redeem from selected providers with whom the prices of the food commodities had been agreed in comparison to the average market prices to avoid exploitation. Then, in 2017 INTEROS has started working in partnership with WFP in Banki IDP's camp through in-kind & Blanket Supplementary Feeding Programme ("BSFP") distribution. There,

INTERSOS is providing Community-based Management of Acute Malnutrition services in 13 sites, coping with both moderate and severe acute malnutrition cases in children under five. Furthermore, INTERSOS has set up a Stabilization Centre in Magumeri town to treat cases of severe acute malnutrition with complications. In 2018, INTERSOS' Food Security activities were further implemented with the help of local authorities, in order to provide either general food distribution either in-kind or Cash-Based-Transfers with a WFP-funded project in Mobbar, Bama, Jere, MMC and Ngala local government areas. Thanks to the quality work achieved in 2017, WFP handed over to INTERSOS 4 local government areas to lead food security projects. Thus, by the end of 2018, the organisation has been able to cover 1.083.835 case-load individual per month within the food ration program, and 279.945 case-load individuals with the CBT programme. From January to September 2019, together with WFP, INTERSOS has continued to extend its operations to Damasak, Ngala Gamburu, Banki and Magumeri assisting the local populations providing in-kind, CBT, and BSFP distribution. INTERSOS is also implementing Infant and Young Child Feeding activities, with the aim to raise awareness and spread best practices among pregnant and lactating women in the communities. To reach this intent, INTERSOS has trained 70 Community Nutrition Mobiliser and created Mother-to-Mother Support Groups. The project has been started, however, under the premise to provide access to food for all affected and targeted populations. It is against the organisations' values that food assistance will persist as the unique viable source of nutrition for the affected people in Banki camp, Gamboru Ngala, Magumeri and Damasak. Looking at the future, INTERSOS will continue its projects in Nigeria, with the aim to gradually reduce the food assistance for all those beneficiaries who are ready to harvest their crops. By the end of September 2020, the target is to transit nearly 15.000 people into the livelihood project, to guide them towards sustainable and autonomous living conditions⁶⁰².

Finally, to conclude, it should be recognised that the NGOs themselves have also contributed to the justiciability of the right to food through their advocacy actions. Their contribution has enabled to strengthening the success of right to food disputes. As demonstrated at the beginning of this chapter, many litigations on right to food violations have been filed by NGOs. This was the case in India, Nepal, Kenya, and Nigeria, where People's Union for Civil Liberties, the Forum for Protection of Public Interest, the Center for Minority Rights, and the Civil Liberties Organisation respectively were all NGOs which, conducting awareness-raising campaigns, supported the trial of many vulnerable people⁶⁰³. In light of this, it should be noted that the dispute related to the justiciability of the right to food has invoked a diverse range of actors, who have all significantly contributed to its promotion and protection, thus demonstrating the judicialisation of the right to food is viable.

⁶⁰² For more details, see INTERSOS' website.

⁶⁰³ TURA (2018).

IV. Conclusion

The specific research question that this thesis sought to answer to was discovering the role of international and national law in constructing and shaping discourses for the protection of the human right to food. The scope of this investigation was, thus, to concentrate on the legal tools to develop a framework for protecting a relevant human right as the right to food, and especially to observe how and whether the said tools have been invoked by the different actors. This perspective has been chosen under the belief that the judiciary, that is rule of law and adjudication, are the most effective instruments in order to overcome the political inaction affecting world leaders' policy behaviour towards the right to food. Essential for the development of this reasoning has been, therefore, to emphasise an understanding of hunger that configures food as a human right to whom everyone should have access to through legal strategies and approaches at the international, regional, and domestic level. An approach that can only be examined taking into consideration the justiciability of this right, intended as ensuring people to bring their claims before courts and have their petitions heard by adequate judges, who will accurately investigate the question and emit an official judgement, with reparations over the offenders.

To answer to this main research question, the structure of this investigation has been organised around three fundamental questions, that is:

- a) *Does a human Right to Food exist and how did it evolve to develop its own legal basis?*
- b) *In which manner is the Right to Food implemented into domestic, regional and international statutes?*
- c) *Can individuals and communities appeal to international, regional or national courts, in order to compensate violations of the right to food?*

Three basic question, yet crucial, with the ultimate objective to demonstrate whether a timely and adequate justiciability of the human right to food can lead to its enforcement and, further, to establish the best strategies at all levels to guarantee concrete access to safe, sustainable and nutritious food for all. Whereas, on the contrary, a theme that has not been addressed is how to assess the right to food with monitoring methods, such as indicators.

