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**Master's degree in  
Human Rights and Multi-level Governance**



POLICY SOLUTIONS TO REALIZE THE RIGHT  
TO FOOD OF CHILDREN IN COLOMBIA: AN  
INTEGRATIVE APPROACH

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*To all hearts who believe that this world can be a better place, to those who open themselves to the vulnerability of transforming realities.*

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## **ABSTRACT**

The traditional analysis of hunger centers on food supply. Food supply is the focus of many leading international and local campaigns that aim at 'food security' to overcome hunger and malnutrition. Although several scholars and human rights practitioners prove this paradigm defective, numerous laws, policies, and regulations at the national and local levels persist in a food supply/food security approach. By means of a case study in Colombia, a review of the legal framework on the right to food, and a thematic analysis of semi-structured interviews with experts, this study examines the policy and regulatory framework barriers to realizing children's right to food. The results point to food supply centralization and lack of regulation for the food industry as critical obstacles. Findings also indicate links between these obstacles and a food-security-centered approach to public policy that interprets the resolution of hunger as delivering handouts rather than an obligation of states under international human rights law. The findings analysis suggests food and nutrition policy and regulations can effectively protect the right to food as long as they ground in an understanding of 'food' as a process and the right to food as every person's entitlement to that process. That is, beyond food security, a non-judicial concept that does not imply legal obligations to the states and concerns household/individual supply, disregarding the conditions of the groups that produce, transform and exchange food.

Finally, the study demonstrates that the model 'Food Process and Standards of Social Realization of the Right to Food' is a useful tool in developing policy and regulation to: (i) uphold the rights of children, families, communities, and the country to sustainably procure adequate food and decide the system to do so; and (ii) redress the elements of the food process infringed by the obstacles identified.

**Keywords:** Food process, Hunger, Policy, Right to food, Food process, Childhood, Food security

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## ACRONYMS

**CESCR:** Committee on Economic, Social and Cultural Rights

**CRC:** Convention on the Rights of the Child

**CRPD:** Convention on the Rights of Persons with Disabilities

**ESCR:** Economic, social and cultural rights

**FAO:** Food and Agriculture Organization of the United Nations

**FIAN:** Food First Information and Action Network, international organization

**GC:** General Comments on a human rights treaty

**IACHR:** Inter-American Court of Human Rights

**ICJ:** International Court of Justice

**ICESCR:** International Covenant on Economic, Social and Cultural Rights

**IHRL:** International human rights law

**NCD:** Non-communicable disease

**OHCHR:** Office of the United Nations High Commissioner for Human Rights

**PCDHDD:** Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo  
(Colombian Platform for Human Rights, Democracy and Development)

**right to food:** Right to food

**UDHR:** Universal Declaration of Human Rights

**UN:** United Nations

**WHO:** World Health Organization



## INTRODUCTION

Early childhood malnutrition poses a number of obstacles to the realization of substantive equality and the enjoyment of human rights. This thesis aims to build a set of human rights-based guidelines for the fulfillment of the right to food of children in Colombia, where early childhood hunger and malnutrition are particularly acute (Bejarano, 2021; FIAN, 2021; FAO, 2021; WFP, 2021). The study explores how rights-based policies can help overcome early malnutrition while contributing to the realization of the right to food.

Given that other researchers have developed relevant theories and descriptive research on the topic, this work intends to complement the existent developments through an exploratory-explanatory approach. The purpose is to find public policy failures to overcome early malnutrition in a case country, Colombia, and propose targeted solutions based on qualitative research. Accordingly, this study departs from three specific objectives: (i) identifying the main obstacles to the eradication of hunger and malnutrition in Colombian vulnerable early childhood; (ii) finding the traits that public policies should have to be efficient at fulfilling the right to food of vulnerable early childhood in Colombia; (iii) unpacking the mechanisms that explain the effectiveness of such traits.

In the current context of food and economic crisis, it is urgent to provide solutions that impact the whole life cycle of the present and future generations. In 2020, 8,9% of the world population (about 690 million people) lived in hunger. That was an increase of 10 million persons in just one year. Amid them, 21.3% (144.0 million) of children under 5 years of age suffered stunting, 6.9% (47.0 million) wasting, and 5.6% (38.3 million) were overweight (FAO, 2020). While some access little or no food, many experience what is known as ‘invisible hunger’: they access foods that provide satiety and energy but are scarce in essential nutrients. These foods might have a low cost, but they are often low-quality, starchy products. Evidence shows that, regardless of the etiology of hunger, nutritional deficiencies, mainly during early childhood, can cause cognitive impairment, psychological dysfunction,

impaired immune response, and diverse non-communicable diseases (NCDs) (Benton, 2010; Delisle, 2008; Johnson, Riis, & Noble, 2016; Yakoob & Lo, 2017). Malnutrition therefore increases the risk of school dropout, reduces opportunities for a dignified source of income, a healthy life, and even a healthy progeny because malnutrition can be intergenerationally transmitted. Thereby, early childhood malnutrition sets individuals in a position of substantive disadvantage, reinforces circles of poverty, hinders the enjoyment of human rights and a life of dignity.

The right to food is enshrined by article 11 of the International Covenant on Economic, Social and Cultural Rights (1976) (ICESCR), as a component of the right to an adequate standard of living. General Comment No. 14 by the Committee on Economic, Social and Cultural Rights (CESCR) also recognizes food as an underlying determinant of the right to health. Member states are bound to take all the appropriate steps to guarantee the full realization of the right to food. However, despite the numerous strategies of the governments and the multilateral organizations, the high figures of hunger suggest that something is missing to ensure that each step is appropriate, and every needed step is taken.

A growing collective of academics and human rights defenders theorize that most current approaches to hunger and malnutrition are inefficient because they are designed from a perspective that considers *food security* as the only avenue to achieve the right to food. The 1996 World Food Summit (WFS) defined *food security* as the situation that “*exists when all people at all times have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life*”. This definition recognizes four dimensions of food security: availability, access, stability, and utilization. Some scholars and social leaders have proposed the concepts of food sovereignty and food autonomies as complementary to the food security approach. The international nongovernmental organization Food First Information and Action Network (FIAN) and the Colombian Platform for Human Rights, Democracy and Development (PCDHDD), which is a network of social organizations and NGOs for the promotion of democracy and human rights, integrate the concepts food security, food sovereignty, and

food autonomies in the model Food Process and the Standards of Social Realization to the Right to Food. The model proposes a holistic analysis that underlines the importance of understanding food as a process that entails collective and individual subprocesses, from food production to biological utilization. According to the model, food entails the personal availability, access, and consumption of food (food security) and the collective rights of the groups that produce, transform, and exchange food. In that logic, fulfilling the right to food requires guaranteeing both the private sphere and the collective sphere of food through three standards of social realization: food sovereignty, or the right of nations and peoples to appropriate, in dignity, the foods they produce and to define their sustainable food and agriculture systems; food autonomies, which concern the same aspects than food sovereignty but at the community level, and food security, which involves the availability, access, and utilization of adequate food at the individual or household level.

This thesis uses the right to food as a legal framework and the model of the Food Process and the Social Standards of Realization of the Right to Food as the conceptual framework. Within these frameworks, the thesis poses the following overarching research question: "how can public policies help overcome childhood hunger?" The present work undertakes an in-depth qualitative case study in Colombia to answer this question by analyzing its food and nutrition policy framework. The case study is based on a literature review and primary data collection through semi-structured qualitative interviews with experts. These primary data are analyzed through a deductive-analytic method. Colombia is chosen as a case study because, at present, it is a state in deep food crisis, above the average hunger rates in Latin America. Furthermore, Colombia is the country of origin of the model Food Process and Standards of Social Realization of the Right to Food, proposed by FIAN Colombia (FIAN, 2021; Morales & PCDHDD, 2010). The model has served as a benchmark for developing policies, territorial plans, and regulations to defend the right to food with the protection of food sovereignty in many Latin-American countries and developments at the World Food Summit. The target population is Colombian children because they enjoy special protection under the law and because the Colombian food and nutrition policy framework focalizes on children. Unlike for other age groups, the Colombian Constitution (1991) explicitly recognizes adequate food

as a fundamental right for children and pregnant women in vulnerability. Despite the formal protections and the concentration of the nutrition policy on children and pregnant women, thousands of Colombian children still die of hunger and its complications.

The first chapter of this work provides a theoretical framework of the model of the Food Process and the Standards of Social Realization to the Right to Food and an analysis of the hunger crisis in the world, in Colombia, and the human rights implications of early childhood malnutrition. The analysis entails a review of the human rights implications of early childhood malnutrition and early childhood violation of the right to food. The last part of the chapter analyzes some institutional proposals to reduce malnutrition globally. It underlines why these approaches might be reductionist if they are limited to the attainment of food security without recognizing the collective dimensions of food.

The second chapter is divided in two sections. Section 2.1. presents the international juridical framework of the right to food. Section 2.2. summarizes the legal framework on the right to food in Colombia. The segment includes an analysis of the national, regional, and international norms. In addition, section 2.2. reviews the Colombian food and nutrition policy and examines the state of the right to food in practice. Building on the theory of the food process model, section 2.2. analyzes why Colombia needs territorialized food and nutrition strategies that involve all the stakeholders from formulation to evaluation.

The third chapter contains the results, analysis, and primary data obtained from a set of semi-structured interviews with eighteen experts on the right to food, food security, and early childhood nutrition policies. The background and career orientation of the candidates was assessed to ensure including interviewees from international multilateral organizations, governmental institutions, academia, civil society groups, and advocacy groups, who might pose diverse stances vis-à-vis the attainment of the right to food. A snowball sampling technique was used to enlarge the number of study participants.

Finally, reviewing the theoretical framework and the analysis of the third chapter, the fourth chapter presents the study's conclusions by way of a thematic analysis of the interviews conducted. Building on these findings, the thesis concludes with a set of policy recommendations for Colombia to use its maximum available resources to realize the right to food of all children. The findings of this study can also be used as a point of departure for further research on the needs of other countries with similar profiles.

## 1. Exploring an Integrative Human Rights-based Model to Tackle Hunger

### 1.1. Defining Hunger and Malnutrition in Human Rights Terms

Article 1 of the Universal Declaration of Human Rights (UDHR) states that “all human beings are born free and equal in dignity and in rights” (UN, 1948). Article 2 UDHR states that everyone is entitled to all human rights and freedoms without any distinction. This freedom from discrimination is what safeguards equality. The principle of equality and non-discrimination is a founding principle of the international human rights law (IHRL). This principle is a cornerstone of all major legally binding IHRL. The Office of the High Commissioner on Human Rights (OHCHR) underlines that the UDHR envisions a world where “everyone - regardless of who they are and where they live - has equal opportunity to grow and develop in freedom and equality and to the fullness of their potential” (OHCHR, 2010). However, even if formally all human beings are considered as equal and deserving the same opportunities, in practice not everyone stands at the same footing to reach the same opportunities and outcomes to access opportunities, results, and fully enjoy all their human rights. Even before birth, a complex of economic, social, cultural, and biological factors defines a certain level of access to opportunities and outcomes in early and adult life. A major factor in defining access to opportunities is nutrition quality during early-childhood, mainly during the first 1000 days of life. Food insecurity and malnutrition during this stage set the affected individuals in a lower footing to access opportunities for a lifetime (UNICEF, 2013).

The World Health Organization (2021) points out that low-income, poverty, and vulnerability amplify the risk of suffering malnutrition and its consequences. This is because although malnutrition can affect anyone in society, it is more prevalent amid individuals who face food insecurity due to physical or economic constraint to access stable adequate food for a healthy diet. When referring to *low-income children* and families, WHO denotes those who are exposed to material deprivation, living in households at the poverty threshold or just above the poverty threshold, understood as the international poverty line of \$1,90 USD/day at 2011 international prices (WHO, 2020). When referring to *poor children* and *poor* households, the present thesis refers to those living under that poverty threshold.

For the effects of the present work, Child vulnerability will be interpreted as defined by the OECD: the result of the interaction of a complex of individual and environmental factors that can change dynamically over time. The individual factors contributing to child vulnerability derive from personal circumstances, physical, cognitive, and emotional characteristics, such as age, sex, disability, ethnicity, having mental health difficulties, and disposition to illness. Factors can be invariable, such as race or immigrant background, or situational, such as experiencing maltreatment, being an unaccompanied minor, or being placed in out-of-home care. The environmental factors demonstrate the inter-generational character of child vulnerability. They occur at the family and community levels. Family factors encompass income poverty and material deprivation, caregivers' health, health behaviors, and education level, family stress, and exposure to family violence. The community factors are access and quality of early childhood care and education, primary and secondary education, and traits of the neighborhood or the immediate surrounding. The types and degree of child vulnerability vary as these factors change over time. For example, during early ages children are completely dependent, and therefore particularly sensitive to parents' health and poverty. Children under three years are in a phase of rapid brain development, so they are particularly affected by family stress, undernutrition, and material deprivation. On the other hand, the independence of adolescence makes individuals more susceptible to specific opportunities and risks and this exposition will be influenced by factors like the presence of caring adults, quality education, and the availability of economic opportunities in their environment (OECD, 2019).

Malnutrition is also rampant among households lacking potable water, sewage, sanitation, basic utilities, healthcare, and/or facing one or more. Therefore, a systematic review conducted by Johnson, Riis & Noble (2016) proves that as a group, children in poverty are at higher risk of lower achievement and more behavioral and emotional problems than their more advantaged peers.

The World Health Organization (WHO) (2020) defines malnutrition as the imbalances, deficiencies, or excesses in the intake of energy and/or nutrients. On the one side, malnutrition can take the form of undernutrition, which encompasses stunting (low height for age), wasting (low weight for height), underweight (low weight for age) and micronutrient deficiencies or insufficiencies. Malnutrition can also occur as overweight, obesity and diet-related noncommunicable diseases (i.e., cardiovascular diseases, stroke, several types of cancer, and diabetes), all of which can coexist with deficiencies of essential nutrients (WHO, 2020).

Food insecurity does not necessarily amount to malnutrition but entails a risk of malnutrition of all types, and prolonged food insecurity leads to malnutrition. According to the Food and Agriculture Organization of the United Nations (FAO), the United Nations Children's Fund (UNICEF), the World Food Programme of the United Nations (WFP), and the World Health Organization (WHO) (2017, 2018, 2020) Food insecurity is the condition by which a person does not have permanent, certain access to nutritious sufficient food. Food insecurity can take the form of moderate food insecurity and severe food insecurity. Moderate food insecurity refers to the condition of uncertainty about the ability to obtain food, which might force individuals to reduce, at times during the year, the quality and/or quantity of food they consume due to lack of money or other resources. It entails a lack of reliable access to food, which reduces dietary quality, impedes healthy eating patterns, and can cause negative effects on nutrition, health and well-being. Severe food insecurity implies a high risk to run out of food, experience hunger and, at the most extreme, lack food for days, putting health and well-being at grave risk. Any type of food insecurity can result into various forms of malnutrition, from undernutrition to overnutrition and related non-communicable diseases (NCDs).

A large body of evidence proves that nutritional deficiencies during early childhood, mostly during the first 1000 days of life, can constrain the neural tube and brain development, thus preventing the attainment of the full cognitive potential (Benton, 2010; Yakoob & Lo, 2017). Additionally, malnourished children are likely to present more overall developmental delay, lower achievement, worse physical and emotional health than peers with a proper nutritional



status (Johnson, Riis, & Noble, 2016). Moreover, the nutritional status of the child is linked to the one of the mother. Inadequate maternal and early child nutrition may limit the development of important aspects of the brain's architecture which from the earliest stages of pregnancy are vulnerable to nutritional influences during early childhood (Yakoob & Lo, 2017). Women with a history of malnutrition or cursing pregnancy with nutritional deficiencies, are likely to conceive malnourished children, to face still-birth or fetal malformation. Sebastiani et al. (2019) also proved that women with nutritional deficiencies, mainly of vitamin B12, vitamin D, calcium, and DHA during lactation, might produce breast milk of low vitamin content. In turn, consumption of milk of lower nutritional density might hinder proper growth and immunity in the child, cause neurological disabilities and low bone mineralization (Sebastiani, et al., 2019). These health outcomes set individuals in lifetime disadvantage to access the same opportunities and outcomes available for better-fed peers. Moreover, malnutrition as well as the physical and cognitive dysfunctions derived from it can be intergenerationally transmitted; consequently, substantive disadvantage travels across generations (Aizer & Currie, 2014). For example, a systematic review conducted by Walker et al. (2011) about the implications of inequality in early childhood, showed that infants of undernourished mothers presented poorer problem-solving ability at 7 months, 16 months, and that ability was better in infants of mother given food supplements early rather than in the advanced stages of pregnancy.

Individuals who experience brain underdevelopment and cognitive impairments due to malnutrition, might face learning difficulties that reflect in an increased risk of school dropout, and reduced access to a stable dignified income. Early malnutrition also reduces the immune response, therefore increasing the risk of infections which, in turn deteriorates further the nutritional status. In addition, malnutrition during childhood rises the risk of developing diverse chronic non communicable diseases (NCDs), which in turn, can hinder participation in society, cause repeated labor absences and disability, hence constraining job and income opportunities<sup>1</sup>.

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<sup>1</sup> Leonardi and Scaratti (2018) highlight that NCDs difficult participation in society and work is one of the most affected areas. NCDs like migraine, diabetes, and depression, have peaks and disease onset in the most

It is worth noting that malnutrition can take several forms: While some undernourished face food scarcity, many others undergo what is often denominated hidden hunger. Hidden hunger occurs when individuals can access some food that provides them with enough calories not to die from starvation, but not enough nutrients to be healthy and develop properly. Hidden hunger is common amid budget-constrained households that live on a diet based on starchy products such as cereals, industrialized starch derivatives, and tubers. This food pattern is usually cheap, provides energy and some satiation, but is poor in bioavailable protein and micronutrients. Therefore, depending on their energy intake, individuals facing hidden hunger might present low, normal, or even excess of weight while cursing while suffering nutritional deficiencies.

Overnutrition, a type of malnutrition, can thus appear under the form of obesity, overweight and diet-related NCDs. Overnutrition can coexist with deficiencies of one or more nutrients. Wasting (low weight for height), on the contrary, is a type of undernutrition, which is an outcome of protein-energy deficiency and might concur with micronutrient deficiencies. There are three types of wasting according to its etiology: (i) primary malnutrition, when malnutrition is owed to insufficient food intake, that can be explained by social problems affecting the child, his/her family or community; (ii) secondary malnutrition, associated with congenital or acquired diseases (i.e., oral cavity malformations or congenital abnormalities of the digestive tract); (iii) mixed malnutrition, when malnutrition is the result of social etiological factors linked to diseases that modify the food and nutrition process (MINSALUD, 2016).

As reported by Jean Ziegler, former Special Rapporteur on the Right to Food (2011), hidden hunger is quieter than famine as it does not attract the attention of the media. However, hunger in all its forms is a violation of the human right to food which impairs the values of equality, dignity and participation inherent to the IHRL (SHRC, n.d.).

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productive years of adult working life. Therefore, NCDs are a major cause of labor absence, lower productivity, and lower income opportunities.

The right to adequate food and to be free from hunger is enshrined in article 25 of the UDHR and article 11 of ICESCR as a component of the right to an adequate standard of living. It is also recognized by the CESCR General comment No. 14 as an underlying determinant of the right to the highest attainable standard of physical and mental health (art. 12, ICESCR). Furthermore, signatories to the ICESCR are legally bound to take all the appropriate steps to guarantee the full realization of this right to food. Jean Ziegler underlines that the right to food is a clearly defined and enforceable right which gives rise to obligations of states to eradicate hunger and malnutrition (Ziegler, Golay, Mahon, & Way, 2011).

Despite the explicit state obligations to progressively take all the appropriate steps to eradicate hunger and malnutrition, the current strategies of governments and multilateral organizations are not solving the hunger issue. The statistics of famine show that the problem is pervasive and suggest that something is missing to ensure that all necessary steps are taken and that each of the, are appropriate. Despite some advancements reducing underweight rates in the past two decades, the progress eradicating malnutrition is still slow and unfair. The global and national patterns cover significant nutrition inequities within countries and communities; the most vulnerable groups, mainly women and children are the most affected. Women and children face further vulnerability when exposed to intersectional discrimination (i.e., being discriminated for being a girl, of ethnic belonging, living in a rural marginalized area). Dire inequalities related to sex, age, urban/rural location, level of education, wealth, and belonging to specific communities coexist within every country in the world (Global Nutrition Report, 2020). Transversely, ethnic discrimination, armed conflict, enforced displacement, migration, climate change effects, food dependence on imports, and other forms of fragility add to the equation.

The 2016-2017 global nutrition policy review of the World Health Organization (WHO) found that more than 90% of countries in each region have policies and programs to target diverse forms of undernutrition, micronutrient deficiencies, infant and young child nutrition, obesity and diet-related noncommunicable diseases (NCDs). Yet, notwithstanding the wide program availability, WHO detected major gaps in terms of: design and content of some

policies and programs, policy implementation, nutrition governance, monitoring and evaluation. WHO points out that in general, nutrition policies are not adequately responding to the challenges that countries and regions are facing in terms of responding to the food crisis. In particular, the policies are failing to tackle the double burden of malnutrition, understood as the escalating coexistence of undernutrition along with weight excess and/or diet-related NCDs, within the same households and populations, and across the life-course. WHO also identified that national capacities for nutrition governance are limited due to a lack of human resources enabled to design, deliver, and monitor the nutrition programs (WHO, 2018)

A growing collective of academics and social leaders theorize that many approaches to combat hunger are inefficient or, at best, partially efficient, because they are grounded on a reductionist perspective of food and nutrition, which understands *food security* as the only way to realize the right to food. Scholars, human rights defenders, collectives of peasants and indigenous peoples have proposed the alternative concept of *food sovereignty* to complement the perspective of *food security*. For more than two decades, a number of debates have taken place around which of the concepts would prevail when referring to strategies for the defense of the right to food and the eradication of hunger. The conceptual model described below presents a scheme that validates and reconciles the two terms in an integrative perspective that provides for the enforceability of the right to food and the monitoring and evaluation of related jurisprudence and policy.

## **1.2. The Food Process and the Standards of Social Realization of the Right to Food: An Integrative Human Rights-Based Model**

The conceptual approach of The Food Process and the Standards of Social Realization of the Right to Food was proposed by Juan Carlos Morales, Executive Director of FIAN Colombia, and the Colombian Platform for Human Rights, Democracy and Development (FIAN, 2021; Morales & PCDHDD, 2010). This approach indicates that when interpreting the right to food, the term food must be interpreted as a process (*food process*) composed by six interrelated components: production, transaction, processing, access, consumption and biological use of

food. Each of these components must take place in conditions of safety, within the framework of social, political, economic and cultural relations. For the right to food to be guaranteed, three levels of social construction must be met: food sovereignty, which occurs at the national and territorial level; food autonomy, which occurs at the community level; and food and nutrition security, which occurs at the household and individual levels. If one of the components of the food process is breached in any way, or if in a society one or more of the scales of social construction of the right to food is not achieved, then, it is not fulfilled. This paradigm indicates that adequate food, as addressed by article 25 UDHR, article 11 ICESCR, and GC 12 ICESCR should be perceived as a collective process rather than as a final step to satisfy individual nutritional needs (Colombian Platform for Human Rights, Democracy and Development, 2010).

Through an analysis of the literature review, the international and Colombian juridical framework of the right to food, and the contributions of the interviewed experts, this work aims to identify key obstacles to overcome malnutrition in vulnerable early childhood in Colombia. In the light of the theory of the *Food Process*, each key obstacle will be examined in order to identify which of the components of the food process does the obstacle breach. Next, a set of targeted solutions to repair the breached components and standards will be offered in the form of guidelines for public strategy. It is expected that these guidelines are applicable to Colombia but also adaptable to other countries undergoing similar obstacles to the realization of the right to food of their early childhood.

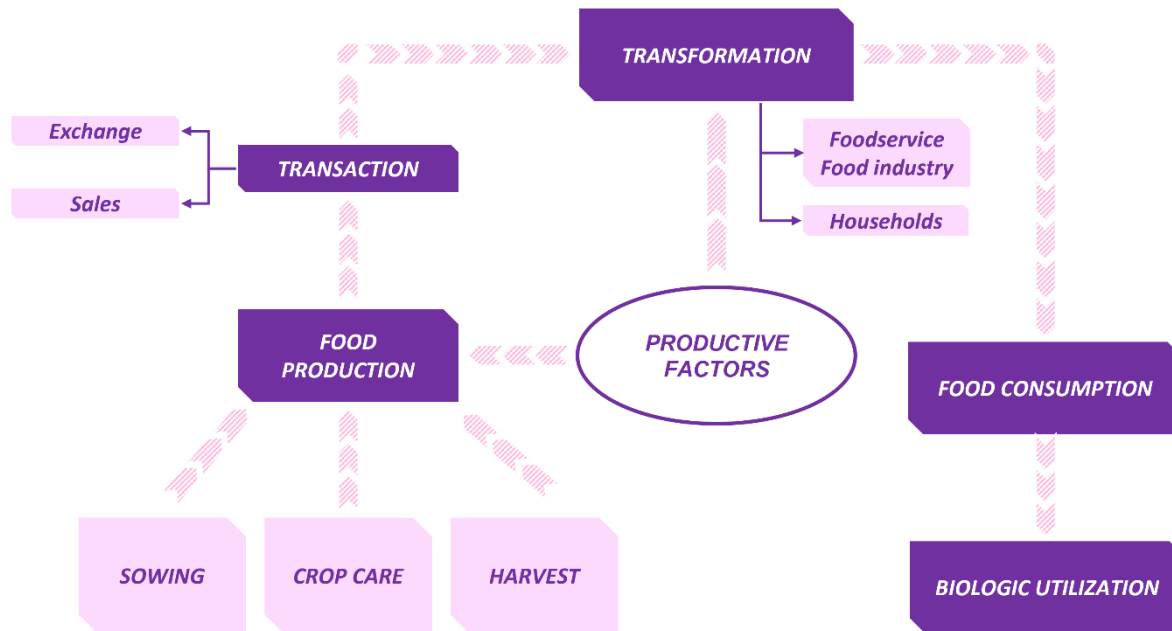
### **1.3. The Food Process and the Right to Food as the Right to the Food Process**

Within the framework of the food process proposed by FIAN, *food production*, the first step of the process, entails the possession, access and use of natural resources to obtain food and inputs. *Transaction* involves the mechanisms for exchange, sales, and purchase of locally, regionally, nationally and internationally produced foods. In the transaction, small, medium and large producers obtain revenues or resources out of the exchange that allow them to reinvest to eventually increase their production and to purchase more food other than the produced to supplement their diet, improve their nutritional status, their economic conditions and, in general, their quality of life. In line with the transaction, *Access* occurs when people

purchase the food available in the transaction. After the access, people count on food and supplies so they can proceed with food *Processing*, which can occur at a small scale at the home when cleaning, conserving, storing, portioning, processing or cooking foods, or at a large scale in food industry processes. In some cases, processing may occur alongside food production, for instance when plant or animal species are modified through conventional or bioengineering methods. Transformation is followed by *Consumption*, which is defined by beliefs, habits, cultural attachments and traditions. Finally, the *biological use of the nutrients* contained in the ingested foods takes place. This utilization of nutrients is determined to a great extent by the health status of the individuals. In turn, the state of health is influenced by many intertwined variables that are part of the social and economic structure of the environment (Caicedo, 2013; Mejía, 2014; FIAN, 2021; Morales & PCDHDD, 2010).). For example, health and capacity to absorb nutrients can be determined by the availability and accessibility to potable water, healthcare, education, basic utilities, sanitation, sewage, prenatal care, and adequate breastfeeding.

Since the building blocks of the food process are interdependent and interwoven with social, cultural, economic and political relations, so no block can be excluded when addressing and protecting the right to food. In addition, the food process and the right to the food process is a social tissue made up of three indivisible standards of social realization: food sovereignty, food autonomy, and food and nutritional security. The right to food is only fulfilled when each of these standards are fully guaranteed (Caicedo, 2013; FIAN, 2021; Morales & PCDHDD, 2010). Hence it cannot be approached through a reductionist perspective that recognizes one single dimension, for example when trying to realize the right to food only through realization of the food and nutrition security dimension.

**FIG. 1. THE FOOD PROCESS**



Adapted from Scheme No. 3 of the Second Report on the Situation of the Right to Food in Colombia (Morales & PCDHDD, 2010, p. 14) and Figure 1 of the Fourth Report on the Situation of the Right to Food in Colombia (FIAN, 2021, p.p.16-17)

After expounding the structure of the food process, it is important to explain each of the social standards of realization of the right to this process, how the concept *food sovereignty*, *food autonomies*, *food security* were developed, and how they are all necessary, intertwined, and complementary. The three terms are explained below.

### 1.3.1. Food Sovereignty

In the frame of the *food* process, food sovereignty corresponds to the national and collective dimension of the right to food. The concept was developed and exposed to public debate for the first time by the transnational social movement of peasant and indigenous organizations Via Campesina, in the context of the World Food Summit in 1996<sup>2</sup> (Desmarais, 2007).

<sup>2</sup> It is worth noting that prior to the development of the food sovereignty concept, FAO had proposed several initial definitions for the term food security, which constituted the cornerstone of numerous national and multilateral strategies for the eradication of hunger. The very first definition of the term food and nutrition security was conceived in 1943 in the frame of the UN Conference on Food and Agriculture in Hot Springs, Virginia (UN, 1943). This definition was updated in 1947. Later, in 1983, the definition of *family food security* was coined, and therefrom a definition of *food security* was provided in 1996 in the World Food Summit. This

The definition of food sovereignty was proposed to complement the dominant discourse of *food security*, underscoring that *food security* alone fails to integrate the political economy of food systems, the power relations that govern them (Edelman, et al., 2014), and the need to rule them through a human-rights perspective transversal to the whole food process from production to consumption. Thus, in the context of the World Food Summit 1996, Via Campesina defined food sovereignty as "the right of each nation to maintain and develop its own capacity to produce food which is crucial for national and Community food security, respecting cultural diversity and the diversity of production methods". To the definition, Via Campesina added the statement that as a growing movement of agricultural workers, peasant organizations, small and medium producers, and indigenous peoples from all regions of the world, knew that food security, the eradication of poverty and hunger cannot be achieved without taking into account those who produce food. Since then, that concept has become a major issue of the international agricultural debate, within and out of the United Nations bodies. It was the main theme of the NGO forum held in parallel to the FAO World Food Summit of June 2002 (La Vía Campesina, 2016). Later, in 2007, in the Nyéléni Declaration, Via Campesina complemented the 1996 definition explaining food sovereignty as "the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems" (European Coordination Vía Campesina, 2020).

The definitions of food sovereignty make it a concept that puts those who produce, distribute and consume food at the center of food systems and public policies, over any market interest. food sovereignty protects the right to food of the next generations and nonhuman forms of life. It focuses on a model of local production that is inclusive of peasants and rural economies by recognizing the right of growers to access land and natural resources necessary to sustainably cultivate, fish, raise, and trade. This conception contrasts with the industrial

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final definition indicated that "Food security exists 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" (FAO, 1996). As explained above, the World Food Summit definition slightly defers from the concept of *food and nutrition security* proposed from the perspective of the *food process*.



agriculture model derived from the green revolution which focuses on high-yield and ever-growing production through the use of monocultures, mechanized irrigation, chemical fertilization and chemical plague control, at the extent of deforestation, deterioration of the soil, of the nutritional quality and the safety of food products and traditional small economies (Caicedo, 2013, as cited in Mejía, 2014). Furthermore, food sovereignty promotes transparent trade that guarantees just income to all the parts of the *food process* and protects the rights of consumers to control their food and nutrition (Via Campesina, 2007). Food sovereignty implies the right of a country or a society to control its food process against the claims and interests of other states or transnational corporations (FIAN, 2021; Morales & PCDHDD, 2010).. In this sense, food sovereignty transcends the individual and family view of food access, by broadening it to a collective, participative dimension of the right to food. In a nutshell, food sovereignty promotes a human rights-based food system free of inequality between the parts of the food process and the incoming generations (Via Campesina, 2007). However, although food sovereignty as originally conceived is a collective, participative, and inclusive standard, the Colombian Platform for Human Rights, Democracy and Development (2010) points out that the concept of food sovereignty itself is vulnerable to manipulation by states. This is because by relying on the concept, some governments might proclaim the nation sovereign to decide for agricultural and food policies which may violate the rights of certain communities or minorities of the national collective<sup>3</sup>. Therefore, the Colombian Platform for Human Rights, Democracy and Development along with other networks, proposed the term Food Autonomy as complementary to food sovereignty (FIAN, 2021; Morales & PCDHDD, 2010).

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<sup>3</sup> Some examples of abusive actions that states might undertake by arguing the ‘defense of the National food sovereignty’ are: plans for agrarian reforms, territorial and demographic reorganization that cause displacement of rural populations, imposition of certain crops or seeds at the expense of traditional production and biodiversity, financial and technological support for large food producers and processors that sets small growers and manufactures in disadvantage or exclusion; free trade agreements that, advocating for the increase of food availability, endanger the viability of domestic traditional, artisanal, and small-scale food production (Morales, 2010).

### **1.3.2. Food Autonomies**

In the frame of the *food process*, this dimension lies at the level of the communities. It denotes the right of each community or group of people, which is part of a nation, to control autonomously their food process according to their traditions, customs, needs, and strategic perspectives, in harmony with the other human groups, the environment, and the future generations (FIAN, 2021; Morales & PCDHDD, 2010, p. 11). Because there is a multiplicity of plural collectivities in each nation, there is no single food autonomy but many. Therefore, the plural tone of the term *food autonomies*. Food autonomies designate the right of peoples to administer their food process in face of the national and international/transnational entities. This entails the economic, political, and media actors that might abuse the principle of sovereignty to develop actions that violate the ways of life of small communities in the name of the "national interest". The plurality of the concept of food autonomy recognizes the cultural aspects of each community as constitutive elements for the effective enjoyment of the right to food. This recognition allows to revendicate the role of groups that have been historically disregarded and give them a fundamental role in the process for the attainment of the right to food (Caicedo, 2013).

### **1.3.3. Food Security**

From the perspective of the *food process*, food security points at the level of the individuals and the households that are part of the communities that make up the nation (Mejía, 2014). Over time this concept has been defined and modified on multiple occasions. The term was initially coined by the United Nations and has constituted the cornerstone of numerous national and multilateral strategies for the eradication of hunger. The first definition was given in the context of the 1943 UN Conference on Food and Agriculture in Hot Springs, Virginia (UN, 1943); this definition was updated in 1947. Later, in the first World Food Summit in 1974, an official definition of food security was devised in response to the moment of acute global hunger that was associated to the so-called Food Crisis<sup>4</sup>. Subsequently, in

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<sup>4</sup> This crisis was the result the convergence between the devaluation of the dollar; the monetary instability fostered by the United States (1971); the reduction of world cereal reserves due to bad harvests in the Sovietic union (1971-1972, 1975, 1977); the monsoon disasters in India; the drought in sub-Saharan Africa (1971-1972); the energy crisis (1973); the increase in inflation and the economic growth decline of the main economies of

1983, FAO focused on analyzing food access<sup>5</sup>. Therefrom, the current FAO's definition of *food security* was built in the frame of the 1996 World Food Summit, proposing a concept that would recognize both food availability and access, adding the component of food utilization:

Food security exists 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 (World Food Summit, 1996).

According to FAO, the 1999 definition of food security entails four dimensions: (I) *food availability*: disposal of sufficient food with appropriate quality, which can be supplied through domestic production, imports, and food aid. (II) *Food access*: individuals must be able to access adequate resources (entitlements) to secure appropriate foods for a nutritious diet. Entitlements are the set of all the commodity bundles which persons can control within the frame of the legal, political, economic and social arrangements of the community in which they inhabit. Entitlements include traditional rights such as access to common resources. (III) *Utilization*: refers to the capacity of the individual to use to the cell level the nutrients contained in the food ingested. This capacity is conditioned by the adequacy of the diet, the safety of the food, and the health status of the organism. In turn, health conditions are determined by a complex of factors such as environmental health, access to healthcare, clean water, sanitation, basic utilities. Food safety and innocuousness<sup>6</sup> must be present from food production to consumption in order to ensure that food preserves and delivers its complete nutritional and organoleptic profile and thus contributes to improve the nutritional

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the world of (FAO, 2006). As a consequence of this complex of events, between 1972 and 1974 alone, in the Sahel region and Ethiopia, more than 300,000 people died of hunger (Morales, 2006). Due to the concern around the fall of the world food reserves, the definition of food security provided during the 1974 World food Summit was focused on the availability of food, indicating that food security was attained through "Availability at all times of adequate world food supplies of basic foodstuffs to sustain a steady expansion of food consumption and to offset fluctuations in production and prices".

<sup>5</sup> Seeking to balance the relations demand and supply within the concept of food security, in 1983 FAO proposed that food security entailed "*Ensuring that all people at all times have both physical and economic access to the basic food that they need*" (FAO, 1983 as cited in FAO, 2006).

<sup>6</sup> The Codex Alimentarius defines food safety as the guarantee that food will not cause harm to the consumer when prepared and when consumed in accordance with the intended use (WHO & FAO, 2016).

and health status of individuals (Caicedo, 2013 as cited in Mejía, 2014, p. 13). (IV) *Stability*: people, alone or in community must have access to adequate food at all times, without fear of losing food access due to sudden shocks or cyclical events. Stability encompasses both the *availability* and *access* dimensions of *food security* (FAO, 2006).

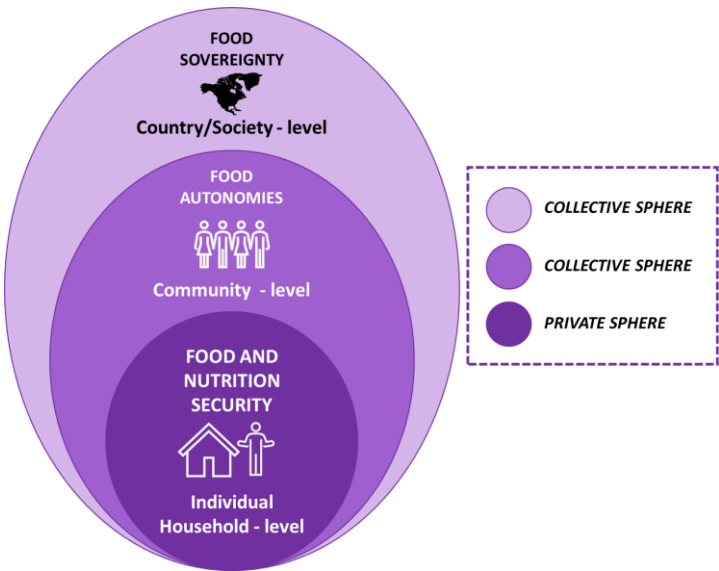
It is worth noting that although the right to food was first recognized in the UDHR, 1948, the Right to Adequate Food was formally adopted in the frame of the World Food Summit, 1999. This formal adoption opened the possibility of a rights-based-approach to food security. Later, in 2004, an Intergovernmental Working Group under the auspices of the FAO Council elaborated a set of voluntary guidelines to orient the states in the progressive realization of the right to adequate food in the context of national food security (FAO, 2006). These voluntary guidelines have been used as a standard to measure and monitor the observance of the right to food in diverse territories.

Morales (2010) notes that despite its improvements regarding the precedent ones, the 1996 definition of food security does not clarify how such food security and each of its components should be attained. Nor does the 1996 definition clarify how to attain food security without vulnerating its right holders, or whether the achievement of such food security can be aligned with the sovereignty of decision of the peoples and nations. In line with Morales (2010), the vagueness in the 1996 and still in-effect definition of food security, does not oblige to undertake structural actions to guarantee the right to food (FIAN, 2021; Morales & PCDHDD, 2010). Hence, it favors the manipulation of the term by states and agents of power, while simulating a commitment to the right.

Realizing the inadequacy and vagueness of the concept, a collective of international social and rural movements, together with Via Campesina, proposed the abovementioned concept of food sovereignty also in the frame of the 1996 World Food Summit. Food Sovereignty goes beyond the possibility of adequate and timely food access as indicated by the 1996 food security definition; it must be complemented by the Food Autonomies standard to protect it from abuses in the name of the interest of the nation.

Concepts and definitions are important to recognize the existence of a notion. Once given a definition, a notion acquires a role, a character, a presence. The right to food has both an individual/private dimension and a collective/public one. Therefore, developing the concepts food sovereignty and food autonomies is an important advancement to recognize the collective dimension of the right to food and the food process. Food security occurs at the private sphere, where the individuals and family members must: (a) find sufficient stable availability of nutritious innocuous foods; (b) have the capacity to access them timely and without risking other basic needs (i.e., risking housing or quality diet due to a constrained budget to cover both and other basic needs); (c) have the conditions to absorb and use the energy and nutrients of the ingested food. Food autonomies entail the community-level of the food process, encompassing sub-processes of food production, transformation, transaction, access over which the community has the right to decide. Finally, food sovereignty refers to those sub-processes at the national and the peoples’ level (see figure No. 1).