In order to provide them answer and thus answer to the main research question underlying this work, the dissertation has begun with a contextual analysis on the global food regimes that have predominated the global arena, proving that, as of today, it is led mainly by international corporations. To contextualise today's challenges, it proceeded by focusing on the global food price crisis of 2007-2008, which highlighted that limited access to food is a major problem affecting several vulnerable people all over the world, including affluent societies' inhabitants. Under these premises, the scope of the work was to demonstrate that all people are entitled to the right to food as a most fundamental human right with a solid definition and relative obligations for the complying States. This stance was confirmed providing a

review of all the international documents that acknowledge this right, thus contributing to creating a legal and institutional basis for its recognition at the global level. With the UDHR and the ICESCR providing its general framework, the content of the right to food has been specifically laid out progressively along three major steps: the 1996 World Food Summit, the adoption of the CESCR's General Comment No. 12 in 1999, and finally the adoption of the Voluntary Guidelines on the Right to Food in 2004 within the FAO's premises. The latter, in particular, were endorsed to encourage States to take legislative and judicial steps to ensure the progressive realisation of the right to food.

Then, the dissertation has focused on how to implement the right to food in actual terms, that is a fundamental step to complement its recognition. This step can be realised following a set of possibilities: that is, through constitutional recognition, with the adoption of a framework law or specific national policies, but it can also be indirectly recognised with the through the direct applicability of international treaties postulating the right to food, such as the ICESCR. Thus, it has been noted that an increasing number of countries have amended their constitutions to directly enshrine the right to food within their jurisdiction. Alternatively, however, in those countries which have not afforded constitutional protection of the right to food, it has been demonstrated that its protection can be derived as part of broader human rights, such as the right to life (or to a dignified life), which retain a stronger level of protection and are closely complementary to the right to food. Then, all the relevant levels of protection at the regional and international level have been considered. Of the international organisations, the role of the FAO and its bodies has been particularly deepened, as UN agency specifically dedicated to food and agricultural questions, as well as that of the UN Human Right Council for its primary position towards the protection of all human rights.

Nonetheless, while enshrining the right to food into constitutions certainly is a relevant step, it does not represent a sufficient condition in itself to enforce it. To comprehend whether the legal enforcement of the right to food is possible, it is necessary to consider the possibility of ESC rights justiciability, which has long been contested, because of the positive obligations constitutive of such rights. Conversely, despite the institutional and structural constraints hindering right to food adjudication, an increasing number of countries has begun to acknowledge the right to food as a viable tool for fighting hunger and malnutrition, that is food crimes. In this regard, indeed, some exemplary cases concerning violation of the right have been considered, being analysed as a demonstration that the right to food can be successfully litigated before courts and its victims are enabled to receiving the adequate effective remedies. The analysed cases have been litigated in Africa, Asia and Latin America, that is, not by chance, the regions most affected by food-related crimes. In order to provide a perspective on the other side of the coin, however, the investigation has also taken into account cases of manifest right to food violation which took place in North Korea, Venezuela and Zimbabwe: three countries united by having non-democratic or quasi-democratic regimes in

place. A necessary example to prove that international covenants and legal instruments at all levels are sometimes not enough to ensure the protection of human rights, especially when dealing with States that execute their sovereign right to reject, ignore, or evade the international community's demands, as well as to preserve determined socio-economic policies, thus to repeatedly infringe human rights. As a final argument, it has been pointed out at those alternatives for ensuring the protection of the right to food: that is, mentioning also those actors who intervened supporting the vulnerable populations affected by enduring conflicts and/or chronic crisis perpetrated during wartimes or humanitarian emergencies. That is to say, those third actors who seek to remedy to human rights violations in factual terms, not by means of policy or law, but bringing their concrete aid where it is needed the most.

Nevertheless, this investigation aimed at demonstrating that the development of a clear and viable legal framework at the national and supranational levels complemented by available remedies, extending the established rules and ensuring the active participation of NGOs and CSOs in the process of mainstreaming human rights globally, are key for enhancing the justiciability of the right to food. Only putting these instruments in place will the whole protection of the right to food as a justiciable human right be guaranteed.

On account of this, it seems necessary to reiterate, therefore, that the real limit to the judicial enforcement of the right to food is not the lack of adequate instruments, but the willingness to adapt the tools in place to the protection of this right. That is, States should attempt to reinforce their legal frameworks as regards the right to food, and thus enhance the judiciary's powers to adjudicate claims centred on ESC rights. This entails, especially the incorporation of this right into national constitutions together with the adoption of framework laws focused on the realisation of food security and the right to food, thus enabling the definition of a specific content for this right according to the specific context and objectives relative to the alleged country. Interestingly, States should also facilitate the mechanisms allowing citizens, NGOs and CSOs to commence and file public interest litigations on alleged human rights violations, thereby easing the necessary prerequisites for accessing legal courts. Yet, this process aimed at furthering the consolidation of the right to food as a justiciable human right should first and foremost include awareness-raising actions and programmes regarding the right to food. Calling upon governments for the renovation of their political commitment towards the adoption and implementation of adequate policies for the progressive realisation of the right to food is at the basis of the whole investigation. Once again, States' involvement and concrete support towards the realisation of this right is key. This could be realised following the ensuing points, which underlie at the basis of this work: to change the food systems guiding the global food governance; to enhance the participation of the peoples, even in the form of CSOs; to shift from justiciability to adjudication globally. In fact, in principle, the recognition and correct application of the right to food constitutes the first legal instrument capable of ensuring legal standards and

political measures to combat hunger and malnutrition. However, further action is needed to ensure a more solid application.