**FIG. 2. THE SOCIAL STANDARDS OF REALIZATION OF THE RIGHT TO FOOD IN THE COLLECTIVE AND PRIVATE SPHERES**



Adapted from Scheme No. 4 of the Second Report on the Situation of the Right to Food in Colombia (Morales & PCDHDD, 2010, p. 20) and Figure 4 of the Fourth Report on the Situation of the Right to Food in Colombia (FIAN, 2021, p. 43)

For this reason, the perspective of the Food Process and the Social Standards of Realization of the Right to Food assert that food sovereignty, food autonomies, and food and nutrition security are not exclusive but complementary standards. All of them are essential to guarantee the viability of the food process, to provide equal recognition and opportunity to each of the actors along the food process, and to fully realize their right to food, leaving no one behind.

Furthermore, this inclusivity of the Food Process model makes of the standards of social realization of the right to food principles for social action and monitoring the right. The food process model shows how the observance of the right to food is only achieved when the food security (of every citizen and household), the sovereignty (of the nation) and the autonomies (of the nation's communities and peoples) are fully guaranteed.

As stated earlier, since the very early definitions of *food security*, many efforts and public strategies to combat hunger and malnutrition have been made from the perspective of food security. However, though important, the *food security approach* is limited, because its components can be ensured through ways that not necessarily respect the human rights of all the agents of the *food process*. For example, if a group access, consumes, and uses nutritious safe foods, but all those foods were imported, that group might have a proper nutritional status. Yet, the modus operandi would violate the economies, traditions, and right to food of national growers and sellers. Therefore, *food security* is essential, but it must be contextualized in collectivity. It should indicate how its components will be achieved while safeguarding the human rights of all the actors implied along the *food process*.

Since the 1970's, many food and nutrition programs conceived with a food security approach, have contributed to reducing the numbers of undernourishment. Still, an approach limited to food security closes the way to a human rights approach, because it restricts food and nutrition to the private sphere, rendering impossible the full realization of the right to the food process. It is possible to guarantee availability, access, utilization, and stability through a purely charity based or assistance-based approach. Charity actions centered on handouts can reduce to some extent the numbers of starvation, wasting, and stunting; they might

provide for the minimum standard of the right to food, freedom from hunger (ICESCR Art. 11 (2)). However, the approaches restricted to social handouts and food assistance disregard the right of peoples to decide their own food system at the private and the public sphere, according to their cosmovision and in harmony with the environment and the incoming generations. In short, food security and its components, without the complement of food autonomies and food sovereignty, fall short to solve the structural causes of visible and hidden hunger and to approach them through a human rights perspective (FIAN, 2021; Morales & PCDHDD, 2010).

Morales (2010) highlights that the right to food, as conceptualized by the CESCR General Comment 12 and the obligations to protect, respect and fulfill this right, fit into the logic of food sovereignty, autonomies and security, as interdependent, interrelated, dimensions of the right to food (FIAN, 2021; Morales & PCDHDD, 2010). From the perspective of food as a process, the right to food can only be achieved to the extent that States and private actors, such as companies, comply with the obligations to protect, respect and fulfill every step and actor of the Food Process, from the ground to the table. CESCR General Comment 12 recognizes the obligations that IHRL sets over States. IHRL establishes that, when a state becomes a member to a human rights treaty, it acquires the obligations to respect, protect, and fulfill the rights hallowed by the treaty (UNOHCHR, n.d.).

As reported by Comment 12 and seconded by the Right to Food Guidelines (FAO, 2005), in the context of the right to food, the obligation to *respect*, connotes that states must refrain from curtailing people's stable *access* to adequate food. *Access* entails the means to produce food or acquire it. Since *access* is one of the last steps of the food cycle, ensuring it also implies obligations to guarantee all the precedent steps (food production, transaction, transformation, distribution, in harmony with the environment and society). The obligation to *protect* the right to food, implies that states should undertake measures to impede other states, corporations, or private entities to deprive individuals of stable adequate food and the conditions to biologically use that food (i.e., granting healthcare, sanitation, vaccination, means for food production and food access). The obligation to *protect* the right to food, aligns with the precepts of the UN Guiding principles on Business and human rights, which summon

States to monitor and regulate private agents to prevent them from endangering human rights (UN, 2011), including any dimension of the right to food. Finally, the obligation to *fulfil* the right to food, requires governments to take positive measures and proactively strengthen everyone's access to and utilization of stable, adequate food. When people cannot enjoy their right to food for reasons beyond their control, the states are obliged to provide them with adequate food directly and support them to access or develop the means to procure in time, their adequate food in autonomy. When States are not in capacity to guarantee a minimum standard of freedom of hunger to everyone, they are obliged to reach out for international cooperation to comply their duties.

Furthermore, the provisions of article 11, part 2 of the ICESCR contextualize the obligations to respect, protect, and fulfill, in a frame of environmental and social sustainability: paragraph a demands states to develop or adjust their agrarian system to be sustainable, achieving the most efficient utilization of natural resources. Paragraph b commands the states to ensure equitable distribution of food supplies, considering the problems that food-importing and exporting might encompass.

In line with Morales, understanding food as a process, provides a clear framework to comply with the obligations to respect, protect, and fulfill, as measures can be planned taking into account all the actors, the collective and private spheres involved in the attainment of adequate food, from production to absorption. As a result, the model *Food process and Standards of Social Realization of the Right to Food* uplifts the participation of all stakeholders in the formulation of policies for the realization of the right to food and gives voice to each process of social struggle in defense of the right to food at each stage of the *food process*. Additionally, the model enriches the interpretation of the right to food beyond its minimum of being free from hunger (visible and hidden hunger) and expands the tools for implementation and monitoring of the *right to the food process*. For instance, the factors of violation to the right to food can be assessed by reviewing each step of the *food process* and, at each step, the state of food and nutrition security, food autonomies, and food sovereignty. Therefrom, targeted plans to overcome each threatening factor can be developed and adjusted over time, as the food process evolves (FIAN, 2021; Morales & PCDHDD, 2010).



#### **1.4. The Global Hunger Quandary**

According to the report “State of Food Security and Nutrition in the World 2020”, which was published in June 2020, the recent global picture is unwelcoming: by 2019 nearly 690 million people were hungry (8.9% of the world’s population), which means a rise of more than 10 million people in one year and almost 60 million in five years. Amid them, 21.3% (144.0 million) of children under 5 years of age were stunted. This number represents about one quarter of this segment of the population (Global Nutrition Report, 2020). 6.9% (47.0 million) of children under-5 are wasted, and 5.6% (38.3 million) present overweight (FAO, 2020). In parallel, early childhood nutrition is affected by the low rates of continued breastfeeding and adequate introduction of complementary foods. The Global Nutrition Report (2020) highlights that breastfeeding up to 1 and -even more rare- to 2 years of age is less common for children from wealthier households, urban areas or with a more educated mother. In contrast, rates of adequate food introduction with a minimum diet diversity are markedly lower for children living in poor households, in rural areas or with a less educated mother (Global Nutrition Report, 2020).

The report also indicates that “moderate or severe food insecurity affects one quarter of the world population” (about 750 million or nearly one in ten people) and shows that food insecurity has raised alarmingly since 2014, mainly due to a rise in Africa and Latin America<sup>7</sup>. It is, however, important to note that despite this rise, 2020’s figures are still far below the 900 million undernourished people recorded in 2000 (FAO et al., 2020) and below the 18,6% undernutrition prevalence in 1990-1992 (International Food Policy Research Institute, 2015). Despite these improvements, at present one in every nine people is hungry or undernourished while one in every three is overweight or obese. Overweight, obesity and diet-related NCDs are speedily proliferating in almost every country (Global Nutrition Report, 2020). Progressively, more countries are facing the double health burden of malnutrition, where stunting and wasting coexist with overweight, obesity and other diet-

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<sup>7</sup> The report states that 50% of the African population and around one third of the Latin American and Caribbean population is suffering food insecurity (FAO et al., 2020).

related non-communicable diseases (NCDs), and where excess weight concurs with micronutrient deficiencies (Global Nutrition Report, 2020). About half of the world population face more than one type of malnutrition and approximately 2 billion globally present one or more micronutrient deficiencies (MNDs), especially of iodine, iron, vitamin A, and zinc (International Food Policy Research Institute, 2015), which are essential for brain formation, cognitive development, and growth during early childhood. It is also worth noting that, when disaggregating by sex, the effects of hunger and nutritional deficiencies are greater on women than men (FAO et al., 2020).

**TABLE 1. THE RISE OF WORLD HUNGER FROM 2014 TO 2030**

<b>Number of people (millions) / prevalence (%)</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>Projection 2030</b>
<b>Undernourished</b>	780 10.7%	653.3 8.9%	657.6 8.8%	653.2 8.7%	678.1 8.9%	687.8 8.9%	841.4 9.8%
<b>Moderately or severely food insecure</b>	1633.5 22.4%	1649.5 22.4%	1735.2 23.2%	1874.5 24.8%	1969.6 25.8%	2001.1 25.9%	
<b>Severe food insecurity</b>	602.0 8.3%	586.0 7.9%	605.5 8.1%	646.4 8.6%	717.5 9.4%	746.0 9.7%	

**Source:** FAO et al., 2016, 2017, 2018, 2020

Although there is progress when comparing the most recent numbers with the statistics of the early 2000's, the world is still far from achieving the 2025 and 2030 targets for child stunting, wasting, and low birthweight. In parallel, the adult and children overweight and obesity are on the rise in all regions. The possible projections for 2030 (table 1), made according to the recent trends, suggest that the world is not on track to attain the zero hunger SDG by 2030. In top of that, a preliminary assessment made in the first half of 2020 suggests that the COVID-19 pandemic could add between 83 and 132 million to the total of undernourished people in 2020. Furthermore, due to the health and socio-economic impacts of COVID-19, the nutritional status of vulnerable groups, is likely to deteriorate further (FAO et al., 2020).

FAO, IFAD, UNICEF, WFP, WHO (2020) underscore that the diet of low-income countries depends more on staple foods than on fruits, vegetables and animal source foods. Staple foods are usually cheaper but poorer in micronutrient content. However, the tendency of these countries towards a poorer diet is owed more to a problem of access than of availability. Only in Asia, enough fruits and vegetables are available to ensure humanity to meet the WHO recommendation of a minimum of 400 g/person/day to prevent diet related non communicable diseases (NCDs). On this ground, FAO, IFAD, UNICEF, WFP, WHO (2020) highlight that whilst the world still faces significant challenges in food access, the challenges are even more critical in terms of access to healthy diets.

### **1.5. The Roots of Hunger in a Glance**

For decades, different programs to target food insecurity and malnutrition have been proposed worldwide. Yet, as the previous figures confirm, humanity remains mired in a food crisis. According to (Rubio, 2008), in general terms the food crisis is characterized by a rise in the price of food that hinders access and generates problems of civil and political order as mass protests and agrarian strikes. Despite the many protests, there is a persistent absence of policies that are solidary with the peasantry to stimulate and protect small-scale local and national agrarian production. Added to this, some States prioritize mining, oil and biofuels production over national and local food production and over sustainability. The environmental effects of deforestation for extensive livestock and of the extensive production of food and grains for agrofuels sums to the equation. These extensive methods derive from the Green Revolution, which maximize the amount of production with advanced technologies, monocultures, and agrochemicals that degrade the quality of soils, underlying waters, and endanger traditional models of small-scale sustainable agriculture. Adding up to the reckoning, the effects of climate change reduce the agricultural productivity and force many farming populations to move to cities. As well, armed conflict enforces displacement from rural to urban areas and hinders the subprocesses of the *food processes* in some countries. Moreover, the aftermath of the financial crisis unleashed by real estate speculation in the United States and the energy crisis have a transversal impact. A food crisis results from

the convergence of these factors and, as harsh as it can be, it still provides a space for a highly profitable practice of a small yet powerful niche: stock market financial speculation around hunger. It is foreseeable that when a given area faces factors that might generate food shortage, food prices are likely to increase. Speculating on this dynamic has perpetuated in time the rise of the food prices and the reduction of the capacity of population to acquire them.

In this regard, Rubio (2008) states that the investment funds that did not find conditions of profitability in the real estate sector, have turned towards the food sector, converting basic food materials for human and livestock consumption such as wheat, corn, rice, and soybeans, in objects of speculation. Therefrom, food prices soared to an unprecedented level. Next, due to the energy crisis, the oil prices also raised, thus increasing the costs to produce agricultural raw materials, consequently leading to a further upsurge in the prices of food commodities.

The conversion of food to a commodity susceptible to speculation summed to an absence of commercial ethics, have led to practices such as reserving certain foods and keeping them out of the market to manipulate their price. This manipulation, which emerged at the origin of the food crisis, contributes to perpetuate it, thus entrenching structurally food insecurity across the world. Through speculation of food and raw materials, those who control food production impose their will, pushing at the national and transnational level to impose policies that force the use of genetically modified seeds (Ramírez, 2019) and restrictive methods of farming. These restrictive policies result in biodiversity reduction, unsustainability of the ecosystems, loss of food culture and farming traditions. Therefore, they impede food autonomy, food sovereignty and the right to food of present communities and future generations (Mejía, 2014).

Ramírez (2019) points out that the way in which the international legal framework and many of the domestic regulations are formulated, gives place to a whole architecture of impunity. This architecture strips many countries of their food sovereignty, productive or reserve capacity, making them dependent on imports, left to the mercy of the international market. The result of this model of impunity is largely responsible for the one third of the world's

population in hunger, most of them located in the so-called "developing" or "third world" countries.

*Food security*, when understood as the only path to the realization of the right to food, is dangerously fragile. Its fragility relies on its focus on food availability, access, consumption and biological utilization, all of them consigned to the private sphere of individuals and households. This perspective runs the risk of overlooking the collective aspect of the *food process*, which is necessarily built in community. States that are highly food-dependent because their economic model prioritizes mining, energy, or monocultures -for agrofuel, livestock the extent of diversity, might assert that they do strengthen food security through imports and economic growth. However, *food security*, when isolated from *food sovereignty* and *food autonomies* becomes manipulable to justify practices that enlarge inequities by several dynamics: (1) lessening biodiversity and traditional sustainable methods of food production and transformation. These losses can leave entire territories, mainly rural areas, without the means to access adequate food for adequate diets and health, precisely because their *food autonomies* are not viable. (2) Pretending to realize the right to food through *food security* alone, serves to justify a purely aid-oriented approach to ensure the minimum standard of freedom from hunger instead of remediating the inequities of the food system. Quality aid programs that distribute foods balanced by nutrition experts, may provide for food availability, access, and innocuity to allow the biological utilization of the nutrients delivered. Nevertheless, the aid-oriented approach does not provide for full realization of right to food since it does not repair the right of the peoples to procure autonomously and in dignity their adequate food. (3) Governments that -grounded on an imports/charity food security perspective- do not diversify their economy, are yielded to the mercantile management of bigger powers. Thus, food access of their peoples therefore is submitted to the volatility of the prices of imported goods and the contingencies of trade agreements. In such scenario food autonomies, sovereignty and hence the right to food, are not viable.

In diverse occasions, the potential of international cooperation has been limited when agencies like the IMF, OECD, FAO, WFP have supported governmental actions grounded on a reductionist understanding of the right to food (Rosset & Martínez, 2012). In the current

arena, not only is the right to food unattainable, but *food security*, as defined in 1996 is globally on decline. The decline of food security has led to widespread discontent expressed in the many protests about the lack of food supply and the exaggerated rise in prices and taxes (Dierckxsens, 2008). In turn, the protests disrupt food production and transaction, leading to higher price hikes. Countries such as Colombia, Egypt, Cameroon, Mexico, Peru, Indonesia, the Philippines, Burkina Faso, Ivory Coast, Mauritania, Haiti, and Senegal are experiencing these effects together with a wave of hunger (Ramírez, 2019) that is magnified with the effects of COVID-19.

The relatively recent trends that propose a dialectic of ownership of the rights to adequate food and to autonomous production of adequate food, are framed by historical debates on land distribution, control of natural resources, agri-food policies, fair markets, armed conflict and peace processes (Ramírez, 2019). Although superficially these debates seem not to generate discomfort, they are often perceived as a threat to public order, to political, economic and food schemes. As Hidalgo, Hourtart & Lizárraga (2015) point out: "The right to food and the right to produce food are among the main struggles against the hegemony of agribusiness" (p. 32). Therefore, a foundation of the right to food that understands food as a process, and *food security* as transversal to *food autonomy* and *sovereignty*, would contribute to advance in this old and feared debate. A recent tool that has advanced in compiling a comprehensive perspective is the Declaration on the Rights of Peasants and Other People Working in Rural Areas (UN, 2019). However, this tool is not binding, and its implementation remain at the extent of legal interpretation and political will.

As reiterated across this work, every person has the rights to access to healthy, affordable food, and quality nutrition and health care. However, these rights are thwarted by the inequalities entrenched in the patterns of the food, health, and economic schemes across countries and communities. Such inequalities determine differences in opportunity to attaining healthy diets and healthy lives, thus marking unequal outcomes in nutrition, health, and enjoyment of human rights. The global high rates of malnutrition and the geographical asymmetries in the types of malnutrition are the reflection of those inequalities. The Global Nutrition Report (2020) provides some figures that illustrate the asymmetries: at present,

overweight and obesity are up to 5 times higher in the richest countries than in the poorest. Meanwhile, the rates of underweight in the poorest countries are more than 10 times higher compared to the wealthiest nations. At the same time, the rates of adequate food introduction with minimum diet diversity are significantly lower for children in low-income households, rural areas, or with a less-educated mother.

The world has only four years left to meet the Six Global Nutrition Targets by 2025<sup>8</sup>. Yet, the global nutritional status is far from the goals; the progress is too slow to meet the global targets. Not one country is on course to meet all the 2025 targets and only 8 countries are on track to meet just four of the targets. Therefore, the actions now must concentrate where the need is greatest in order to amplify their impact (Global Nutrition Report, 2020).

In agreement with the Global Nutrition Report (2020), the fix to the global nutrition crisis calls for a dramatic change of approach in two ways: focusing on food inequities and focusing on health inequities.

First, inequities in food systems must be addressed across the whole food process from production to consumption. It is evident that this approach goes in line with the conceptual frame of the *Food Process and the Standards of Social Realization of the Right to Food*. At present, food systems do not allow the majority of people to make healthy food choices. Availability of nutritious safe foods is limited worldwide and therefore their prices are excessive. Thereby, even if people know how to undertake a healthy diet, they simply cannot access it. Most agriculture systems worldwide are concentrated on a surfeit of staple grains such as wheat, corn, rice and derivative products, rather than on diversified offer of

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<sup>8</sup> In 2012 the World Health Assembly Resolution 65.6 launched a comprehensive plan on maternal, infant and young child nutrition grounded on six global nutrition targets to be achieved by 2025. The six targets were: (1) achieve a 40% reduction in the number of stunted children under-5; (2) attain a 50% reduction of anemia in women of reproductive age; (3) achieve a 30% reduction in low birth weight; (4) detain the increase in childhood overweight; (5) increment t least to 50% the rate of exclusive breastfeeding in the first 6 months of life; (6) reduce and maintain childhood wasting to less than 5% (WHO, 2014).

sustainable and more nutritious foods like fruits, vegetables, nuts and varied legumes. Simultaneously, highly processed foods are abundant in the market, ubiquitous (even in remote areas and food assistance programs), cheap, and exceedingly marketed. Ultra-processed foods are still highly demanded high-income countries and in lower-middle- to upper-middle-income countries their demand is escalating swiftly. As well, the emergencies provoked by climate change and the consequences of the COVID-19 pandemic, are deepening these dynamics and urging for a structural change. The positive side is that such urge presents an opportunity to shift to approaches that ensure that sustainably produced healthy food is both profitable for all the actors of the food process and the most physically, economically accessible and desirable choice for everyone. To address all elements of the food process, this shift of approaches must work within specific segments as well as across sectors and countries (Global Nutrition Report, 2020).

Second, a parallel change of approach must combat nutrition inequities in health systems. The global goal of universal health coverage represents an opportunity to incorporate integral nutrition care into territorial, national, and international health systems. This incorporation is imperative, considering that: (i) malnutrition in all its forms has become the leading cause of ill health and death worldwide; (ii) the rapid rise of diet-related NCDs has unprecedented economic and human rights implications; (iii) most people cannot access quality nutrition care for prevention or treatment. As proof, in 2017 only about the 25% of the 16.6 million children under 5 years of age that suffer severe acute malnutrition worldwide. Just a small portion of national health budgets are devoted to nutrition actions although they are proven to highly cost-effective to reduce healthcare costs in the long run. Moreover, the public nutrition budget is mainly focused on undernutrition and is rarely delivered by nutrition professionals. At the same time, most health systems do not include nutrition screening and monitoring -like diet quality and food security questionnaires- in the periodic health checks of their users (Global Nutrition Report, 2020).

The civil society and many social businesses have already devised strategies that are functional to combat malnutrition in their communities, but also to empower citizens to produce, exchange, access, transform, and consume safe foods in a healthy and sustainable



way. However, a majority of these initiatives are disarticulated or unseen by the governments, the multilateral organizations, and the finance industry. If governments, companies, multilateral organizations, the financial services sector build platforms for participation and sharing solutions, malnutrition and inequities in food and health systems can be tackled. The states must set out laws and measures to address inequities and unsustainable practices in the food systems, but such measures require the authorities hearing the input from the civil society. Moreover, recognizing the *know-how* of the civil society, the governments, civil society, multilateral organizations, and companies must seat together at equal footing to formulate policies and programs that: (i) make healthy, sustainable food the most -physically and economically- accessible choice for everyone; (ii) fully integrate preventive and curative nutrition services to the health system, which must be accessible to everyone, and focused on those who need them most; (iii) make such integral health system universally accessible; (iv) build sustainable food and health systems that are resilient to climate change and contingencies; (v) invest to improve the nutritional status of the whole population, tackling the most prevalent nutrient deficiencies, with emphasis on the most affected groups (Global Nutrition Report, 2020); (vi) give place to alliances that endorse joint resources, endorse continuous research and proposals from all the stakeholders; (vii) agree upon a participative platform for monitoring approaches, evaluation, and accountability.

National government funding matching with international cooperation where governments lack the resources to respond effectively, are needed to implement, sustain, and escalate these improvements. So far, most joint efforts have focused on addressing undernutrition. These efforts have made some advancements -yet not sufficient- in gradually decreasing the stunting rates. In parallel, overweight, obesity and diet-related NCDs are rising though widely neglected. In consequence, the states and the international community have to address resources to target every variant of malnutrition at the same time. Investments for such purpose must be planned through a perspective of substantive equality, prioritizing the most vulnerated and allocating resources in proportion to the onus.

## 1.6. The Hunger Phenomena in Colombia

By 2018, Colombia was on the verge of a food crisis with more than 3.2 million people in hunger (FAO, 2018). This figure was above the average for Latin American countries and has worsened by leaps and bounds following the effects of COVID-19. The National Household Food Insecurity Survey (ISAH for its initials in Spanish) revealed that as of 2015, 54.2% of the Colombian population was living in food insecurity, meaning that 1 in 2 households did not have enough food or the means to obtain it (ICBF, 2015; ABACO, 2020). The National Nutritional Situation Survey (ENSIN, for its initials in Spanish) (2015) showed that the departments the most affected by food insecurity (between 67. And 77%) are: Chocó, Sucre, Bolívar, Guajira, Vichada and Putumayo. These are followed (food insecurity prevalence of 60.10 to 67%) by Magdalena, Cesar, Córdoba, Arauca, Cauca, Nariño, and Guaviare. ENSIN 2015 also revealed a profound inequality in terms of food insecurity between indigenous and population without ethnic classification, and between women and men: 8 out of 10 families with an indigenous head of the household, and 5 out of 10 where the head of the household had no ethnic origin, were food insecure. Meanwhile, 6 out of 10 households led by women and 4 out of 10 led by men suffer food insecurity.

With regard to malnutrition amid children under 5, the ENSIN 2015 showed: a prevalence of 3.7% for low weight for height (7.2% for the indigenous population); of 1.6% of wasting; 10.8% of stunting (29.6%for the indigenous population) and 6.3% excess weight<sup>9</sup>. The World Food Programme's Hunger Map Live provides more recent figures on malnutrition under 5 years of age, but only in terms of wasting and stunting. It estimates that by June 2021, 1.6% of children under 5 years of age are wasting and 12.7% of children under 5 years of age are stunting (WFP, 2021).

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<sup>9</sup> Although the prevalence of weight excess (including overweight and obesity) increased from 4.9% in 2010 to 6.3% in 2015, the numbers are lower in comparison to those of Central America (7.4%) and South America (7.0%) (ICBF, 2015).

Concerning exclusive breastfeeding, it was observed that approximately 1 in 3 children under 6 months of age (36.1 per cent) was breastfed alone, which signifies that this practice needs to be strengthened to meet the international target of 50%, set by WHO. With reference to complementary feeding, by 2015 only 41% of infants aged 6 to 23 months, including those breastfed and not breastfed, have a minimum acceptable diet in terms of frequency and variety of minimum foods. These latest figures are likely to have worsened due to the COVID-19 pandemic (ICBF, 2015).

Between 2012 and 2016, 1562 children under 5 died of malnutrition (Ombudsman's Office Colombia, 2018), a figure that has remained rising and to which the Ombudsman's Office has referred stating that the state must urgently provide effective programs to ensure adequate care and monitoring. In 2020 alone, the Colombian Ministry of Health reported the death of 209 children due to causes associated with malnutrition, indicating that the early childhood sector is the most affected and that one out of four children under the age of 5 has anemia - from which those between 6 and 11 months of age are the most hit with a prevalence of 60%- (Rojas, 2021).

The hunger figures are related to the rates of monetary poverty<sup>10</sup>, which increased from 35.7% in 2019 to 42.5% in 2020 and extreme monetary poverty in 2020 was 15.1% from the national population (DANE, 2020a). In this context, the most affected scenarios are those of the rural areas, where historically more than 90% of the population of the dispersed and populated centers has lived in condition of monetary poverty or vulnerability (DANE, 2020b).

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<sup>10</sup> With a monetary poverty line of \$327,674 Colombian pesos (COP) (approximately 73 EUR) and extreme poverty line of \$137,350 COP (approximately 30,5 EUR). According to that threshold, if a home is composed of 4 people, it will be classified as poor if the total income of the household falls below \$1,310,696 COP (approximately 292 EUR). This value is adjusted according to the urban or rural location (DANE, 2020).

In addition, Colombia presents a high prevalence of diseases associated with malnutrition, which reflects the chronic state of food insecurity in the country and coincide with its high levels of inequality. In some departments precarity in nutrition is even more acute, which is the case of Guajira, where in 2018, the Colombian Constitutional Court decreed an unconstitutional state of affairs. In 2015 the Inter-American Commission of Human Rights (IACHR) also decreed precautionary measures in Guajira to protect the Wayuu indigenous community from starvation (Ramírez, 2019).

In this context, it is important to highlight the statement of FAO (2015) that 4.4 million (8.8%) of Colombians had an insufficient diet due to the inability to access food. This means that the main problem in Colombia is not about food availability, but is one of access and distribution, considering that Colombia is positioned as one of the first countries in biological diversity (FAO, n.d.).

The access of Colombian vulnerable families to sufficient, adequate, stable and safe food is impeded by multiple actors, including the harassment of the armed conflict and drug trafficking; environmental damage due to the climate change and the plundering of natural resources by various industries; subsequent forced displacement -mainly from the rural areas to the cities-; the fraudulent actions of state officials and operators in the administration of the budget for food assistance and for educative programs with nutrition and interdisciplinary care; the fraudulent actions and the lack of continuity within the technical skills training programs for entrepreneurship and food production; the fraudulent actions by state officials in the restitution of land, alienation of land, and embezzlement of assets intended for agricultural promotion; the impact of norms that have historically limited the production and transfer of seeds and the implementation of ancestral practices on the use of land and natural resources; low coverage in basic utilities, sanitation, sewage, and social security; the distance of many scattered rural sectors from primary health centers and educational centers; the effects of free trade agreements over small and traditional markets; and speculation over food prices. These factors hamper their economy and their attainment of the right to food, which is a faculty of every human being and a responsibility of the State to ensure its progressive

realization for the entire population (Mejía, 2014). The Colombian Constitution does not explicitly recognize the right to food for every Colombian, but article 44 of the Colombian Constitution does explicitly recognize it as fundamental for children. Nevertheless, the right to food of children continues to be breached, even at its minimal standard of freedom from hunger.

### **1.7. Hunger During Early Childhood, Substantive Inequality and Human rights Implications**

This segment of the text will explain how the existence of early malnutrition contravenes the human right principle of equality and the human rights connotations of child malnutrition as a grave violation of the right to food.

In words of the UN Office of the Office of the High Commissioner for Human Rights, human rights are inherent and inalienable to every human being, and they range from the most fundamental right -the right to life-, to rights that make life worth living, such as the rights to food, health, and work. Human rights are also indivisible and interdependent, so none right or set of human rights can be fully enjoyed without the other human rights. The principles of universality, interdependence and indivisibility are complemented with the grounding principle of equality and non-discrimination. Article 1 of the UDHR claims: "All human beings are born free and equal in dignity and rights." and article 2 hallows the right of freedom from discrimination, which is the freedom that ensures equality. Equality and non-discrimination are transversal to all international human rights law and recognized in all major human rights treaties. All states in the world have ratified at least one of the nine core binding human rights treaties and at least one of the nine optional protocols. Therefore, states have obligations under international law to ensure the principles of universality, interdependency and indivisibility, equality and non-discrimination, while respecting, protecting, and fulfilling all human rights (OHCHR, 2007).

The principle of equality and non-discrimination implies that every person must be able to access the same opportunities that lead to equal results for a life of dignity. This means that States must take positive actions to address and prevent any type of discrimination, to set everyone in society at an equal footing for the enjoyment of their rights, and to refrain from

measures that result in direct or indirect discrimination<sup>11</sup>. The condition by which every person is on equal basis to attain equitable outcomes through equitable opportunities is called substantive equality. Substantive equality implies that states and institutions must undertake special measures to ensure that marginalized or vulnerable groups and individuals are given the same opportunities as everyone else in the state. Thereby, they can stand at an equal footing to attain the same outcomes available for the most advantaged (Cusack & Ball, 2009).

Early childhood malnutrition is an impediment to substantive equality, a major cause of structural discrimination, and a violation of the right to adequate food and to be free from hunger<sup>12</sup>, which is a precondition to the right to life, to the other human rights, and to a life of dignity. Moreover, since adequate food is one of the underlying determinants of health, the violation of the right to adequate food and freedom from hunger impedes the fulfillment of the right to the highest attainable standard of health upheld by UDHR (art. 25.1), ICESCR (art. 12), and CRC (Art. 24)<sup>13</sup>.

Child Malnutrition, either in the form of undernutrition or overnutrition, impedes the realization of the right to health and is usually the result of a violation to the right to food. On the one hand, gestational undernutrition, stunting, or wasting, put children in position of disadvantage by impairing normal physical and cognitive development. On the other hand,

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<sup>11</sup> In consonance with the Inter-American Convention against all forms of Discrimination and Intolerance, Chapter I, article 1(2) indirect discrimination is the type of discrimination that which occurs in the public or private sphere, when a policy, provision, criterion, or a seemingly neutral practice is likely to imply a particular disadvantage for persons belonging to a specific group or puts them in disadvantage. Measures with such outcome amount to discrimination unless the provision, criterion or practice has an objective or justification reasonable and legitimate in the light of international human rights law (OEA, 2013).

<sup>12</sup> The right to food is hallowed by article 25 UDHR. It is recognized as part of the right to an adequate standard of living by articles 11 of ICESCR and 27 of the Convention on the Rights of the Child (CRC). Part 1 of article 11 of the ICESCR sets out the right of everyone to adequate food and part 2 of the same article sets out the fundamental right and minimum standard to be free from hunger. Paragraphs 3 of the article 27 of the CRC makes parents or primary caregivers responsible for guaranteeing, within their abilities and financial capacities, the conditions of living necessary for the child's development, which entails adequate food. Paragraph 4 sets a duty to member states to assist parents or others responsible for the child to implement this right and to provide, in accordance with national conditions and within their means, material assistance and support programs in case of need, particularly with regard to nutrition, clothing and housing (UN, 1989).

<sup>13</sup> Annex 1 presents how the right to adequate food is a precondition to the realization of the right to an adequate standard of living as presented in articles 25 UDHR and 12 of ICESCR, and how it is an underlying determinant of health, as presented in article 24 CRC and interpreted in the ESCR General Comment No. 14 (para. 11,12).

obesity and overweight resulting from imbalanced overnutrition, can lead to metabolic disorders, non-communicable diseases (NCDs), psychologic and cognitive impairments resulting from chronic inflammation and microbiome disbalances, as well as difficulties for active play, normal social exchange, and subsequent stress. The health and social consequences of any type of early malnutrition can result in: impaired learning ability for a lifetime; difficulties to perform at school; increased health-related school absences; increased risk of school dropout; increased labor absences during work life; impairment to find and keep a dignified stable job; impairment to a healthy reproductive life; increased healthcare costs; and, in sum, impossibility to fully realize the right to the highest attainable health standard.

Early undernutrition and early overnutrition usually emerge as a result of a violation of the right to food of children, pregnant and lactating mothers. Yet, childhood weight excess is not commonly associated with hunger. However, many children, mainly those living in low-income households develop excess weight due to a lack of access to adequate food for a balanced diet. Moreover, overnutrition can occur alongside invisible hunger, as a result of calorie-rich diets that are poor in essential nutrients. Deficiencies of essential nutrients for health and for brain development can be equally harmful in children undergoing a calorie-surplus or a calorie-deficit. As a case in point, the report *The State of Food Security and Nutrition in the World 2020* by FAO, IFAD, WFP and WHO, highlights that excess weight is on the rise in all regions and that a key reason for the high figures of hunger, food insecurity and malnutrition worldwide is the widespread impossibility to afford the cost of a healthy diet. The report underscores that unaffordability of healthy diets is associated with all forms of malnutrition, including stunting, wasting, overweight and obesity and that it is even more difficult for the poorer and vulnerable populations to have access to healthy diets. A diet must be varied so as to fill the requirements of essential nutrients. Contrariwise, monotonous diets mainly composed by staple foods, refined cereals (like rice, wheat, corn), tubers or plantains often lead to deficiencies of one or more nutrients (Miller & Welch, 2013).

Families can face difficulties to diversify and balance their diet due to scarce food availability, instability of the food supply, constrained physical or economical access to

certain foods, or a combination of them. In any case, article 11 ICESCR provides that when people cannot procure food to guarantee their basic needs to be free from hunger, the states must assist them. Concerning the economic constraints to adequate food for a healthy diet, Bouis et al. (2011) underline that in developing countries, the poor are compelled to rely on dietary staples like cereals and other low-cost starchy foods that provide satiety and energy but tend to be deficient in quality protein, vitamins and minerals. Intake of animal foods, vegetables, fruits and legumes, which are higher in micronutrients than unfortified staple foods, is superior in higher income households than in low-income households. In addition, the fluctuations of food prices have a direct incidence on dietary adequacy in developing countries: when prices of staple foods rise, people tend to spend more on staple foods because even after a rise in price, they are the cheapest alternative to meet the caloric needs. By spending more on staple products, families are left with little to invest in more nutrient-dense foods to diversify and complement their diets. Semba (2012) points out that the lack of permanent access to a wide variety of foods prevents people to follow the national dietary guidelines for healthy diets. In turn, access to varied foods can be conditioned by income, geographic location, climate conditions, access to land and natural resources to produce food, level of soil fertility, type of agricultural practices, capacity and infrastructure for food storage and food processing, food value chains, access to enforceable nutrition education, food advertising, food prices (Semba, 2012), and trade. In many developing countries or in remote areas of some developing countries, food variety is often limited and some nutrient-dense products are scarce thus more expensive, so low-income population may not have the financial means to access them.

Stunting and deficiencies of brain-essential nutrients<sup>14</sup> from early stages of pregnancy up to the first two years of life, impede the normal development of the neural tube and the brain, hence preventing the attainment of a child's full cognitive potential (Benton, 2010; Yakoob & Lo, 2017). As reported by Jhonson, Riis and Noble (2016), malnourished children are

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<sup>14</sup> Annex 2 presents a chart that expounds the key essential nutrients for early brain development, their main functions, the effects of their deficiency, and their global prevalence of deficiency.



prone to more developmental delay, lower achievement, worse physical and emotional health than their non-malnourished peers. In addition, women who have a history of undernutrition during childhood or adolescence are likely to engender malnourished progeny and produce low-vitamin breast milk. In turn, low-vitamin breast milk might limit the growth of the baby, cause neurological restraints (Sebastiani, et al., 2019) and immunosuppression. Unfortunately, the developmental consequences of malnutrition during early childhood can be irreversible, so disadvantages acquired before birth or during the first months of life can become structural and even transmittable to the next generations (Aizer & Currie, 2014; Mejía, 2020).

Due to malnutrition, countless children all over the world are fated to inequality of opportunity<sup>15</sup>. Therefore, malnutrition contravenes the human rights principle of equality based on the assertion that all human beings are born equal. In addition, due to the interdependent character of human rights, the life lasting effects of early malnutrition contravene the principle of human dignity and hinder the enjoyment of the intrinsically linked right to life and every other human rights.

### **1.8. Violations to the Right to Food during Childhood and the Links with the Right to Health**

Article No. 12 of the ICESCR enshrines “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. Through article 12 (2), the signatory states acquire obligations to achieve the full realization of this right, including the necessary actions to:

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<sup>15</sup> There is no specific data about the global prevalence of malnutrition-induced cognitive impairment. The closest estimation corresponds to the global prevalence of developmental delay, which is estimated to be between 5% and 15% (Demirci & Kartal, 2016). However, there are not specific figures or estimations of the share of developmental delay caused by nutritional deficiencies and stunting. Given that cognitive impairment can be the result of deficiency of one or more nutrients and that early monitor of brain development is costly and invasive, it is very difficult to determine the share of the prevalence of cognitive impairment owing to a lack of a specific nutrient. A general idea of the prevalence of cognitive impairment of nutritional etiology can be inferred through revision of the prevalence of stunting and prevalence of deficiencies of nutrients that are essential for cognitive development, such as Iron, iodine, zinc, vitamin D, and folic acid (Yakoob & Lo, 2017), and omega-3 LCPUFA (Colombo, et al., 2004; Walker, et al., 2011). It is worth noting that even slight differences in the food intake with respect to the dietary requirements can lead to nutritional deficiencies (Yakoob & Lo, 2017). Annex 2 presents a chart that explains the main functions of the most essential nutrients for brain development and their global prevalence of deficiency.

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness (UN, 1969).

In its General Comment No. 14 (GC 14), the CESCR declares that health is a fundamental human right indispensable for the exercise of other human rights and that every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. Nonetheless, since adequacy of the diet is an underlying health determinant, it follows that the right to food is essential for the realization of the right to health and -as previously mentioned- for a life of dignity. This means that the contents of the right to food are elaborated the most at the international level within Article 11 of the ICESCR and the CESCR's GC 12. Nevertheless, the right to food also becomes internationally articulated as an element of the right to the highest attainable standard of physical and mental health through Article 12 of the ICESCR and GC 14 (Degard et al., 2020).

Asides of hampering appropriate physical and cognitive development, malnutrition directly impairs health by diverse dynamics: first, it increases the risk of diverse chronic non communicable diseases (Tulchinsky , 2010), metabolic disorders, and reduced resistance to infections (Harrison, 2010; Khanna, 2018). Second, during early childhood, malnutrition can produce physical and psychomotor delay or lifetime impairment (Khana, 2018). Third, undernourished children have a very weakened immune response, so they are more prone to contract infections, to develop chronic diarrhea, malabsorption, and to eventually die as a result of recurrent and long-lasting infections. Infections are more persistent in settings where children also lack other underlying determinants of health such as potable water, sanitation, basic utilities, innocuous food, healthcare, safe environment. In these settings a vicious circle takes place, in which malnutrition leads to disease, and disease, in turn, deteriorate further

the nutritional status. This circle can be lethal or cause profound loss of human development and socioeconomic opportunities which have transgenerational implications that might hinder the breakout from a circle of poverty.

Fourth, while malnutrition can affect anyone, its health and human rights implications fall heavier on children and women of reproductive age, mainly those from developing countries (FAO & WHO, 2006). Malnourished women are at risk of fertility setbacks, miscarriage, and to conceive children with nutritional deficiencies or malformations. Fifth, long-term undernutrition and micronutrient deficiencies during childhood can lead to stunting, which might cause cognitive and physical dysfunctions (FAO, IFAD & WFP, 2015).

Sixth, due to the globalization of high-sugar, high-fat, ultra-processed foods, and the lack of adequate regulation of the food industry and its marketing schemes, child overnutrition that coexists with micronutrient deficiencies is rising. In such condition, children are at risk of suffering both the effects of the lack of specific vitamins or minerals and the NCDs related to weight excess and chronic inflammation. At present, there are also inequalities in the rates of overnutrition and related NCDs between low, medium, and high-income countries. The World Health Organization (WHO) (2016) reports a higher incidence and prevalence of overweight and obese children in low- and middle-income countries than in high-income countries, and stresses that a majority of them have a calorie dense but nutritionally poor eating pattern<sup>16</sup>.

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<sup>16</sup> Regarding the economic impact of malnutrition, WHO and FAO (2006) refer that micronutrient deficiencies contribute substantially to the global burden of disease and derived public health costs. Concerning productivity and human capital loss, FAO (2013) points out that malnutrition and its effects on health constitute a serious challenge worldwide, but especially for countries that face a high prevalence of more than one type of malnutrition, including the coexistence of undernutrition and overweight.