- *Changing the global food governance throughout better food systems, including food supply chains, food environments and consumer behaviour*

A first and foremost step that should be implemented to ensure the realisation of the right to food is changing the approach towards the global food governance, that is developing better food systems. A programmatic agenda for sustainable food systems should contribute to realise relevant improvement at the economic, social and environmental welfare of the society and its ecosystem. Sustainable food systems are realised through the improvement of three constitutive elements: food supply chains, food environments, and consumer behaviour.

In terms of nutritional behaviour, both of the markets and the consumers, this should include: the promotion of sustainable balanced and diversified nutrient-rich diets and active lifestyles, including physical activity, such as the Mediterranean Diet, which – according to scientific researches – helps preventing chronic NCDs (*i.e.* diabetes, obesity, and cardiovascular disease); the adoption of shorter value-chains that can valorise smallholders' right to more easily cater nutritious plant-based foods to markets, and thus support rural farmers' organic and not-processed products, which contribute to preserve traditional diets; fostering guidelines on the mode and frequency of consumption of food containing sugars, fats and sodium which are, yet, constitutive not only of sugar-added products but also of traditional ones; ensure the promotion of relevant policies for managing food losses and waste, addressing especially mass canteens' (*i.e.* schools, hospitals, *etc.*) personnel and users; growth that is inclusive and respectful of women, especially rural and vulnerable ones, whose nutritional behaviours should be being the primary caregivers shaping children's diet choices; conduct research and know-how development for enhancing food and nutrition security, especially for making food crops climate resilient, especially in marginal production environments, thus limiting the impacts of climate change.

Such innovative approach is increasingly at the forefront of all relevant debates at the international level, especially within the FAO, as it aims at reducing the negative externalities of agricultural production: that is, decreasing biodiversity, increased greenhouse gases and degradation of soil and water, among others. Analogously, moreover, the implementation of sustainable food systems would ensure that agricultural producers' welfare is improved, particularly of smallholders and rural poor, as well as consumers', who would herald a more responsible and sustainable behaviour concerning livelihoods' resources. Through the protection of landscape and dietary diversity, of wild foods and local agrobiodiversity, of nutrient-rich diets and traditional food cultures, also the right to food would be strengthened.

- *Voice to the Peoples: Civil Society Organisations*

As already said above, this is another fundamental point to ensure that the right to food is further elaborated. Indeed, over the last years, the contribution and support of the peoples has been absolutely fundamental in order to ensure the recognition of this right in world constitutions. Both the civil society and NGOs have been part to the advocacy action necessary for realising the right to food globally, especially for its national implementation. This has been observed as for the case of La Via Campesina, but also in the part on right to food legal adjudication, where in many cases CSOs and NGOs have been critical to file several claims.

Moreover, ensuring the participation of the peoples is a guarantee for accountability, participation and democracy. A principle that should be foreseen in all processes of design, implementation and monitoring of laws and policies having an effect on the people, that is a country's foremost rights-holders. Yet, however, the claimed participation of civil society's groups has long been elusive, which still requires advocacy work and the development of a bottom-up approach giving voice to the People for meaningful progress to be realised. This applies especially to a right such as the right to food, whose scope and content are still to be wholly defined and implemented, and are at times threatened by the weakening of dedicated international fora (*i.e.* FAO, CFS).

- *The way forward: from justiciability to enforceability*

Notably, this dissertation aimed at demonstrating that legal adjudication is a consistent possibility for ensuring the realisation of the right to food. Yet, the question remains: is legal adjudication the best and most valuable path for a concrete realisation of the human right to food, thus granting every individual adequate access to safe, sustainable and nutritious nourishment?

This thesis, indeed, has started from the assumption that the right to food assumes not only a legal connotation, but especially a strictly political one. Although the litigations analysed above have demonstrated that the right to food can be properly claimed before courts and safeguarded with interim measures and remedies as compensation, this has not overcome the said lack of political will weakening its realisation on a purely political level. Although courts demonstrated their willingness to accomplish a transformative change whereby having adequate access to food represents a human right, governments lacked to implement courts' judgements. Without the necessary systemic adjustments – that is public policies and programs, or framework laws directly addressing this issue – the effective protection of the right will thus not be guaranteed. Changing the global food governance following the inputs provided before for building better better food systems would be a first step towards this. Therefore, the thesis will conclude that only by transitioning from justiciability to real enforceability can the right to food be effectively safeguarded, thus guaranteeing access to safe, sufficient and nutritious food to everyone. Only by overcoming the lack of political will and developing

effective public policies can food insecurity be defeated and the full realisation of the right to food be guaranteed.