## **1.9. Gender Discrimination and the Disproportionate Repercussions of Hunger on Women, Girls, and Children**

Women all over the world are more likely to experience food insecurity than men<sup>17</sup> and they are disproportionately affected by food insecurity and poverty due to a complex of factors related to gender-based discrimination. Some of these factors are: gender inequities in labor opportunities, property, rural resources, and financial services; gender neutral policies that exacerbate baseline discrimination; under-evaluation of women's roles and their contributions to society (ADB, 2013); as well as traditional norms that regard women as home producers, assistants on the farm, or caregivers and not as economic agents on their own merit. Such traditional paradigms limit women's access to education, especially superior education, and control over resources (USAID, 2015).

Deep-seated gender discrimination often hampers the right to food of women and their progeny, as well as the one of their household (FAO & ADB, 2013). In some territories, laws and traditional practices impede women's access and control of land, property, credit, education, agricultural inputs, and resources to procure adequate food physically or economically (FAO, 2019; FAO & ADB, 2013). Paradoxically, women are key players in the *food process*, both producing food and transforming it to provide for their household. In agricultural communities, especially in rural communities in which men are forced to migrate to work in the urban areas, women work the fields whilst taking care of the family. The gender-based impediments to women's right to food hinder the fulfillment of women's nutritional requirements during pregnancy and lactation, as well as those of their children. This dynamic makes women, especially low-income and vulnerable women more prone to malnutrition than men (Delisle, 2008; FAO & ADB, 2013). Adolescent pregnant and lactating mothers are even at higher risk than adult mothers because their own growth nutritional requirements overlap with the requirements for pregnancy and lactation. In addition, adolescent mothers often face judgement, discrimination, and marginalization. Therefore, a poor and/or vulnerable adolescent mother and her progeny are at grave risk of

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<sup>17</sup> It is known that women are more likely to experience food insecurity than men and the World Food Programme has recent estimates of women suffering from hunger and malnutrition but there is no gender disaggregated data of food insecurity (Lieberman, 2021)

food insecurity, malnutrition, derived human rights implications and substantive disadvantage.

Poverty also affects women and children disproportionately. It does not only hinder women's and families' access to adequate food, but it is often originated in food insecurity, poor nutrition and poor health, especially in early childhood. Stunted girls might become stunted mothers and maternal stunting is one of the strongest predictors of giving birth to a low-birth-weight infant. In turn, children with low-birth weight are prone to future metabolic and noncommunicable diseases and to have progeny with risk of developing the same conditions. Thereby, maternal and child malnutrition can perpetuate the cycle of poverty (ADB & FAO, 2013).

As previously mentioned, maternal undernutrition leads to restricted fetal growth, infant mortality and stunting of those children who survive. On the other side, a large body of evidence shows that excess weight in the mother can induce hypertensive disorders, gestational diabetes, miscarriage, preterm birth, intrauterine fetal death, fetal macrosomia, subsequent higher caesarean section rate and labor difficulties for the mother (Lozano, y otros, 2016). Concurrently, excess weight in the mother and/or the father can lead to in utero, genetic and epigenetic impacts on the children that puts them at risk of obesity, NCDs, inflammatory, metabolic disorders, and related disabilities.

In sum, gender and cross-sectional discrimination, poverty, food insecurity, and malnutrition set women, their progeny and family in a situation of economic, social, and health disadvantages that entail multidimensional and transgenerational human rights infringements. Therefore, investing to ensure maternal health and nutrition by guaranteeing women's right to component of the *food process* is critical to tackling malnutrition among children and to improve the health of the entire population.

UN estimates that 60% of the undernourished globally are women or girls (FAO, 2013). Although women are responsible for about half of the world's food production and 60 to 80% of the food production in developing countries, and despite they make up about 80% of the world's agricultural labor force (USAID, 2015), they still own less than 1% of land and

account for less than 1% of credit offered to farmers globally (FAO, 2013). Such figures are dire considering that mothers' undernutrition has lifetime consequences on their progeny and pondering that in most homes worldwide, it is women who take charge of food purchase, preparation and serving. There are studies that show that gender equality is the most important determinant of food and nutrition security, and that gender equality can boost substantially national economic growth (ADB, 2013). A body of evidence also proves that when women are given the opportunity to manage household finances, they are more likely than men to spend on the family's nutritional needs, healthcare, and education for children (USAID, 2015).

For these reasons, women should form an essential part of the interventions designed to ensure the right to food of early childhood. Such interventions must be coupled with actions to tackle the structural causes of gender inequality and increase women's access to and control over resources. This reinforcement is key not only to overcome food insecurity and malnutrition, but to fully attain the right to food of the entire society and to break the circles of poverty. Moreover, any investment to realize women's and children's rights to health and food cannot be complete without the elimination of every law, policy and practice that perpetuates or results in gender inequality, impaired access to and/or control over resources including adequate food, health care, productive factors, property, education, and financial services (ADB, 2013).

In short, using an integrative human rights-based model is key to elaborating effective targeted solutions to hunger and malnutrition. This is because an integrative model allows to comprehend food as a process, that entails every collective and individual dynamic from food production to biological use of food nutrients. Keeping a human rights perspective from the ground to the table, allows to design solutions to achieve the right to food through: recognition, respect, protection, and fulfillment of the rights of every participant of the food process, in a frame of sustainability.

## **2. The Juridical Framework of the Right to Food**

### **2.1. The International Juridical Framework of the Right to Food**

#### **2.1.1. Food as an International Human Right**

The human right to adequate food was initially recognized in 1948 by the article 25 (1) of the UDHR as a component of an adequate standard of living. Conforming to Dugard and Ikawa (2020), since this initial recognition, significant attention has been shed to the development and implementation of normative and policy frameworks for the right to food at the national, regional and international levels. In line with this increased attention, a number of transnational social movements advocating on issues around the rights to food, food sovereignty, land, natural resources, and the rights of indigenous peoples, peasants, and rural populations have extended unprecedently. This activism was especially strengthened after the 2008 global financial and food price crises. Such impetus has spread a prevalent agreement that the right to food, as essentially linked to the right to life, is a pre-condition for the realization of the other civil, political, economic, social and cultural rights. Yet, various political and economic actors continue to constrain the development of measures for its full implementation.

Some experts criticize that historically, the right to food has been placed in a position of ambivalence in the face of national and international policies and organizations that while promoting equal access to adequate food and nutrition, support a way of liberalization of trade and agricultural investment, cuts in public spending and privatization of public services that hinders its attainment (Dugard, Porter, Ikawa, & Chenwi, 2020). Bourke-Martignoni (2020) states that notwithstanding the evident raise of hunger and malnutrition worldwide, many state and non-state actors remain in sustained opposition to “the very existence of a legally enforceable right to food” (FAO et al., 2019; U.S. Mission Geneva, 2017). Bourke-Martignoni identifies that socio-economic inequalities, the effects of armed conflict, environmental deterioration, and the expansion of agribusinesses challenge the attainment of rights-based approaches to guarantee adequate food for all.

Ever since the end of the Second World War, the subsequent human rights system has perceived a need act to combat hunger through stable and equitable food production and distribution. This concern has progressively given place to the enactment of national, regional and international laws and policies to promote, protect and fulfil the right to food as foundational to the right to a dignified life. Also, as intrinsically related to a wide array of other rights, namely the rights to water, land, natural resources, health, decent work, education and social security (Dugard, Porter, Ikawa, & Chenwi, 2020).

Since the right to food is a prerequisite to life and dignity, since adequate nutrition is essential to human development, and since equality is not possible without ensuring adequate food to everyone, the right to food transcends the perceived divide between economic, social, cultural rights and civil and political rights (UN Human Rights Committee, 2019). Deliberations around the right food definition and its multidimensionality have undermined the construction of a cohesive international law framework, one clear about what should become legally binding, and what should remain voluntary. The present segment will explain the international juridical framework and the soft law developments around the right to food, the stemming obligations of the States, and the transversal role of the Food and Agriculture Organization of the United Nations (FAO).

### **2.1.2. The Emergence and Role of the Food and Agriculture Organization of the United Nations**

The Food and Agriculture Organization of the United Nations (FAO) is the main international institution in the development of international normative instruments as well as orientation for the states regarding policymaking, implementation, and monitoring related to food security, agriculture and the governance of land and natural resources.

As reported by Lopez (2017), the two instruments that led to the establishment of FAO in 1945, made no mention of the right to food. Instead of addressing food as a human rights matter, they addressed the question of food and hunger within the paradigm of modernization, technological development, trade, and nutritional content. The first founding instrument was



the UN Conference on Food and Agriculture, celebrated in May 1943 at Hot Springs, Virginia. It established a UN Interim Commission assigned to design a plan for a permanent international organization in the field of food and agriculture. The Conference also elaborated recommendations for: (i) the improvement of national diets; (ii) tackling malnutrition, disease, and nutritional deficiency diseases; (iii) the establishment of national nutrition organizations; (iv) exchange of information, experience, and cooperation between nations; (v) orientation of policymaking on food production, agricultural credit, land tenure, settlement of land for food production, farm labor, land and water resources, occupational adjustments in rural populations, international security; (vi) guidance towards the “achievement of an economy of abundance”; (vii) regulation of international commodities, food distribution, marketing, and related education and research. As underlined in chapter 1, the Hot Springs Conference also introduced the concept *food security* in the international agenda for the first time. The second milestone was the First Session of the FAO Conference in Quebec (October 1946), through which 42 countries approved a draft of the FAO Constitution and formally completed the establishment of the organization as an intergovernmental organization (IGO) and a specialized agency of the UN meant to lead the international efforts to defeat hunger by achieving *food security* for all.

Since 1946, FAO has led the parade in environmental and agri-food issues, carrying out diagnostics and giving policy and technical support to member states. FAO’s support aims at achieving five key objectives:

1. Elimination of hunger, malnutrition, and attainment of *food security*.
2. Contribute to shift towards more sustainable agriculture, taking into account that over the past 5 decades human activity has changed the ecosystems more rapidly and extensively than in any other equivalent period in history, largely to meet the food demand (FAO, 2007, p. 3).
3. Reduction of rural poverty.
4. Inclusive and productive food systems.
5. Fostering resilience to food and agricultural crises.

In line with those objectives, over the years FAO has studied emerging agri-food issues, developed territorial food security diagnostics, and built agri-food standards in collaboration with member states and agencies such as OECD, IMF, IFAD. On the basis of these studies, FAO has produced multiple reports in which it has attributed the global increase in food insecurity and malnutrition mainly to climate change and multi-causal socio-economic inequality (Ramírez, 2019). Such reports show that even if FAO's mission was not conceived over a human rights-based approach, its labor promoting *food security* and engaging States in the struggle against hunger, has paved the way towards an international consensus that hunger is related to inequality and inequality must be tackled by recognizing adequate food and freedom from hunger for every human being.

The transition of FAO from its initial approach based on its own definition of *food security*, modernization and nutritional adequacy to a paradigm in which *food security* is understood as the key for the attainment of the right to food and other interdependent human rights, displays what Lopez (2017) asserts: international agreements and institutions have transitioned the speeches around food and the right to adequate food as a political imaginery. The right to food in these contexts emerged from a concatenation of organisational forms, social technologies, subjective interpretation of crises, economic, societal needs, and modulated political action that were and remain open to constant renegotiation.

### **2.1.3. The Right to Food in the Universal Declaration of Human Rights and Customary Law**

Article 25 of the UDHR was the first instrument to enshrine the right to food. Therefrom, the right was initially construed in international human rights law (IHRL) as one of the elements of the right to an adequate standard of living and has ever since been singled out and developed upon. While there are ongoing discrepancies regarding the customary law status of the rights upheld by the UDHR, IHRL recognizes that the Declaration has had a political and moral influence on the conduct of international relations. This influence implies that although the contents of the UDHR are not legally binding, they inflict a certain level of moral bounds to the states. Furthermore, elaborating from article 25 of the UDHR, growing

support has emerged for the view that the right to food is an essential aspect of the human rights to life; thus, it must be protected under customary international law (Degard et al., 2020).

#### **2.1.4. The Right to food in the International Covenant of Economic, Social, Cultural Rights and the General Comment No. 12 on the Right to Food**

The most comprehensive expression of the right to food in IHRL is given by article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its interpretation in the General Comment No. 12 (GC 12) on the Right to Food, by the treaty body of the Covenant (the Committee on Economic, Social and Cultural Rights) (Degard et al., 2020). In the 1960s, during the drafting of the ICESCR, several delegations underscored that the right to food was the most crucial right in the whole treaty, stating that “no human right (is) worth anything to a starving man” (Saul, Kinley, & Mowbray, 2014).

The Article 11 of the ICESCR reads:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed:
  - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
  - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Elaborating on the analysis of Tomaševski (1987), Degard et al. (2020) underline that “the structure of paragraph 1 of Article 11 is somewhat unconvincing in that the right to adequate food is not forcefully enunciated and can be viewed as a relative right, whereas the right to be free from hunger in paragraph 2 is considered to be absolute”. The preparatory works for the second paragraph of Article 11 registered that many members of the drafting group within the Third Committee expressed a deep concern regarding the high figures of hunger and malnutrition that Africa, Asia, and South America were suffering since the 1950s (Saul, Kinley, & Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials*, 2014). In response to this concern, the Director-General of the FAO proposed the structure of the paragraph, formulating a negative right to freedom from hunger along with an aggregation of goals aligned with FAO’s objectives and the priorities of the campaign that FAO was leading by the moment: the Freedom from Hunger campaign (Tomaševski, 1987). Degard et al. (2020) observe that “the wording of Article 11 (2) is striking in that it does not explicitly define the right to food but instead focuses on the mechanisms through which it might be achieved”.

The more than two decades following the adoption of the treaty saw a progressive increase in the number of social movements advocating for the right to food and calling for greater clarity on its content and scope.

In light of these reiterative requests, the World Food Summit (WFS) held in Rome in 1996 proposed a Plan of Action called for the UN human rights system to “better define the rights to food” contained in Article 11 of the ICESCR (WFS, 1996). In line with such call, the Committee on Economic, Social and Cultural Rights (CESCR) enacted the General Comment no. 12 (1999) on the right to adequate food (GC 12), in which it outlined the core content of the right and the measures that states and the duty bearers must undertake to guarantee it. The CESCR highlighted that an important reason to provide a clearer content was that the periodic reports that the Committee had received from states since the ICESCR entry into force (1979) lacked enough details on the right to food to clearly identify the impediments to its attainment (Courtis, 2007).

GC 12, recognizes that the human right to adequate food “applies to everyone” (par. 1); that it “indivisibly linked” to human dignity, “indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights”, and “inseparable from social justice” (par. 4).

Paragraph 6 of the GC 12 notes that the right to adequate food has to be realized progressively, although the states have a core obligation to take the necessary action to mitigate and alleviate hunger. That is, to ensure the minimum standard of the right to food (freedom from hunger) hallowed by Article 11(2) ICECR. Although in paragraph 6 the ESCR presents a more comprehensive definition of the *right to adequate food* than a right to be free from hunger, it still leaves room to uncertainties concerning the specific obligations of states and duty bearers to guaranteeing the right to adequate food. The end of the definition presented in paragraph 6 of the Comment refers to core obligations to mitigate and alleviate hunger, that is, to ensure observance of the minimum standard of the right to food mandated by paragraph 2 of Article 11 of the ICESCR. In contrast, regarding the *right to adequate food*, GC 12 does not specify which are the core duties of the duty bearers to ensure the *right to adequate food* beyond a minimum standard of freedom from hunger (FIAN, 2021; Morales & PCDHDD, 2010). Paragraph 6 of the GC 12 reads:

The right to adequate food is realized when every man, woman and child, alone or in community with others, has 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 realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided in paragraph 2 of article 11, even in times of natural disaster (ESCR, 1999, paragraph 6).

Paragraph 14 reaffirms that obligations to the right to food go beyond guaranteeing the minimum standard, stating that “The principal obligation is to take steps to achieve progressively the full realization of the right to adequate food. This imposes an obligation to move as expeditiously as possible towards that goal”. The last part of paragraph 14 clarifies the scope of the minimum standard provided by Article 11(2) ICESCR: “Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger” (ESCR, 1999, par. 14). This clarification denotes that the states have immediate obligations to take necessary action to ensure such minimum essential, alleviating hunger and malnutrition (Degard et al., 2020). Concerning this immediate obligation, paragraph 17 of the GC 12 mandates that States must use the maximum of their available resources to fulfil “at the very least, the minimum essential level required to be free from hunger”

Furthermore, GC 12 (par.8) asserts that *food security* can only be realized when there is sustainable and adequate food that is available and accessible in sufficient quantity and quality for everyone, and that food must be culturally acceptable. Regarding food access, GC 12 states that identifying and redressing discrimination in access to adequate food and to the means and entitlements for its procurement is part of the minimum core immediate obligations of the States. (par. 18).

Eide (1998) analyzed that the respect, protect, and fulfill typology of obligations mandated in GC 12 helps to correct the common misconception that the right to adequate food simply requires states to provide food. The typology entails the multiple actions that all duty bearers must take in order to fully realize the right to food.

Finally, the GC 12 also highlights the paths for justiciability of the right to adequate food at both the national and international levels. Paragraph 33 encourages the states “in all cases” to incorporate in their domestic legal framework the international instruments recognizing the right to food, stressing that domestication “can significantly enhance the scope and effectiveness of remedial measures” because thereby Courts are enabled “to adjudicate

violations of the core content of the right to food by direct reference to obligations under the Covenant”.

### **2.1.5. The Optional Protocol to the International Covenant of Economic, Social and Cultural Rights**

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), which entered into force in 2013, provides a quasi-judiciary tool to reinforce accountability to the States’ observance of their obligations to respect, protect, and fulfil the right to food.<sup>39</sup> The OP-ICESCR allows the CESCR to assess individual and collective complaints alleging violations of the right to food, on two conditions: (1) that the complaint comes from a state party to the instrument and (2) that before filing the complaint, all the domestic remedies must have been exhausted (Degard et al., 2020).

As with other ESCR, the gap between formal recognition and de facto implementation of the right to food is largely explained by the lack of interest and willingness of many States to make the necessary political and economic efforts for structural changes. Aware of this gap and the arguments put forward by States to justify their lack of action, such as not having sufficient resources, the international community reached the consensus in the framework of the WFS 2002 that the realization of right to food would only be possible through voluntary progressive measures accepted by the entire international community (FIAN, 2021; Morales & PCDHDD, 2010). This consensus led to the drafting of the Right to Food Guidelines (2004). Although the guidelines are a fairly comprehensive instrument, as they are not legally binding, they are insufficient to lead duty bearers to fulfil their obligations. The OP-ICESCR offers complementary mechanisms to the VGs to provide accountability and redress in case of violations specific to ESCR. Unfortunately, just as with the Guidelines, adherence to the OP-ICESCR is optional and many of the member states of the ICESCR have not ratified the protocol.

### **2.1.6. The Right to Food as a Precondition to the Right to Life and as an Element of the Right to the Highest Attainable Standard of Health within the ICESCR Framework**

In the General Comment no. 36 (GC 36) on the right to life (2019), the ESCR the provision of access without delay to “essential services such as food” and the restitution of land for indigenous peoples are part of the measures necessary to protect life. Through these premises the GC 36 enshrines *food security*, *food autonomies* and *food sovereignty* as essential to life (CCPR, 2018). Enabling access to sustainable food production and means to procure food - including agrarian reforms where needed- is therefore part of the obligations of the states and duty bearers to respect, protect, and fulfill both the right to life and the right to life. It follows that the IHRL machinery to protect the right to life can also serve in some scenarios as a tool to also hallow the right to food.

### **2.1.7. Adequate Food as a Precondition to an Adequate Standard of Living and an Underlying Determinant of Health**

Article 25.1 of the UDHR upholds that “Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services”. Through article 12.1 of the binding ICESCR, States parties recognize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, and through article 12.2 they recognize their obligation to take steps “to achieve the full realization of this right” including those necessary for “The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child” (art. 12.2 (a)). Regarding children’s right to health, adequate food and nutrition of children, through article 24 of the CRC the member states “recognize the right of the child to the enjoyment of the highest attainable standard of health”. Parts c, d, e of article commits the signatories to ensure adequate food and to protect the nutritional status of children by adopting appropriate measures:

(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;



- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (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 (UN, 1989).

Transversally, the CESCR General Comment No. 14 (9) notes that “the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health”. These provisions reveal that although States cannot protect children and individuals against every possible cause of illness and malnutrition, they are bound to provide for the determinants that enable the peoples to procure their highest health and nutrition standard attainable. In reference to these determinants that states must provide for, the ESCR General Comment No. 14 points out that the right to health, as defined in article 12.1 ICESCR cannot be reduced to ensuring timely and appropriate health care. The right also encompasses the underlying determinants of health: “access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health” as well as “participation of the population in all health-related decision-making at the community, national and international levels”. The underlying determinants of health must be physically and economically accessible and safe to everyone, with emphasis on the most vulnerable and marginalized sections of the population (CESCR, 2000, para. 11, 12). The states must also adopt measures to abolish traditional practices that harm the health of children (CESCR, 2000, para. 23; CRC art. 24 (3)) and refrain from adopting measures that might hinder the underlying determinants of health or result in the harm to health and/or nutritional status of the peoples.