The case for the justiciability of the right to food is another example where the judiciary has intervened rather than the government. In this regard, indeed, disagreement remains as regards the appropriateness of recurring to courts and legal mechanisms to advance the protection of human rights. On the one hand, detractors are not convinced that judges are completely able to subvert the status-quo in front of right to food violations, especially provided that national governments can deliberately ignore or disregard their judgements. On the other, supporters of right to food justiciability are convinced that court, at least, offer a possibility to repair the violation, thus implicitly protecting the rights of minorities and vulnerable peoples. Although unveiling the political potential of human rights is the most effective way to avoid infringements, in many cases, however, going through the legal avenues for ensuring the protection of a right has been the way towards the implementation of public policies. Certainly, the case of the right to food has disclosed an interconnected global fight for human rights. Given the ongoing challenges facing humanity, every actor involved in such fight is required to continue its work with advocacy actions and mainstreaming this theme, aiming at bringing it to the very decision-making tables.

Food is a decisive question of the 21st century: unveiling its potential would generate several international, regional, national policy frameworks determining improved health, democracy, environmental sustainability, and international development. An unprecedented opportunity exists to improve access to food and determine the right to food as a human right. Establishing clear, legal tools to guide access to food transformation is an essential step in realising the opportunity towards the programmatic implementation of the right to food.

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VI. Summary

Introduction

Food is one of mankind's most fundamental needs, as well as a fundamental human right. Having access to nutritious food is a crucial matter of daily concern to improve people's living conditions, global health and the environmental sustainability of the Planet. Yet, hunger is currently menacing the security of humanity, as the total number of hungry people in the world has risen for the third year in a row. Whilst hunger has been declining for decades, estimates demonstrate that, in 2019, nearly 821 million people in the world faced chronic food deprivation. Amongst these, there is a growing number of children suffering low birthweight or stunted growth: that is, 151 million children are stunted, 51 million are wasted, and more than 2 billion people are micronutrient deficient. The problem of hunger, malnutrition, and poverty is in fact a rampant question of global order, especially due to its social implications, which concern even the richest countries.

The origins of the increase in world hunger are to be found in many factors. Persistent conflict, famines and climate change are its main drivers. Yet, rising unemployment, declining wages and income inequality are also contributing to worsen people's access to sufficient food. Whilst this situation is particularly severe in most low-income countries – particularly, in Africa, Latin America and Asia, as shown in figure 1 – where most of the population is experiencing acute undernourishment, also many people living in the Global North are increasingly becoming food insecure, because of complementary factors creating further barriers to access food, as highlighted by the world economic crisis in 2007/2008. As of today, over 2 billion people do not have *regular* access to safe, nutritious and sufficient food: these are the so-called “moderately food insecure”, who have been publicly reported among food insecure people for the first time. Interestingly, according to scientists, malnutrition can coexist with overweight and obesity: malnutrition is a problem related to both nutrient deficiency and food excesses. Food excess is not the opposite of hunger, thus creating the so-called “double burden of hunger”, that is a universal phenomenon with relevant socio-economical implications.

Bolder actions are thus needed to improve our “broken food systems” and enhance access to food, that is to grant the fulfilment of the human right to food. In fact, hunger in all its forms is a violation of the right to be free from hunger, which is intrinsic of the right to life. While the dispute over food insecurity is clear and its burden extremely elevated, inaction prevails, making advancement unacceptably slow. The only way to overcome the evanescent political will is to foster the implementation of the human right to food into national constitutions and realise its protection through justiciability and advocacy globally.

Building upon these premises, this research will mainly explore whether a judicially enforceable right to food is capable of reversing the claimed political inaction. Grounding on this, the present dissertation will investigate

the human right to food and the way such right is protected through the instruments provided by the human rights' legal doctrine. Thus, the human right to food between international and domestic law will be analysed according to three main questions:

- a. *Does a human Right to Food exist and how did it evolve to develop its own legal basis?*
- b. *In which manner is the Right to Food implemented into domestic, regional and international statutes?*
- c. *Can individuals and communities appeal to international, regional or national courts, in order to compensate violations of the right to food?*

Therefore, this research will demonstrate whether a timely and adequate justiciability of the human right to food can lead to the establishment of best strategies to guarantee concrete access to safe, sustainable and nutritious food for all.

To answer these questions, the following dissertation will be articulated into three main chapters, which have been developed based on a thorough literary review of all relevant scholarly production concerning the protection of human rights and its interaction with the legal doctrine. The literary review has followed three rules: to consider mainly on the resources produced from 2015 to 2019; the research field focused on works concerning international law, human rights, and international affairs in general; filtering the obtained resources according to pertinent *keywords*, namely “right to food”, “food security”, “access to food”, “food crimes”, or “right to food justiciability”. The discovery platforms made available by Luiss “Guido Carli” University have facilitated this review, as well as UN Agencies publications and NGOs reports, which contributed to validate that law stands at the forefront of this issue.

Chapter One – From Food Security to the Right to Food

Food is a fundamental human right and a factor of social cohesion and identity. Nevertheless, a constellation of class and interstate power relations, norms and institutional structures linking market rules to international relations, have detached food from its social dimension, transforming it into a mere commodity. Grounding on this, the first chapter of this investigation has analysed the evolution of the global governance of food, providing an in-depth analysis of food regimes' development from 1940s to the present days. That is, providing an overall review of how food systems evolved throughout history and in which way they have been organised and governed on a global scale, so as to reflect also on the present *status quo* of global food relations. This has been possible adopting the perspective of food global governance, namely adopting the ‘food regime’ analytical approach. A notion developed by Harriett Friedmann and Philip McMichael, and then further expanded in their successive individual academic work, which investigated the role of agriculture and global food trade relations in relation to specific geopolitical and power configurations. The food regime theory ‘historicised’ world history

through the perspective of relatively stable arrangements of agricultural production and transitional periods of capital accumulation. A perspective that enabled to recognise a 'geopolitics of food' determined by certain actors, institutions, and main paradigms.

Friedmann and McMichael have identified three consecutive food regimes which dominated the global governance of food from the XIX century to date. The first two were characterised by a state-centred development paradigm, dominated by the United Kingdom (1870-1930s) and the United States (1950-1970s). Ruled by transnational corporations, the third one, by contrast, emerged in the late 1980s as a product of neoliberal globalisation and is often referred to as the corporate or neoliberal food regime. Corporations began to exercise a prominent role in global food relations, determining a shift to the corporate development paradigm of globalisation. Yet, scholars argue that the neoliberal approach is currently going through a phase of crisis, and there is an ongoing scholarly debate on the extent to which such a regime is still in place or not.

A crisis that has been further confirmed by the 2007 Global Food Crisis with which the failure of the global food system gradually emerged, thus scattering intergovernmental instability at the global crisis. The world food crisis that broke out in the spring of 2007 was magnificent for many reasons: for the extent of the price inflation, the amount of countries involved, and the role of new industries and corporations in its causation. Reaching the highest levels in nearly 50 years, the prices of the major agri-food commodities increased consistently, damaging mainly the millions of people who were already suffering from hunger in the developing world, but also the affluent societies of the Global North, thus marking hunger as a universal phenomenon.

In this generally gloomy panorama, the scenario of food governance offered a relatively bright cross-section, as during those years the FAO sought political solutions to the causes of the crisis. It consequently decided to reform its ineffective Committee on World Food Security ("CFS"), making it the most inclusive forum at the global level. The renewed CFS started to mainstream that the crisis was a consequence of having treated food as an item of trade, rather a fundamental human right: consequently, it proposed to replace the paradigm based on food security with a rights-based approach centred on the human right to food. This ultimately led to the unanimous adoption by the FAO's member States of the Voluntary Guidelines on the Right to Food in 2004: that is, the first attempt to give practical guidance to governments on how to implement the right to food into concrete national policies or laws ensuring its actual realisation. Thus, the 2007 Global Food Crisis somehow favoured the mainstreaming of the concept of right to food.

The investigation therefore provided an overview of the legal instruments that enshrined and officialised the right to food at all levels, thus contributing to creating a legal and institutional basis for its recognition at the global level. With the UDHR and the ICESCR providing the general framework, the content of the right to food has been specifically laid out progressively along

three major steps: the 1996 World Food Summit, the adoption of the CESCR's General Comment No. 12 in 1999, and finally the adoption of the Voluntary Guidelines on the Right to Food in 2004 within the FAO's premises. The right to food is also enshrined in regional covenants, in sector-specific covenants directed at particularly vulnerable beneficiaries – such as the CEDAW, the CRC, and the Convention on the Rights of Persons with Disabilities – and is also in soft law instruments, including the Agenda 2030 for Sustainable Development establishing the 17 Sustainable Development Goals.

With its legal basis defined, the dissertation concentrated on the meaning of this right and its primary features. The right to food has a specific content and relative deriving State obligations. As for its normative definition, it is provided by art. 11 ICESCR has defined the right to food as: “[...] 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. 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. The right to adequate food will have to be realised progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of Article 11, even in times of natural or other disasters”. A definition that has further been expanded by first UN Special Rapporteur on the right to food, prof. Ziegler, as: “the right to have regular, permanent and free 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”.