### **2.1.8. The Right to Food in International Treaties Aimed at the Protection of Specific Groups**

The right to food is reiterated in international treaties for the protection of the rights of specific groups, such as the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (Articles 12(2) and 14), the Convention on the Rights of Persons with Disabilities (Articles 25(f) and 28(1)) and the 1951 Convention on the Status of Refugees (Article 20). Likewise, in the context of humanitarian law, the Rome Statute of the International Criminal Court, provides for protection against deprivation of food and means for its production, forbids and sanctions the obstruction of relief supplies and the use of starvation as a method of warfare<sup>18</sup> (ICC, 2011; FAO, 2002).

For the effects of this thesis, the protections provided by the CRC are pivotal, mainly those of articles 24 and 27 which protect the right to food of children. Article 24 recognizes the right to food as component of the right of the child to the highest attainable standard of health. Parts c, d, e of the article set out obligations for the member States to adopt positive measures to ensure adequate food and to protect the nutritional status of children<sup>19</sup>. Article 27 enshrines the right to a standard of living adequate for physical, mental, spiritual, moral and social development and recognizes the right to adequate food, nutrition, clothing and housing as a component of it, underlining the duties of States and the adults responsible for the child. With these provisions, the CRC shows the remarkable international effort to combat malnutrition, hunger and to foster an equal appropriate start to life and access to opportunities to every child. The CRC is preceded by the Declaration of the Rights of the Child of 1924, 1959, by the UDHR (1948), the ICCPR and by the ICESCR (1966), all of which make reference to the best interest of the child.

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<sup>18</sup> See Rome Statute of the International Criminal Court (1998), article 8 (2) (ICC, 2011).

<sup>19</sup> Read further in Annex 2.

### **2.1.9. The Contributions of the UN Special Rapporteur on the Right to Food to the Development of the Right**

Despite the UN Special Procedures on the right to food do not act in a quasi-judicial capacity, and despite the states, NGOs, and corporations are not legally bound to report, the work of the UN Special Rapporteur has contributed substantially to the development of law, policies, and instruments for implementation, monitoring, and evaluation of the right to food all over the world (Biglino, Golay, & Truscan, 2012). The right to food special rapporteur reports on country visits and annual topics appointed by the Human Rights Council<sup>20</sup> and the UN General Assembly. The topics are planned in response to problems identified through individual communications claiming violations of the right to food and in the light of dialogue with relevant stakeholders in food and nutrition. The topics are left open for in-depth study and development of human rights-based solutions during and after the mandate of the Special Rapporteur. Some of the topics already examined are: the children's rights to food, the right to water, gender equality and women's rights, the right to land, the implications of conflict, natural disasters and climate change, the role of the private sector in land acquisitions and contract farming arrangements, the rights of agricultural workers, intellectual property rights over seeds, and justiciability of the right to food (Dugard, Porter, Ikawa, & Chenwi, 2020).

### **2.1.10. International Guidelines and Soft Law on the Right to Food**

Non-binding instruments such as declarations and guidelines impose only moral obligations to the parties. They do not provide, as opposed to hard law, for a way to hold States accountable to respect the right to food while developing norms, plans, actions, and budget allocations to ensure fulfillment. In contrast, compliance with hard law, derived policies, plans, and implementation, goes beyond voluntary good intentions and becomes liable to the whole international community (Amnesty International, 2020). Nevertheless, soft law

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<sup>20</sup> It is important to mention that the UN Special Procedures were in charge of the UN Human Rights Committee until it was replaced by the Human Rights Council in March 2006. The first Special Rapporteur on the right to food was appointed in 1983 by the Sub Commission on the Promotion and Protection of Human Rights, under the scope of the Committee. Since the establishment of the Council, all the Special Procedures, including the right to food mission remain as mandate of the UN Human Rights Council.

instruments set out standards and principles for the enforcement of the right to food which have played a key role in the recognition of food as a right, in the development of the right to food and in its integration within international law (IDLO, 2015).

The main non-binding concerning the right to food are: the Universal Declaration on the Eradication of Hunger and Malnutrition (1974), the Rome Declaration on World Food Security (1996), the Right to Food Guidelines (2004) (FAO, 2014, p. 3), The Millennium Development Goals (2000-2015), and The 2030 Agenda for Sustainable Development (Mejía, 2020).

As a response to the ominous famines in Asia, South America, and Africa in the early 1970s, in 1974 the World Food Conference adopted the Universal Declaration on the Eradication of Hunger and Malnutrition. Such declaration restated the right to be free from hunger and malnutrition that had been enshrined in article 25 UDHR and article 11 ICESCR. The declaration also proposed the establishment of a UN financial institution for the needs of rural populations, which led to the foundation of the International Fund for Agricultural Development (IFAD). In the following years, a number of civil society organizations advocated for a clear recognition of the right to food within the international policy landscape, which in turn paved the way to the adoption of The Rome Declaration on World food security in the 1996 the 1996 World Food Summit (WFS). The 1996 emphasized the importance of a right of equal participation in food policymaking aimed at ensuring sustainable food security for all (FAO, 1996). In line with this objective, the 1996 WFS Plan of Action required the UN system to define clearly the rights related to food in Article 11 of the ICESCR, their implementation, and a set of guidelines to attain food security for all. As a result, in 1999 the CESCR set out General Comment No 12: The Right to Adequate Food (Art 11) and in 2004 an Intergovernmental Working Group under the auspices of the FAO Council issued the Right to Food Guidelines (Reidel, 2012).

The Right to Food Guidelines were the first attempt by governments to agree upon actions for the realization of the right to food. They set out the commitments and actions that not

only States but also relevant international organizations and stakeholders should undertake to advance towards the full realization of the right to food. The Right to Food Guidelines are a significant step forward because on the one hand, they introduced a human rights-based approach into FAO's work which so far had been centered on food security and agriculture. On the other hand, they provided human rights-based and sustainability-based standards - which continue into force- for the formulation, implementation, monitoring, accountability, evaluation of policies and actions framed by active participation of the civil society in each step. Thereby, the Guidelines provide a solid ground to pinpoint obstacles to the right to food and to plan actions or adjustments to tackle them (FAO, 2019; Rae , Thomas, & Vidar). In 2012, the Right to Food Guidelines were complemented by the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and the Principles for Responsible Investment in Agriculture and Food Systems (RAI). In 2014 the VGGT were endorsed by the Committee on World Food Security and next complemented with the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Alleviation (2015) (Dugard et al., 2020). Dugard, Porter, Ikawa, & Chenwi, 2020 assert that the fact that each of these guidelines were developed through inter-governmental negotiations with active participation of diverse civil society actors, confers them certain degree of legitimacy and potential for effectiveness that other food security provisions may lack. However, it is important to remark that despite such potential, the guidelines were conceived over the 1996 WFS notion of *food security*, which ever since the very 1996 WFS has been criticized as a reductionist approach by a number of civil society groups.

As mentioned in Chapter 1, the concept of *food security* was first formulated in the 1943 UN Conference on Food and Agriculture in Hot Springs, Virginia, which means that the concept of *food security* is even older than the first universal recognition of the right to adequate food by article 25 of the UDHR in 1948. Since its very origin, *food security* has been interpreted as the way to overcome hunger and malnutrition, and later on, with the universal proclamation of the right to food, it was interpreted as the way to attain the right (FAO, 2005). As it is evident, the *food security* concept did not emerge from a human rights-based

paradigm; however, it has been often interpreted as a precondition to fulfil the right to food and its interdependent human rights. Although *food security*, its pillars of availability, accessibility, utilization, stability, and the right to food are frequently used interchangeably in policies and discourses, there are important differences between their normative and political frameworks (Bessa, 2019).

Mechlem (2004) emphasizes that *food security* perspectives are generally related to policy and not to a connotation of individual or collective right-holders that entails binding legal obligations for duty bearers and public accountability mechanisms. Critics to the initiatives based on *food security* condemn that with the exception of the Civil Society Mechanism (CSM) established in 2009 within the UN Committee on World Food Security (CFS), numerous multi-stakeholder processes aimed at the promotion of *food security* are contributing to a de-politicization of global food governance resulting in a ‘lock in of neo-liberal norms and values’ (Duncan & Claeys, 2018 as cited in Dugard & Ikawa, 2020). As already discussed in Chapter 1, recognizing the shortness of the majority of institutional food security approaches, a collective of social and indigenous leaders alongside Via Campesina proposed the concept of food sovereignty in the context of the WFS 1996. Internationally, food sovereignty is regarded as more strongly human-rights-based than food security, as it entails both the right to access and consume adequate food and the right to produce that food in dignity, in complementarity with other human rights, including those to land, property, water, natural resources, healthy environment (Claeys, 2015). The linkages between the right to food, these cross-cutting rights, and the right to food sovereignty are recognized in the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, adopted by the UN General Assembly and the Human Rights Council in 2018. Although the term *food autonomias* proposed by FIAN and the Colombian Platform for Human Rights, Democracy and Development is not explicitly recognized in the Declaration, the notion of *food autonomias* is comprised in the instrument when referring to food sovereignty as a human right of peoples to sustainably produce and appropriate healthy and culturally acceptable food and to define their own food and agriculture systems in harmony with the environment, the present, and the future generations.

It is however important to underline that the *food process* model mentioned in Chapter 1, which proposes the term *food autonomies* and its complementarity with *food security* and *food sovereignty*, has made momentous progress concerning right to food enforceability. On one side, the *food process model* recognizes the complementarity of *food security* and *food sovereignty*, therefore overcoming a long-lasting debate about which approach should prevail to advance the right to food. On the other side, the model provides a steer to: (a) monitor the implementation of the right to food through the Right to Food Guidelines; (b) to instruct the civil society about the right to food -understood as the right to the whole food process- to access to justice (FIAN, 2021; Morales & PCDHDD, 2010). The way in which the Declaration on the Rights of Peasants and Other People Working in Rural Areas, adopted by the UN General Assembly and the Human Rights Council (2018), denotes *food sovereignty* as a collective right of the peoples (groups, communities, peasants, nations, regions), transcends the mere idea of national sovereignty. Thereby, interpreted as a right of the peoples and not purely a right of the nation, the right to food sovereignty encompasses both *food autonomies* and *food security*. However, it is crucial to remark that although the 2018 Declaration is an important development for the collective enforceability of the right to food, just as the food security guidelines, it is still a soft law instrument whose contents need to be supplemented by legally binding provisions in order to push duty bearers to the fulfilment of their obligations with respect to the right to food<sup>21</sup>.

Asides the right to food international human rights soft law framework, diverse international cooperation agendas stress the importance of equal access to adequate food and nutrition as essential for human development (Degard et al, 2020). Although the founding principles of these development agendas somewhat converge with those of the human rights regime, they do not address hunger and malnutrition through human rights lens. Yet, development agendas

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<sup>21</sup> In this respect, Sara Brandão from the RIDHE organization of Human Rights (2017) states that whilst the declaration is not legally binding, so it “will not completely overcome the barriers to the realization of the rights of rural populations, it will be a large step forward in formally acknowledging the particularities of these groups and the difficulties that they face”. It is hereby evident that the declaration is an advancement but only to the extent of providing a set of moral principles to which state parties are supposed to abide and which should set ground and orientation for the development of international and domestic hard law (Brandão, 2017).

have brought visibility to the right to food and other interdependent interrelated rights such as the rights to work, education, land, and social security. Furthermore, the governmental and intergovernmental actions to attain these agendas crosscut with human rights-based actions for the defense and promotion of the right to food, so a number of governments and human rights organizations have been cooperating concurrently for the advancement of both targets.

Chronologically, the main global development agendas are the goals established in the frame of the 1996 WFS, the Millenium Development Goals (MDGs) (2000), and the 2030 Agenda (2015). The 1996 WFS committed before the ODMs to halve global hunger by 2015, an objective that none of the three frameworks has been able to reach. As stated in chapter 1, the world is far from achieving the ongoing goals of the 2030 Agenda. This repeated failure might be a suggestion that the international norms and guidelines on agri-food affairs are not respected by the countries that agree to abide by them. Thus, it might be worth questioning whether it is convenient to promote human rights through the creation of more norms or if, instead, it is the creation of mechanisms to ensure compliance to the existing standards through justiciability of the rights that is imperative (Ramírez, 2019).

The MDGs and subsequently the 2030 Agenda elaborated on the provisions of the Declaration on the Right to Development (1986) which acknowledged for the first time the relationship between States' collective construction of food regulations and the right to development. The Declaration provided a space for the States to agree on cooperating and elaborating domestic regulations to ensure access to everyone to minimum goods including food, so the Declaration shed preliminary light to the food issue. Therefrom, the ODMs AND THE 2030 agendas advanced the contents of the Declaration by articulating food and environment norms (Ramírez, 2019). Nevertheless, visibility to the problem of unequal access to adequate food as an obstacle to the implementation of the right to development is not sufficient to realize the right to food (Castellano & Gómez, 2014, p. 507). First, because nor the Declaration neither the development agendas provide for measures for effective protection. Second, because their contents have remained open to interpretation under the economic, social and cultural standards of the signatory countries (Ramírez, 2019).



### **2.1.11. Regional Law Frameworks**

The Southeast Asian, African, and Interamerican human rights systems provide guarantees of the right to food. In contrast, the European Convention on Human Rights (1950) and the European Social Charter (1961), which were adopted before the ICESCR (1966) do not mention the right to food and besides the interpretations of the European Court of Human Rights regarding a few cases related to the right to food, the European system does not possess any specific protection instrument (Griego & Musso, 2017).

For the Southeast Asian system, The Association of Southeast Asian Nations (ASEAN) Human Rights Declaration (2013) recognizes in article 28 “the right to adequate and affordable food, freedom from hunger and access to safe and nutritious food”. In the African System, The African Charter on Human and Peoples’ Rights (1981) does not contain a direct guarantee of the right to food, but the African Commission on Human and Peoples’ Rights states that the right to food is implicitly protected through the guarantees that the Charter provides for the rights to life, health and development (African Commission on Human and Peoples’ Rights, 2010; Degard et al., 2010). In addition, the right to adequate food is recognized by Article 14 of the African Charter on the Rights and Welfare of the Child (1990) as a component of the right to the best attainable state of physical, mental and spiritual health (OAU, 1990) and the Right to Food Security is enshrined in Article 15 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003) (African Union, 2003).

Colombia, the state of the case study of this thesis, works under the Interamerican human rights system. Therefore, the present segment elaborates further in the right to food protections established in the framework of the Organization of American States (OAS).

On behalf of the OAS, the right to food is protected by The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights

(Protocol of San Salvador) (1988). This Protocol complements the human rights provisions set out by the American Convention of Human Rights, but its contents differ from those of the Convention in that the economic, social, and cultural rights hallowed by the protocol are of progressive character. In line with this character, Article 12 of the San Salvador Protocol mandates:

#### Right to Food

1. Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.
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 (OAS, 1999, art 12).

As reported by Ramírez (2019), in this article the concept of food is replaced by nutrition while the final addition is the same than in article 11 of the ICESCR. Ramírez highlights that this convergence denotes the strong influence of the ICESCR over the regional systems, pushing States to joint efforts to guarantee the rights hallowed by the Convention. Moreover, Ramírez analyses that the way in which the right to food is presented in the Protocol implies that such international cooperation and the direction of national agri-food policies are based on an charity-based perspective which understands hunger as an international issue which hinders development and requires therefore of international food assistance.

Talking about a right to adequate nutrition without mentioning the rights to the means to acquire adequate food is problematic for two reasons: first, it reduces the right to food enshrined on article 11 of the ICESCR and article 25 UDHR to a mere calculus of energy and nutrients that can simply be delivered through charity or aid, instead of ensuring that people can procure their adequate acceptable food in a free, dignified, and sustainable manner. Second, it does not indicate how adequate nutrition should be achieved, that is, it does not specify whether nutrients will be obtained from foods produced locally, nationally or by imports. Nor does it rule about how the foods should be obtained so as to regulate the

implications on the environment, the society, the household, local and national economies. Furthermore, Part 2 of the Article 12, asserts that the eradication of malnutrition is achieved through improved methods of production, supply and distribution, that is, through efforts to increase food availability. This approach ignores several essential elements of the right to food: the dimensions of permanent and safe access to food, which are articulated with the notion of sustainability; the dimensions of food consumption and acceptability, and the right of the communities to choose their own food system in harmony with the environment, the present and the future society.

Fortunately, these shortcomings of Article 12 of the San Salvador Protocol have been partially supplemented through interpretations of the Inter-American Court of Human Rights (IACHR). The IACHR upholds the connection food sovereignty and right to food after recognizing complaints from indigenous and traditional rural communities alleging violation of their rights to access to land and traditional means for food production and subsistence as violations of the right to life under article 4 of the American Convention on Human Rights (IACHR, 2006). Moreover, in the report *Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region*, the IACHR (2019) pointed out that

...the whole range of environmental impacts in the Amazon region are to a large extent undermining the indigenous peoples' enjoyment of the rights to water and food ... the pollution of water resources prompts a food crisis, given that fish are a vital part of their traditional diet for many communities in the Amazon region. The IACHR likewise notes that, since dietary habits are tied in with the cosmovision of indigenous peoples, some of the food supply measures taken by States have been culturally inappropriate ... In addition to the above, there are also impacts related to deforestation and the loss of biodiversity, which have reportedly impaired traditional hunting and gathering practices (IACHR, 2019, p.134 as cited in Degard et al, 2020, p. 148).

The Protocol of San Salvador is complemented by the Inter-American Convention on Support Obligations, which besides of ruling the family support obligations, also provides in

Articles 4 and 19 for the obligations for States with respect to two situations: the right not to be discriminated against when receiving food and the duty of the State to provide food for children who are homeless in their territories (OAS, 1989). Individuals can only present complaints to ad-hoc international bodies regarding situations in which failure to food maintenance obligations endangers the life and health of human beings, especially minors.

#### **2.1.12. National Legislation, National Jurisprudence and Implications for the Protection and Justiciability of the Right to Food**

The right to food is a justiciable, legally enforceable human rights, although its justiciability is a relatively recent and underdeveloped characteristic (IDLO, 2015; Mejía, 2020; Windfuhr & Jonsén, 2005). At the domestic level, the right to food can be upheld through different means, namely by issuing ad-hoc laws, by explicit or implicit Constitutional recognition, or by integration in the chart of rights or as a guiding principle of the State. The variety of means for national recognition gives place to inequality in the level of protection from one state to another. In general terms, since the Constitution is considered the supreme national norm, the protection of the right to food can be very effective if countries explicitly recognize it in the Constitution as a fundamental right of every citizen and establish ad-hoc legal remedies. The CESCR, The Right to Food Guidelines, and the special Rapporteurs on the right to food defend the adoption of specific protection for every citizen at the national level. Still, at present only a few constitutions worldwide explicitly recognize the right to food as a fundamental human rights for everyone, which leaves justiciability to the interpretation of State judges. To date, it is estimated that more than 30 countries count with explicit recognition of the right to food, implementation and remedy in their constitution or framework legislation. Some of those States, namely South Africa, Kenya, Ecuador, and Bolivia, enacted specific articles in the constitution protecting the right to food and water for everyone, and some of these constitutions even present provisions on food sovereignty and land rights (Degard et al., 2020). In contrast, the majority of States have chosen more evasive approaches to incorporate the right to food in domestic law (Mejía, 2020), particularly:

1. Recognition of international or regional treaties in the national law and jurisprudence, which is the case of the 77 States that chose incorporating the ICESCR in the national

legislation. In such cases, the interpretation of the rights hallowed by the incorporated treaties and therefore the decisions on how to implement them through domestic legislation, policies, plans and how to provide for their justiciability remain a matter of national sovereign jurisdiction, case law, and discretion of national judges.

2. Recognition in the constitution or policy framework of the access to food as a national principle, a social or political objective, without direct recognition of the right to food. In the practice, vague recognition of a right makes justiciability very difficult in cases of violation. Some States have constitutional stipulations that mention the right to food within broader principles related to the rights to life, to an adequate standard of living, or to minimum subsistence (Knuth & Vidar , 2011).

3. Direct or indirect recognition of the right to food in one or more national laws. In these cases, even if the right to food is not explicit within the domestic constitution, its justiciability can be effective if the law and policy framework provide mechanisms for justiciability and remedy.

4. Explicit constitutional recognition of the right to food as fundamental only for particular groups within the population, mostly for groups considered vulnerable, such as children, pregnant women, elderly people or convicts (Vidar, Jee Kim, & Cruz, 2014). This is the approach that the majority of States have opted (Degard et al., 2020). Some examples are Colombia, Guatemala, Brazil, Ecuador, Cuba and Paraguay (FAO, 2009, p. 47). In the case of Colombia -object of this study-, the constitution recognizes the right to food as fundamental only for children. Alongside, it refers indirectly to food as a right for regulating food aid for unemployed or helpless pregnant and post-partum women (Art. 43) and elderly indigents (Art. 46) (ODA-ALC, 2020).

5. Certain federal states have constitutional guarantees at the subnational level for the right to food and other related rights such as the rights to work and social security (Raponi, 2017)

6. Enactment of constitutional provisions that implicitly protect the right to food through the rights to life, an adequate standard of living, development and well-being (Degard et al., 2020). For example, recognizing the right to life as fundamental and interpreting the right to

food as a precondition to the right. Another great number of states chose this approach<sup>22</sup>, whose main downside is that if a right is recognized as interdependent with a fundamental right, but the legal framework does not incorporate it as justiciable, then its protection will become problematic.

7. Enactment of national framework laws on the right to food grounded on the Right to Food Guidelines 2004. This is the case of a few countries: Guatemala (2005), Ecuador (2009), Brazil (2010), Zanzibar (2011), and Indonesia (2012) (Degard et al., 2020).

Alongside the states' method for incorporation of the right to food in national law, it is undeniable that jurisprudence and case law in the domestic, regional, and even international jurisdictions robustly influence the development of human rights law, policy, mechanisms for accountability, and decisions of the courts in terms of justice, reparation, and redress.

Moreover, in practice, States' recognition of the right to food needs to be complemented with timely specific decisions paired with strong civil society participation. In this regard, Degard et al. (2020) provide a good illustration through the case of South Africa: although the South African Constitution provides solid foundations for the protection and promotion of the right to food, the absence of strong civil society campaigns accompanied with a failure of the courts to create monitoring mechanisms and to issue specific, time-bound orders, has implied that strategic litigation does not ensure a meaningful impact on hunger and malnutrition (p. 150; Nkrumah, 2019).

Only once all the domestic legal remedies are exhausted, individuals can file a complaint alleging violation to the right to food with the regional quasi-judicial and judicial bodies. However, there are only a few of these bodies, so in countries in which the domestic legal framework presents a vague recognition of the right to food and scarcity of domestic

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<sup>22</sup> A FAO study about the recognition of the right to food among states showed that 114 States have indirectly recognized right to food through enshrining the right to social security in their Constitutions; 46 States through broader rights such as right to adequate standard of living or right to live in dignity; 13 States by means of the right to health; and 37 States include by the right to an adequate minimum wage to satisfy the basic needs of both working persons and their families (FAO, 2009, p. 48).

remedies, redress can be ineffective. At the regional level only two judicial bodies are available: The Inter-American Court of Human Rights and the African Court on Human and People's Rights. The quasi-judicial remedies are the African Committee of Experts on the Rights and Welfare of the Child, the Inter-American Commission on Human Rights, and the European Committee on Social Rights (FAO, 2009, pp. 37-40; Mejía, 2020).

Amid the treaty bodies from the human rights treaties that abide the right to food, only two assist individual complaints: CEDAW Committee, by means of its Optional Protocol (OP-CEDAW), and the CERD Committee, through Article 14 of the Convention. The CRC does not count with an optional protocol that provides for a petition mechanism, so justiciability for violations of the right to food before the Committee on the Rights of the Child is not viable. Each treaty body has stipulated specific conditions to admit complaints; if the conditions are fulfilled, the oversight body can start a process of investigation in order to decide on the case and present the verdict to the State Party in which the individual who filed the complaint resides (FAO, 2009, pp. 32,33). The quasi-judicial mechanisms of OP-CEDAW and CERD are unspecific for economic, social and cultural rights. Only the very recent Optional Protocol to the ICESCR (2013) allows to file complaints of individual, collective, inter-state character, or on behalf of the victim alleging violations to economic, social or cultural rights<sup>23</sup> before an ad-hoc Committee. This specific resource is available only to signatory states to the OP-ICESCR, possibly to give the signatories to the ICESCR a possibility to evade the onus of ensuring remedies for the violations to all the economic, social, and cultural rights hallowed by the covenant (ESCR.Net, 2020; FAO, 2009, pp. 32,33; Gualdrón Rivero, 2017; Mejía, 2020).

For inter-states complaints alleging violations of the right to food, the International Court of Justice (ICJ) is the competent authority. The ICJ can only intervene in cases in which the implicated states have recognized the jurisdictional competency<sup>24</sup> of the ICJ and have

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<sup>23</sup> Individual, collective, inter-state complaints, or complaints on behalf of the victims.

<sup>24</sup> It is noteworthy that ICJ has no mandatory jurisdiction, meaning that although all the UN member States are parties to the Court's Statute, ICJ has no authority to judge a State if it has not recognized its jurisdiction. In

recognized the right to food in the national legal and juridical framework. If after the decision of the court, a state is found guilty of a violation of the right to food, such state may be called for international accountability.

In theory, for its very nature as a fundamental human rights, the right to food must enjoy of a high degree of protection. In practice, vagueness in domestic recognition and scarcity of legal remedies, impair such level of protection. Laws that exist, but are imprecise, might lose their value because they are hard to enforce. Courts are the ultimate guarantors of human rights, so they must be enabled to take into consideration the right to food (FAO, 2013, p. 25). Without the adherence of the ICESCR member states to the OP-ICESCR and their adoption of explicit legislation and legal remedies that protect the right to food of everyone, the progressive realization of the right is jeopardized, if even attainable. Several states, afraid of falling short of resources to guarantee the right to food for everyone, persist in maintaining an elusive legal framework. Many of them recognize the right to food through any of the mechanisms above mentioned, yet they have not set specific remedies for victims. Some States replace the recognition of food as a right for the concept of *access to food* as a political principle or objective. Other states stick to food assistance measures that focus on a reductionist understanding of food *access* that seeks to roughly comply with the minimum standard of freedom from hunger (CESCR Art 11(1)). Many others emphasize on the food *availability* dimension through national production or imports, disregarding the importance and complementarity of the other dimensions of the right to food: *adequacy*, *access*. Such reductionist approaches hinder the full realization of the right, which goes beyond freedom from hunger where every human being is enabled to procure adequate stable food for himself/herself and his/her household without compromising his/her other human rights and needs and safeguarding the environment and the human rights of the present and future generations. The refusal of many states to mainstream their legal framework might obey to the fact that the charity-based approach, although reductionist, can still cut the national figures of malnutrition, numbers that can be pompously shown when needed for international

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addition, individual cases may only be presented to ICJ through the respective State of the petitioner (FAO, 2009, p. 33).



accountability or requesting multilateral aid for development. Alongside, interventions limited to handouts and food assistance might still leave room to keep budget designation low, to corruption, or to prioritize in the agenda other rights that match better the interests of influential groups. Rights such as the right to food, which require prioritizing the most vulnerable, might be less attractive to some governments than property or commercial rights, or ventures for exploitation of land and natural resources (FAO, 2013, pp. 25,26). This is a recurrent dilemma in the formulation of protective jurisprudence for the right to food, especially in states that are rich in natural resources and high in socioeconomic inequality (Mejía, 2020).

### **2.1.13. A Minimum Core amidst Diverse Interpretations**

Amidst the many juridical and political interpretations, the contours of the definition of the right to food, its enforceability and justiciability might appear as blurry. The legal and policy framework within which the right to food is implemented at the local, national, regional levels is multidimensional and dynamic. However, notwithstanding that local, national, regional and international settings may change over time so that different measures will be necessary to enforce the right to food, still a minimum core of contents of the right to food have been set out through international and national law and policy, jurisprudence and practice.

Any new insight of the right to food must consider that the CESCR GC12 has already established a baseline understanding of the contours of the right to adequate food as well as indications on how the right should be applied domestically. This CESCR's interpretation of the core content of the right to food is reiterated by the Right to Food Guidelines and the UN Special Rapporteurs on the right to food. The core content corresponds to the so-called "Three As": availability, accessibility, adequacy. Adequate food entails "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" and "the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights" (CESCR, 1999). In this context, *adequacy* denotes the safety, quality, nutritional

content, and cultural value of food, meaning that food must be innocuous, nourishing, and acceptable for the consumers. Availability and accessibility refer to sustainability, stability of food, and the means to produce or acquire it. They also refer to the obligations of duty bearers to identify and eliminate the structural barriers that may impede food availability and access to specific groups in the present and in the future. According to the CESCR the duty bearers are the states and other stakeholders which must develop mechanisms to ensure full, active, transparent participation by the right-holders in all the steps of food and nutrition policymaking, monitoring, accountability, and remedy in cases of violations of the right to food (FAO, 2013).

The General Comment 12 also underlines that the Article 11 of the ICESCR specifies two components of the right to food: the *right to adequate food* and the *fundamental right to be free from hunger*. For being closely linked and a precondition to the right to life, the *right to be free from hunger* is a legal absolute standard. In practice, this means that notwithstanding their level of development, every state party to the ICESCR is obliged “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.” Failure to satisfy at least this minimum standard, implies a prima facie violation. In the cases a failure is owing to resource restraints, the states must demonstrate that they displayed every possible effort at the maximum extent of their resources in order to satisfy as a priority, these minimum obligations (CESCR, 1999, para. 17). In contrast, the first component of the right to food, the *right to adequate food*, entails an obligation of progressive non retrogressive realization, as it requires the development of economic, political and social conditions that enable people to procure on their own sufficient, stable, sustainable, adequate food (UN General Assembly, 1966) (FAO, 2009, p. 4).

The fact that Article 25 of the UDHR recognized the right to food as a human right and Article 11 of the ICESCR categorizes the right to food as a fundamental human right, entails a complex of implications for the interpretation and enforceability of the right to food. First, being a fundamental human rights means that the right to food applies at all situations,

including times of peace, conflict and emergencies. Moreover, because of being inextricably related to the non-derogable right to life, the right to food cannot be derogated under any circumstance. Thus, the ICESCR does not provide for any derogation and contains only one general limitation clause in article 4 which applies to all the rights hallowed by the Covenant (Cotula & Vidar, *The right to adequate food in emergencies*, 2002; UN General Assembly, 1966, Art. 4; FAO, 2009, pp. 84, 85, 128). Second, the international community recognizes a moral obligation towards the rights hallowed by the UDHR, and for being recognized as human right, the right to food becomes universal, inalienable, indivisible, interrelated and interdependent with other human rights. The states must guarantee its equal, participatory and inclusive enjoyment by every human being. Third, the recognition of a right as a human right implies accountability. This means that once States sign a treaty enshrining the right to food, they are bound, beyond moral obligations, and accountable to respect the right, set domestic legislation and mechanisms for justiciability and protection, and develop strategies, plans, actions, and budget allocations to fulfill it under the principles of non-discrimination, and non-retrogression<sup>25</sup> (FAO, 2009, pp. 29,54-46,80,96,111). States also become accountable to procure international cooperation to these effects when a constraint of resources may hinder their obligations. Therefore, the civil society can demand and monitor the compliance of the States and the duty bearers according to CESCR GC No. 12 (Mejía, 2020; Windfuhr & Jonsén, 2005).

#### **2.1.14. Challenges and a Way Forward on the Right to Food**

Despite several legal and juridical advancements, the implementation, justiciability and remediation of the right to food still face multiple challenges. According to Claeys (2021), one of the main challenges is the disproportionate focus that the IHRL framework sets on the obligations of the States. A state-centered approach might deter the implementation of the right to food at the national level, as it tends to overlook the responsibilities of non-state

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<sup>25</sup> The principle of non-retrogression means that states must take positive actions to progressively advance towards the full realization of the right to the extent of their maximum resources and they can never reduce the level of protection and observance that was already achieved (retrogression). Retrogression amounts to a violation of the right to food (FAO, 2009, p. 6).

actors. Diverse human rights experts attempt to overcome this reduction by proposing extra-territorial obligations (ETOs) on international organizations, transnational corporations, and on states that operate outside their territory (Claeys, 2021). Complementing State obligations with a comprehensive set of ETOs, allows to transcend the monitoring that is centered on national statistics (Falk, 1988). With the aims of building a framework of human rights obligations for transnational corporations, the UN Human Rights Council has recently advanced some guidelines (FIAN, 2014). An example are the Guiding Principles on Business and Human Rights (UN, 2011).

One of the key current obstacles to the observance of the right to food, is that advocacy on ESCR often presents duality: on the one side, advocacy demands the states to cease the human rights violations they cause; on the other side, it requires the states to deliver more assistance measures. This double demand causes tension proposals of structural solutions (i.e. land reforms, redistribution of resources, and inclusive, fair trade) and welfare-oriented expectations. Therefore, a current challenge is to integrate the structuralist and social-democratic approaches into a coherent framework (Claeys, 2021).

Another obstacle is disinformation. First, countless right holders do not comprehend that they have the right and the duty to take part in the entire cycle of food policy and decision-making. Second, the mechanisms of enforceability and justiciability of the right to food are widely unknown and misunderstood, mostly in states with more frequent violations. Still, in the past few years, the recognition of the right to food justiciability has increased. Although justiciability recognition is crucial, it has mainly focused on the “fulfillment” obligations related to social security and food aid. Such focus leaves the “respect” and “protect” dimensions behind and neglects the structural and collective dimensions of the right to food (i.e. access to land and means of production, redistribution of rural property, sustainability, fair trade, access to farming financial services).

Second, right holders often understand the right to food as an exclusively positive right that implies State obligations to provide food. This perspective disregards the negative obligations, such as the duty of both state and private actors not to interfere the capacity of

individuals and groups to procure their adequate food (Lambek, 2014). This tension between the structural and social-democratic perspectives has been prominent within the Inter-American Human Rights System (Abramovich, 2009). In face to this tension, the future decisions of the courts in right to food cases will play a pivotal role.

A third key obstacle is the “lack of constituency” towards the right to food and ESCR in general (Nelson & Dorsey, 2008, P. 83). There is no global movement demanding the right to food, as there is, for instance, for the demand of women’s rights (Henkin, 1990). Therefore, a crucial challenge is the articulation of the food sovereignty frameworks and campaigners with the advocacy on the right to food (Claeys, 2021; Lambek, 2014), food justice and sustainability (Bullard & Müller, 2012; Holt-Giménez, 2010; 2011; Pleyers, 2011), and food system transition (Sage, 2014). The establishment of human right to land and territory might strengthen this articulation (De Schutter, 2009; Künnemann & Monsalve Suárez, 2013). Such right and its ad hoc legal and policy framework might be beneficial for the global South, where conflicts over land and nature appropriation are widespread (Margulis, Mckee, & Borras, 2012). A human rights to land might also benefit the global North, where access to land by new and young farmers is becoming a pervasive problem (Claeys, 2021).

## **2.2. Colombian National Legislation and Juridical Framework on the Right to Food**

### **2.2.1. Interpreting the Right to Food in Colombia**

Colombia lacks comprehensive, explicit and unequivocal regulations on the obligations that state entities, individuals, national and foreign economic interests, as well as the remaining society, should have regarding the respect, protection and realization of the right to food (FIAN, 2021; PCDHDD, 2010).

Added to the impairments of lacking a clear and sufficient legal framework, a conjunction of three main historically rooted obstacles hampers the attainment of the right to food. First, the economic opening of the 1990s, which sought to integrate the local economy with the world economy by conforming to the Washington Consensus (FIAN, 2014, p. 20), which proposed trade liberalization that materialized in the form of free trade agreements, led Colombia to a dichotomy between rights/services that followed a view of human rights tending to

mercantilism by turning rights into services that must be acquired by monetary payment, subjecting rights to capital, hence creating barriers that hinder an adequate standard of living to those who did not had sufficient means to pay for their rights, including the right to adequate food (Ramírez, 2019).

Second, the armed conflict in which Colombia has been immersed for more than five decades, has slowed down the advancement towards the realization of economic, social and cultural rights. This is why in the Havana negotiations between the Colombian government and the FARC-EP, the two sides agreed on certain improvements of the agrarian conditions of the Colombian rurality that sought to reduce the inequalities between the countryside and the urban side. Such accords sealed in the Peace Agreement appeared as a crucial opportunity for the improvement of the human rights conditions of peasant communities and ethnic communities linked to the democratization of the land (Ramirez, 2019). However, almost five years after the signature of the final peace agreement (26 September 2016), the agrarian accords seem to be buried under the rug of a new political agenda that came with the subsequent presidency. Third, corruption has historically limited the outcomes of many food assistance, education and development programs, namely, the School Feeding Program (PAE), which, according to the Contraloría General de la República (Government Accountability Office), exceeds the cost of 140 billion pesos in corruption (El Espectador, 2017).

At the juridical and policy frameworks, the enforceability of the right to food in Colombia has been interpreted from its relationship with the right to health and food security, but not as an independent human right. Most advances in the right to food standards have been achieved from a public health perspective that has paved the way for a legal and policy machinery mainly focused on promoting food availability and access to reach an adequate nutritional status as a prerequisite for the enjoyment of health. It is this interdependence of the right to food and the fundamental right to health that has allowed for certain evolution in jurisprudence through incorporation of the provisions of the ICESCR and the Right to Food Guidelines in the Constitution. However, this evolution is mostly formal, as in practice the enforceability and justiciability of the right to food are hindered by three main obstacles:

first, the national constitution does not recognize the right to food as a fundamental right to every citizen, but only for children and refers indirectly to food for women and the elderly. As highlighted by Ayala & Meier (2017), international law has limitations to change the practice of national governments, and the most effective way of operationalizing international law is through constitutional provisions that by explicitly recognizing the right to food for everyone, setting a foundation for the development or reform of ad-hoc national laws and policies. Second, Colombia has not signed the OP-ICESCR, so Colombians cannot present individual complaints to a treaty body specific for economic, social, and cultural rights. They can only file a complaint with the committees of the CEDAW or the CERD only if the case is relevant to the provisions of the treaty. Individuals and groups can, however, appeal to the Interamerican Court of Human Rights in cases of alleged violation to the right to food, after exhaustion of all the domestic remedies (Robles, et al., n.d.). Third, Colombia has not submitted an ICJ jurisdiction declaration, so the ICJ cannot intervene in case of an inter-state complaint alleging violation of the right to food (ChartsBin statistics collector team, 2011).

Given the context, at the national level the enforceability and justiciability of the incorporated international law remains at discretion of the Supreme Court and case law developments, and judiciary alternatives through treaty bodies or at the regional level are scarce.

### **2.2.2. The Right Food within the Colombian Constitution 1991**

The right to food in the Colombian Constitution is recognized in line with the international institutional mainstream, that conceives its attainment through the realization of food security. In this line, the Colombian State has set an array of constitutional articles that mainly refer to food availability and food access for the protection of women, children, the elderly, and national food production.

### **2.2.3. Constitutional Protection for Women and Gender Equality**

Article 43 of the Colombian Constitution states:

Women and men have equal rights and opportunities. Women may not be subjected to any form of discrimination. During pregnancy and after childbirth, the mother shall enjoy

special assistance and protection from the State and shall receive from it food allowance if she is unemployed or defenseless. (Constitution of Colombia, 1991, art. 43)

It is a step forward that the Constitution, by means of Article 43, recognizes gender equality in rights and opportunities, and protects women from all forms of discrimination, considering that women have historically been most affected by poverty, food insecurity and unemployment in Colombia and worldwide. An illustration of this entrenched inequality in the country is provided by the OECD report "How Is Life Going in Colombia" (2017). The report highlights that women are 70% more likely to be unemployed than men. Yet, Article 43 protects the mother until the postpartum period, ignoring that the lactating woman also has high nutritional requirements and is recommended to exclusively lactate the child at free demand ideally until his/her six months of life and next keep lactating in conjunction with adequate complementary feeding up to the 24<sup>th</sup> month of life. Ignoring women in lactation is already a ground for discrimination. Additionally, Article 43 does not specify how to guarantee non-discrimination in food matters in such cases in: (A) which women are employed but the employment does not provide sufficient income for a basic family basket that guarantees adequate food for the woman and her family. (B) The woman is an independent worker or works informally and hence does not receive maternity leave allowance. (C) The woman is employed but does not have access to childcare services to leave her children during working hours. In addition, in the field of food production and agriculture, there is a strong tendency that women do not own the land yet are responsible for the agricultural production, because men often leave the countryside in search of employment opportunities in the urban capitals, leaving land tenure to women but not property, therefore constraining their decision-making and participation (Zuluaga, as cited in Korol 2016, p. 113). It follows that, in order to make progress in the implementation of article 43, public strategies must be formulated to eliminate all legal and practice grounds for possible discrimination, including across the whole *food process* -from production to utilization-, access to property and financial services.