Finally, as food in general is characterised by a multidimensional nature, the chapter concluded by distinguishing food security from food safety, that is the demand for both quantitative (*security*) and qualitative (*safety*) food. From a fundamental perspective, the right to food includes *per sé* both the notion of food security – intended as one underlying fundamental condition for human existence – as well as that of food safety – that is, guaranteeing adequate protection from food harmful to health. Conversely, the aim of food safety is to implement a sophisticated ensemble of legal and scientific requirements designed to protect people from hygienic-sanitary emerging risks related to the food chain. Nonetheless, the presence of an extensive normative system on food safety is worthless if people are not guaranteed proper and easy access to food. Therefore, food safety alone is not able to provide a stable solution to the more general food problem (*i.e.* hunger and malnutrition) and will merely remain a complex set of technical regulations applicable only to the food value chain of affluent societies. Only the development of a unique holistic and integrated notion of “food security/safety” with the two disciplines being developed in a complementary way will enable to further the challenge of food security and the right to food.

Chapter Two – How to implement the Right to Food

The second chapter has concentrated on the methods which allow for a proper implementation of the right to food at all levels. For this purpose, the chapter was opened by a preliminary paragraph upon the linkages existing among the right to food and other human rights, with a particular emphasis on the right to water and land.

Bearing in mind the principle of universality, indivisibility, and interrelatedness of all human rights, the right to food has proved to be a perfect exemplification thereof, since it cannot be achieved in isolation, nor can other human rights be enjoyed when violations of the right to food persist.

As a consequence of human rights' interrelatedness, the infringement of one of these rights might cause the impairment of the right to food as well. This characteristic has the twofold aim to create additional entry points for fulfilling human rights through several legal mechanisms. Using different mechanisms for protecting this right is not merely a procedural necessity, but it is aimed at widening or restricting the protection of the claim. Therefore, the right to food presents itself as a multi-sectoral and multifaceted right, not endowed with a univocal juridical status, to the extent that to the interpreter it has appeared as a right with "variable geometries". This right has confirmed its aptitude for being the inescapable point of convergence of multiple legal principles, giving them strong concreteness and thus contributing to the foundation of a new political-institutional environment based on the respect of human rights. The right to food constitutes, indeed, the precondition for the enjoyment of other rights whose fundamentality is inherent in its intrinsic connection with existence, that is the right to life, and with the value of human dignity, a precondition for guaranteeing freedom, equality, and even the same democratic principles. The right to water and the right to land are particularly linked to it, as they both are essential resources to improve the food security of all vulnerable people, given that often socio-economic, climatic, and geographic conditions – such as availability of land and water – directly affect to food.

Expanding the reach of the right to food and explaining its interrelatedness with the other human rights contributed to better characterise how this right is formally included into national, regional, and international statutes. The mechanisms for the domestic implementation of this right entail two main possibilities: (1) comprising the right to food into Constitutions, and/or (2) adopting legislations on the right to food or food security and nutrition, possibly through framework legislation. Related to this, the case of Italy was analysed as perfect example where this right is not explicitly recognised either in the constitution or through *ad-hoc* laws, but rather derives from the judicial interpretation of other rights, including the right to life, to human dignity, *etc.*

Although the implementation of the right to food at the domestic level is more significant, there are regional and international accountability mechanisms, which are particularly important when national remedies are not available nor effective. The focus was on the inter-American, African,

European levels, to proceed then by better scrutinising the international level, with particular reference to the United Nations treaty bodies' role, as well as that of the FAO and the UN Council on Human Rights. Assuming a variety of forms, these regional tools allowed to compare how food security and the different nutritional traditions convened with the sharing of best practices, offering an innovative approach to the realisation of the right. Concerning UN agencies, the investigation proceeded by critically evaluating the extent to which the FAO's Right to Food Guidelines have succeeded in establishing a universal framework guiding the realisation of this right, together with the mandate of the UN Special Rapporteur on the Right to Food. This highlighted a partial retrenchment of UN bodies' commitment towards the Zero Hunger challenge, which conversely requires more action to adequately mainstream the right to food.

The final paragraph examined those factors challenging the effective realisation of the right to food, focusing on the market, climate change and food loss and waste. Despite this long-repeated premise on the responsibility of States to promote adequate policies for addressing food security, still many are the challenges towards achieving such an ambitious objective. Given the complex nature of food insecurity, a combination of diverse factors may favour its recurrence. In addition to natural disasters, a complex set of human-made actions may negatively impact food and nutrition security, such as global financial and economic crisis, volatility in commodity prices, conflicts, but also environmental degradation, desertification, and the impact of global climate change. In order to enable every individual to fully develop and maintain his/her physical and mental capacities, all competent stakeholders are required to adopt urgent measures at all levels for the elimination of hunger and malnutrition.

Chapter Three – Legal adjudication of the Right to Food in practice

The third chapter considered the centrality of legal instruments in the history of access to food realisation. The discussion initiated with a necessary premise on the issue of justiciability of Economic, Social and Cultural Rights (including the right to food), which has long been contested. Nonetheless, this section highlighted that, instead of questioning *whether* ESC rights can be adjudicated, critics should reverse the query to *how* these rights should be adjudicated, provided that they also hold a legal basis. Indeed, recurring to legal instruments represents the possibility for judges to develop new avenues and creative forms of adjudication in order to execute the right to food and enforce its justiciability.

In this regard, to provide a detailed perspective on how right to food litigations have been adjudicated in concrete case-law raised before courts, this section has analysed some relevant jurisprudence presented before supranational and national courts. The cases analysed regarded especially those events where national institutions lacked to enact the adequate measures to ensure citizens' minimum levels of subsistence, that is to ensure the

fundamental right to be free from hunger. Ensuring freedom from hunger is the minimum level obligation that States should respect to realise the right to food. Yet, as these examples demonstrated, not few have been the situations in which courts have been called to settle failures to ensure such “minimum level obligations” related to the right to food. Underlying the critical role that the effective judicialisation of the right to food would imply, the jurisprudence stemming from cases adjudicated before supranational courts – that is, Nicaragua, Ecuador and Nigeria – and before domestic ones – including, India, Nepal, Brazil, Kenya and South Africa has been examined. These cases have been selected on the basis of their relevance with respect to the core contents of the right to food and the corresponding States’ obligations, as well as for having provided innovative entry-points and interpretation towards its legal actualisation. This included especially the analysis of the so-called “Right to Food case”, that is *People Union for Civil Liberties v. Union of India & Others*. A case that demonstrated that legal adjudication can lead to issuing remedies, including adequate norms: that is, the adoption of the National Food Security Act in 2013. The latter not only incorporated many provisions included in the abovementioned interim orders, but also contributed to creating a clear legal framework vis-à-vis the distribution of food assistance, as well as providing guidance on how to issue complaints in case of food shortages. This case has been given special attention as it finally led to confirming that the right to life includes the right to food for enabling all citizens not only to conduct a dignified life, but especially to allow the vulnerable ones to switch from simple beneficiaries to “stakeholders of justiciable rights”. Moreover, with this petition it has also been possible to make the state more accountable and transparent, as it enabled people to claim their rights more easily: this has confirmed that the judicialisation of the right to food has positively contributed to realising food rights in actual terms.

Linked to this, the investigation included an examination of the remedies that can be applied to right to food violations by both domestic and supranational bodies, so that the people victims of RTF violations are enabled to receive adequate reparation. In general, guidance on the remedies that can be issued has been provided in both General Comment No. 12 on the right to food, and in the FAO Guide on Legislating for the Right to Food. Yet, the availability of judicial remedies might be confronted to the country’s legal, political, and social system where the litigation is submitted: that is why the distinction between national and supranational remedies is presented again. And yet, the main difference between the two relies on the possibility for the former to issue binding remedies, whilst the second are quasi-judicial bodies which generally do *recommend* remedies to the interested parties with no binding legal effect. Drawing inspiration from the cases-law presented above, over the years legal courts have responded to right to food litigations with conventional measures: namely, *compensation*, *restitution*, *declarations*, and *detailed orders*, including *interim orders* or *mandatory injunctions*. Nonetheless, it might also occur that courts are required to ‘forge new tools’

and formulate innovative and creative remedies so as to efficiently achieve the enforcement of the claim.

For the sake of completeness, this chapter was concluded by examples of explicit and voluntary violation of this right. This grounds on the principle that deliberately preventing people from having access to food and water first and foremost represent a breach of the right to food, but may also be invoked as a war crime according to the Geneva Convention, or a crime against humanity according to the Rome Statute of the International Criminal Court, thus imposing individual criminal responsibility. Drawing on a research conducted by prof. Howard-Hassmann, “State Food Crimes” occurred in North Korea, Venezuela and Zimbabwe have been analysed as manifest examples thereof. Three contemporary countries from different world’s regions and with diverse political systems, having as common factor to be experiencing State-sponsored right to food abuses: North Korea, an Asian country ruled by the dictatorial communist regime led by the Kim’s dynasty; followed by Zimbabwe, ruled by President Robert Mugabe’s personalist authoritarian regime; and finally, Venezuela, an increasingly authoritarian populist regime formerly ruled by Hugo Chávez, and then succeeded by Nicolás Maduro. Diverse contexts leading to different levels of violation depending on the severity of the abuse and the applied food policies, thus, with North Korea as the most severe case, followed by Zimbabwe, and then Venezuela. An analysis that, however, proved that the instruments currently in place are not sufficient to protect citizens from governments that violate human rights, even when such violations reach the level of crimes against humanity. This review proved that that States’, indeed, are guaranteed the sovereign right to preserve determined socio-economic policies, as well as the sovereign right to repeatedly infringe human rights and ignore international human rights law with almost complete impunity.

Finally, alternatives for ensuring right to food protection were presented, that is referring to the role of NGOs as leading actor intervening in emergency contexts affected by severe hunger and malnutrition, but also as main drivers of change as regards the justiciability of the right to food. In this regard, the intervention of INTERSOS – a humanitarian NGO based in Italy – in Nigeria has been presented as example of the former, whereas the general contribution of NGOs in the case-law presented above has been reiterated.

Conclusion

The specific research question that this thesis sought to answer to was discovering the role of international and national law in constructing and shaping discourses for the protection of the human right to food. The scope of this investigation was, thus, to concentrate on the legal tools to develop a framework for protecting a relevant human right as the right to food, and especially to observe how and whether the said tools have been invoked by the different actors. This perspective has been chosen under the belief that the judiciary, that is rule of law and adjudication, are the most effective

instruments in order to overcome the political inaction affecting world leaders' policy behaviour towards the right to food. Essential for the development of this reasoning has been, therefore, to emphasise an understanding of hunger that configures food as a human right to whom everyone should have access to through legal strategies and approaches at the international, regional, and domestic level. An approach that can only be examined taking into consideration the justiciability of this right, intended as ensuring people to bring their claims before courts and have their petitions heard by adequate judges, who will accurately investigate the question and emit an official judgement, with reparations over the offenders. The development of such analysis was made possible by answering to the three fundamental questions presented in the introduction of the work.

This dissertation reiterated that a clear and viable legal framework at the national and supranational levels complemented by available remedies contributed to the enforcement of the right to food. Yet, on account of this, the real limit to the judicial enforcement of the right to food is not the lack of adequate instruments, but the willingness to adapt the tools in place to the protection of this right. That is, States should attempt to reinforce their legal frameworks as regards the right to food, and thus enhance the judiciary's powers to adjudicate claims centred on ESC rights. This entails, especially the incorporation of this right into national constitutions together with the adoption of framework laws focused on the realisation of food security and the right to food, thus enabling the definition of a specific content for this right according to the specific context and objectives relative to the alleged country. Interestingly, States should also facilitate the mechanisms allowing citizens, NGOs and CSOs to commence and file public interest litigations on alleged human rights violations, thereby easing the necessary prerequisites for accessing legal courts. Yet, this process aimed at furthering the consolidation of the right to food as a justiciable human right should first and foremost include awareness-raising actions and programmes regarding the right to food. Calling upon governments for the renovation of their political commitment towards the adoption and implementation of adequate policies for the progressive realisation of the right to food is at the basis of the whole investigation. Once again, States' involvement and concrete support towards the realisation of this right is key. This could be realised following the ensuing points, which underlie at the basis of this work: to change the food systems guiding the global food governance; to enhance the participation of the peoples, even in the form of CSOs; to shift from justiciability to adjudication globally. In fact, in principle, the recognition and correct application of the right to food constitutes the first legal instrument capable of ensuring legal standards and political measures to combat hunger and malnutrition. However, further action is needed to ensure a more solid application.

Therefore, the thesis has concluded that only by transitioning from justiciability to real enforceability can the right to food be effectively safeguarded, thus guaranteeing access to safe, sufficient and nutritious food to everyone. Only by overcoming the lack of political will and developing

effective public policies can food insecurity be defeated and the full realisation of the right to food be guaranteed.

The case for the justiciability of the right to food is another example where the judiciary has intervened rather than the government. In this regard, indeed, disagreement remains as regards the appropriateness of recurring to courts and legal mechanisms to advance the protection of human rights. On the one hand, detractors are not convinced that judges are completely able to subvert the status-quo in front of right to food violations, especially provided that national governments can deliberately ignore or disregard their judgements. On the other, supporters of right to food justiciability are convinced that courts, at least, offer a possibility to repair the violation, thus implicitly protecting the rights of minorities and vulnerable peoples. Certainly, the case of the right to food has disclosed an interconnected global fight for human rights. Given the ongoing challenges facing humanity, every actor involved in such fight is required to continue its work with advocacy actions and mainstreaming this theme, aiming at bringing it to the very decision-making tables.

Food is a decisive question of the 21st century: unveiling its potential would generate several international, regional, national policy frameworks determining improved health, democracy, environmental sustainability, and international development. An unprecedented opportunity exists to improve access to food and determine the right to food as a human right. Establishing clear, legal tools to guide access to food transformation is an essential step in realising the opportunity towards the programmatic implementation of the right to food.