#### **2.2.4. Constitutional Protection for Children**

Through the Law 12 of 1991, Colombia has incorporated as constitutional principle the commitments undertaken through the signature of the CRC. In line with this incorporation, Article 44 of the Colombian Constitution of 1991 recognizes right to food as a fundamental right of children and the obligation of the State to guarantee it, noting that “The following are basic rights of children: life, physical integrity, health and social security, a balanced diet...”; that children “shall be protected against all forms of abandonment...”; and that:

The family, society, and the State have the obligation to assist and protect children in order to guarantee their harmonious and integral development and the full exercise of their rights. Any individual may request from the competent authority the enforcement of these rights and the sanctioning of those who violate them. The rights of children take precedence over the rights of others (Colombian Constitution 1991, Art. 44).

On the basis of Article 44, the State has the duty to formulate public policies that support children and their families to develop healthy lifestyles. The National Policy of Food Security -established by the document CONPES 2008- orients the formulation of such policies and delegates their implementation, monitoring, and evaluation on the hands of the Colombian Institute of Welfare (ICBF for its initials in Spanish). ICBF leads the formulation of the national dietary and healthy habits guidelines and provides diverse programs for child protection, nutrition and support of pregnant and lactating mothers, centers for early development, primary and secondary schooling through which children receive balanced, food, psychological, pedagogic assistance, are articulated to healthcare and immunization services, and their families are involved to participate in health and wellness promotion.

These programs seek to promote adequate early development and reduce school dropout. Unfortunately, the coverage and quality of these programs is uneven: millions of children are excluded for various reasons and some beneficiaries receive better services than others. The reason for these discriminatory outcomes lies in the fact that the programs are implemented locally according to the budget defined by each territorial entity and the region in which the entity is inserted. Hence, the cities that are capital within their regions and the territorial

entities pertaining to the most solvent regions, access more packages of services, better quality, and enjoy and greater coverage. Rural areas, especially those scattered and remote, are largely neglected, as many programs do not reach the location, Moreover, many educational and food programs for children and families are not adapted to the culture of the communities<sup>26</sup>.

A key trigger for child malnutrition in Colombia is socioeconomic inequality, which, according to the World Health Organization (WHO), is caused by multiple structural determinants, such as unequal income distribution, macroeconomic policies, gender, age, ethnicity, social class- and intermediary determinants, including access to health care, education, working, housing and environmental conditions, biological, behavioral, psychosocial factors, and corruption, which deprives the population of opportunities by reducing the use of resources for social investment. The differences between territories in the measure of multidimensional poverty coincide with the differences in malnutrition prevalence, which proves a causal association between socioeconomic inequality and malnutrition in Colombia (Bejarano, 2020). The National Planning Department (DPN in Spanish) of Colombia uses the Multidimensional Poverty Index (IPM in Spanish) to measure poverty by calculating the deficiencies of households in different dimensions, including educational conditions of the household, work, health, public and home services, housing and children and young people conditions. In 2018, the National Administrative Department of Statistics (DANE) found that using the measure of municipal multidimensional poverty from the national census, the highest rates were those of the municipalities of Uribí (Guajira) with 92.2%, Cumaribo (Vichada) with 91.4%, and Alto Baudó (Chocó) with 90.6% (DANE, 2018). These regions also portray the highest numbers of child malnutrition in the country and lower access to the above-mentioned programs in comparison to other regions. The lower access is mainly due to long-term corruption and, to a lesser extent, to reasons of difficult geographical access. Both due to corruption and political negligence, these and many other

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<sup>26</sup> Which implies, of course, that the food delivered is not culturally acceptable to many communities and therefore such programs breach the right to food as they violate its *adequacy* component, which according to the ESCR General Comment No. 12 is one of the three pillars of the right to food (*availability, accessibility, adequacy*).

disperse rural communities lack basic utilities, potable water, and health coverage. Malnourished individuals have a weakened immune response. Hence, their risk of mortality and grave morbidity due to infectious diseases is significantly higher in absence of sanitation, utilities, and healthcare.

For example, in La Guajira, the Inter-American Commission on Human Rights (IDH) decreed precautionary measures in 2015 to protect the Wayuu indigenous people from extinction due to starvation. In 2017, Judgment T-302/17 was established, which recognized a guardianship action to protect the fundamental rights to health, water and food of children of the Wayuu people of the Department of Guajira. However, the sentence was not carried out, and in 2018 the Colombian Constitutional Court decreed an unconstitutional state of affairs. As of June 2021, the number of deaths due to malnutrition in the department turned into a scandal: since 2017, more than 350 children had died due to diseases associated with malnutrition. The oversight organism assured that at the beginning of June 2021 there was no action plan, nor a mechanism to evaluate the public policies implemented, neither a dialogue between the national government and the territorial entities with the authorities of the Wayuu people. The High Court declared “evident the non-compliance of the judgment in the municipalities Riohacha, Manaure, Maicao and Uribí” (Ramírez, 2019; Mejía E., 2021).

It is noteworthy that the Colombian government has known for years about the systematic corruption in these regions (Bejarano, 2020; Castillo, 2021; Human Rights Watch, 2020; ElHeraldo.co, 2016; La Libertad, 2021) and its impact on the nutritional and health status of the population. Still, it has not yet taken effective measures to remedy the victims and correct the structural flaws that lead to the misappropriation of the resources. Such negligence as well as the systematic discrimination within the food security and education programs reveals that the formal recognition of the right to food as fundamental for children is not preventing the State from violating its duties to protect, respect, and fulfil the right to food of many children and other interdependent rights.

Apart from Articles 43 and 44, the Colombian Constitution of 1991 only indirectly refers to food for ruling assistance to elderly indigents (Article 46) (ODA-ALC, 2020). Although the

explicit constitutional recognition of the right to food as fundamental for children, and the recognition of women and the elderly as subjects of special protection are a formal progress, in practice the implementation of the right to food of these groups and the whole citizenship remains rethoric because of a political understanding that the fulfillment of the right to food and other economic, social, cultural rights depends of economic solvency. Such understanding fails to tackle the historically rooted obstacles to the right to food and persists in the assumption that Colombia, as a development country, exists in a perpetual shortage of economic resources which requires continuous international aid and inyection of capital through expansionist economic policies of market aperture, trade liberalization, and foreign investment.

#### **2.2.5. Constitutional Protection for Food Production**

In connection to food security, the 1991 Constitution manifests that food availability is a priority of the State and therefore enjoys special protection through article 65:

The production of food crops shall benefit from the special protection of the State. For that purpose, priority shall be given to the integral development of agricultural, animal husbandry, fishing, forestry, and agroindustrial activities as well as to the building of physical infrastructural projects and to land improvement. Similarly, the state shall promote research and the transfer of technology for the production of food crops and primary resources of agricultural origin with the purpose of increasing productivity (Colombian Constitution 1991, Art 65).

This article appears to protect more the agroindustrial and commercial development of the country than the right to food. Be that as it may, the special constitutional protection of food production also remains in rhetoric, considering the freezing of the Havana accords and their agreements concerning the right to food and food production are frozen; the effects of the abrupt implementation of the advantages given to imported goods from the United States with the Free Trade Agreements; the contrast between state subsidies for large enterprises in face of an absence of subsidies for small and medium-sized agricultural production; the high food insecurity indices of the rural population, the bills such as resolution 970 of 2010 that

sought to force all peasant to use only certified seeds. These actions indicate that the protection of national food production is almost void, and the few forms of protection are mainly to the benefit of the big landowners and producers. Colombia has prioritized an economy model that superimposes mining-energy extraction over food production, relegating Colombia's capacity to be food self-sufficient and even its potential to become an agricultural power (Ramírez, 2019). Since 2000, the country has amended its legislation in order to expand the mining frontier, but such expansion has only been possible through militarization of territories and violence (Vélez, 2014). The sum of the above factors suggests that the legal architecture in Colombia has been designed to align with the development goals and the international development guidelines proposed by multilateral agencies, but in such a way that in practice benefits the economic and political elite at the expense of the livelihoods and human rights of the majority, and more dramatically those of the rural communities.

#### **2.2.6. National Laws Associated to Articles 43 and 44 of the Colombian Constitution of 1991**

Law 12 of 1991 recognizes all the contents of the Convention on the Rights of the Child (CRC) (1989). Moreover, The Children and Adolescents Code, regulated by Law 1098 of 2010, establishes the rights of minors to adequate food as a means for their physical, psychological, spiritual, moral, cultural, and social development. This standard is in line with the provisions of the CRC. In order to comply with this Law 1098 of 2010, other laws have been issued, such as Law 1355 of 2009, which regulates the supply of food in educational establishments. According to this law, schools must offer fruits, vegetables, and other healthy foods that help to cover the nutritional requirements of the minors to support of their development and equal access to opportunities. Article 11 of Law 1355 of 2009 and the Ten-Year Public Health Plan, seek to regulate the definition of mandatory criteria so that educational entities offer only healthy foods and encourage the development of activity in motion.

However, as the civil organization Redpapaz (2019) points out, the State is not the only actor responsible for guaranteeing the right of minors to adequate food and a healthy diet. The food

industry has a share of responsibility and must be governed according to the Statute of the Consumer established by Law 1428 of 2011, promoting, protecting and guaranteeing the free exercise of the rights of consumers. In line with the Statute, the private company has an educational, guiding and responsible role with the consumer, which it must assume in compliance with the rules of food production and labelling, as well as Law 1355/09, transmitting transparent advertising. In recognition of the role of the industry, and in conjunction with the National Institute for Food and Drug Surveillance (INVIMA), the government must regulate the content and form of advertising addressed to minors, sanctioning the use of information that does not correspond to the reality of the product.

### **2.2.7. Case Law and Jurisprudence: The Rulings of the Constitutional Court**

Several of the rulings of the Colombian Constitutional Court have allowed developments of case law and jurisprudence for justiciability and remedy of the right to food. The Constitutional Court has repeatedly stated that hunger and deprivation of food amounts to cruel, inhuman and degrading treatment and a violation of the rights to life, health, dignity, and personal integrity. Despite the fact that the Colombian Constitutional Court has developed protections for the right to food understood as the realization of *food security*, that is, in the same line of thought as the National Food Security Policy, the Court has also recognized the concept of food sovereignty. Although the Court does not recognize a collective right to food sovereignty or food autonomy, it does frame food sovereignty within an understanding that protects the fundamental rights to food, to participation, to work, and to human dignity. In fact, the Court has ruled in some cases in recognition of the autonomy of the territories to decide their food system in harmony with the environment. Though the Constitutional Court has distinguished food security as the observance of the right to adequate food, from food sovereignty, as the participation of communities of the means that enable them to ensure that adequate food, in certain rulings the Court has switched the terms, as if they were interchangeable.

For example, the Constitutional Decree 348 of 2012 establishes the scope of the right to adequate food and the participation of communities in these definitions. This ruling concerns

a context of communities affected by the construction of megaprojects, and in need of safeguarding their food sovereignty so as not to die of hunger. In this decree the Court defined food sovereignty:

Food sovereignty includes not only the free power of States and peoples to determine their food production processes; it also implies that these production processes guarantee the respect and preservation of artisanal and small-scale production communities, in accordance with their own cultures and the diversity of peasant and fishing modes". (Constitutional Court, 2012)

In this case, the Court recognized that the construction of a mega-project in Crespo, Bolívar, affected the right of a fishing community to feed itself and stated that those affected should be consulted in the planning of such projects, to express their position freely and in an informed manner.

Although its definition of food sovereignty referred to a collective right of the communities to decide their food systems. Yet, then final decision was grounded on the right to feed oneself, which would correspond to the dimension of food security.

Despite the Another constitutional ruling from 2012 also portrays these shifting terms trend. This is Judgment 644 of 2012, which demands the unconstitutionality of Articles 60, 61 and 62 of Law 1450 of 2011 indicating that these do not meet the objective of facilitating access to land for rural workers. On this occasion, the terms food security and food sovereignty are interchanged when the Court noted that small and medium-sized food production and marketing must be respected "to protect the food security of communities". Once again, the Court assigns the collective character of food sovereignty to the concept of food security. According to Ramírez (2019), it is clear that the decision was based on the concept of food sovereignty as an instrument of analysis, but the Court persists in a position to rule in terms of respect for food security.

Despite the misconceptions, the Court's framework for protection of the right to food, especially in connection to the defense of food sovereignty, has advanced significantly through the Guardianship Rulings 652 of 1998, 348 of 2012, 606 of 2015, 622 of 2016 and 644 of 2012. These rulings have interpreted that the exercise of the collective rights to a healthy environment, to culture and to the sustainable development of indigenous afro, Raizal, Palenquera communities, comprises recognizing, protecting, and respecting ancestral subsistence practices that allow such communities to attain the right to food autonomously.

#### **2.2.8. The National Food and Nutrition Security Policy, Stemming Plans and Programs**

The CONPES 113 of 2008 Document, enacted by the National Economic and Social Policy Council, defined the national public policy on food and nutrition security (PSAN). The objective of the PSAN is "to ensure that the entire Colombian population disposes of, accesses and consumes food in a permanent and timely manner, in sufficient quantity, variety, quality and safety" (CONPES et al., 2008). The CONPES 113 indicates that the poorest and most vulnerable groups are the priority when tackling this macro-objective (Health and Social Protection Ministry of Colombia, 2012). The PSAN delegates the territorial entities throughout the country to implement its contents through departmental, district and municipal plans based on local diagnoses.

The actions of the PSAN were formulated to implement the commitments to the MDGs and the pledges done in the WFS 2002. The national food and nutrition security policy targets the entire Colombian population but indicates the need for actions to reduce socio-economic inequalities by prioritizing vulnerable groups such as: children, pregnant women and nursing mothers, population displaced by violence, affected by natural disasters, ethnic groups (indigenous, Afro-Colombian, Raizal, Gypsy), and low-income households.

One of the objectives of the PSAN is to coordinate the different inter- and intra-sectoral programs, projects and actions in order to guarantee access to quality food in sufficient quantity for everyone. Another objective is to create conditions that contribute to the proper school performance of minors, to their regular attendance to school and their permanence in the educational system. PSAN acknowledges that achieving these conditions requires



partnerships at the local, regional, national and international levels, which contribute to the strengthening of projects in education, health, nutrition and food assistance groups. Another goal of the Policy is to ensure that all the educational establishments that serve the majority of the poor and vulnerable population, offer universal balanced school feeding (CONPES et al., 2008).

Following the guidelines from CONPES 113, the Colombian territorial entities build their own territorial food security policies and allocate resources to implement them. The resources come from both the territorial entities and central transfers from the nation. The national transfers to the territorial entities are regulated by Law 715 of 2001, articles 356 and 357 of the Colombian Constitution 1991.

The document CONPES 113 of 2008 gave way to decrees 2055 of 2011 and 1115 of 2014, which established an Intersectoral Commission on Food and Nutritional Security (CISAN) to be responsible for the implementation and monitoring of the Food and Nutritional Policy (PNSAN). The president and technical secretary of the CISAN is the Ministry of Health and Social Protection and the committee is constituted by: the Ministry of Health and Social Protection, the Colombian Family Welfare Institute, the Colombian Institute of Rural Development, the Ministry of the Environment, Housing and Territorial Development, the Ministry of Agriculture and Rural Development, the Ministry of National Education, the Ministry of Finance and Public Credit, the Ministry of Trade, Industry and Tourism and the National Planning Department (CONPES et al., 2008).

Under the direction of the Ministry of Health and Social Protection, CISAN created the National Observatory for Food and Nutritional Security (OSAN). The purposes of the OSAN observatory are: (i) to obtain statistical information on the food security situation at the national level that inform for targeted policies; (ii) to articulate the ministries and entities that are part of CISAN; (iii) to present laws, decrees, resolutions, national and international agreements on food and nutrition security, and technical and informative documents. At the same time, the United Nations Food and Agriculture Agency - FAO, acts as an articulating axis to achieve this coordination and generate inter-institutional synergy around food and

nutritional security in Colombia and to create a model to replicate in other countries (Health and Social Protection Ministry Colombia, 2015).

In March 2013, CISAN officially introduced the National Food and Nutrition Security Plan 2012-2019 (PNSAN), which aimed to present the method of action to implement the Policy set by CONPES 113. The OSAN has to provide data for the monitoring and evaluation of the national plan and makes them public on the web portal (ICBF, 2019). It is important to emphasize that whether for reasons of corruption, bureaucracy, institutional disarticulation, lack of political will, or all of the above, the National Food and Nutrition Security Plan 2012-2019 has expired and there is no new plan to replace it. During the past almost two years, the institutions responsible for providing food and nutrition security programs continue their work along the lines stipulated in the expired PNSAN and in the territorial plans.

The concept of food and nutrition security proposed by CONPES 113 of 2008 is based on the recognition of the fundamental right of everyone to be free from hunger. CONPES 113 defines food and nutrition security as the "adequate and stable availability of food, timely and permanent access and consumption of food in quantity, quality and safety by all people, under conditions that allow its appropriate biological use, to lead a healthy and active life". This definition is derived in five fundamental axes: (1) Food availability, understood as the amount of food available at the national, regional and local levels, which depends mainly on national production and imports. (2) Access: the ability of all people to obtain or purchase food to maintain adequate and sustainable food. (3) Consumption: refers to the foods that people eat and select, which is related to food availability, beliefs, attitudes and practices. (4) Biological use of food: concerns how and how much the human body uses the nutrients and energy of the food consumed. CONPES 113 recognizes that optimal utilization depends on adequate health, which in turn is determined by the quality of the environment, the quality of the diet, access to health services, drinking water, sewerage and basic utilities. (5) Safety: refers to the set of characteristics that ensure that a food does not represent a health risk.

### **2.2.9. The Role of the Colombian Institute of Family Welfare**

In Accordance to the Decree 1137 of 1999, which established the structure and administrative system of the Colombian Institute of Family Welfare (ICBF), the ICBF leads the public strategies aimed at promoting food security and health in the Colombian families. ICBF chiefs the design of the national dietary and healthy habits guidelines and programs for health promotion, nutrition education, and illness prevention for families, children, pregnant and lactating mothers. The Instituto distributes nutritional fortified foods for children and pregnant women in conditions of vulnerability. Moreover, in line with the goals of the National Plan for Food and Nutrition Security 2012-2019, the ICBF offers diverse modalities of childhood development centers for low-income families in which children with ages 0 to 5 receive balanced meals that cover up to 70% of their daily requirements, nutritional and psychological assessment, alongside preschool education. Furthermore, ICBF has a program called Centers of Nutritional Recovery, which offer interdisciplinary attention to recover children under 5 who are undernourished. The families of the children enrolled in the community homes, development and nutrition recovery centers are also involved in health and nutrition education activities and receive social work aid when needed. Families can access the services as long as the caregivers commit to enroll in the child to healthcare, take him/her to all the growth and development follow-up services, dental assessment, vaccination according to the national immunization plan, and to dietitian consultancy if through the periodic nutritional screenings exerted in the development centers, the child is identified as in malnutrition or at risk. There are different types of development centers for the early childhood: childhood development centers (CDI) and different types of community welfare homes (HCB) -family, group, multiple, social preschool, and for homes for employees.

### **2.2.10. The School Feeding Program of the Ministry of Education**

For scholars and adolescents, the Ministry of Education leads the national School Feeding Program (PAE for its initials in Spanish), which provides a food complement to children and adolescents registered as state students, financed with resources from the General Participation System. During the school day, meals balanced in macronutrients and micronutrients (zinc, iron, vitamin A and calcium) are provided in the percentages defined

for each age group and program modality. The main objective of this food complement is to contribute to the retention of students in the school system by supporting their appropriate development and learning.

PAE follows the guidelines of the National Food and Nutrition Security Policy and the National Development Plan. The National Development Plan indicates the responsible actors to execute the PAE at the territorial level and to monitor and evaluate it at the regional and national levels. While this is a program aimed at school-age children, that is, children who have already passed early childhood, it is worth overviewing, as PAE is usually the continuation after the ICBF development centers and provides the main nutritional contribution for some teenage mothers or adolescent girls who become pregnant shortly after completing the baccalaureate.

All of the ICBF programs for children, women, families, and the PAE are obliged to abide by the best interest of the child and to implement -according to the provisions of Law 70/1993, the Constitutional Articles 7, 8, 63, 70, 286, 287, 329, Decrees 3779/08, 2164/95, 1088/93, 2164/95, 2500/10- a differential approach that takes into consideration the specific rights and needs of children according to their demographic group, conditions, or specific situations of difference, disadvantage or vulnerability (physical, psychological, social, economic, of sexual diversity, or as victims of natural or anthropic disasters, orphan hood, or violence) (Ministry of Education et al. , 2018).

#### **2.2.11. The National Development Plan and its Line of Action for the Childhood**

The National Plan of Development 2018-202 set out a Pact for Equity, which, amongst others, presents a line of action to prioritize and foster health and integral development of minors. The line is called “First the girls and boys: integral development from early childhood to adolescence”. This line established specific targets to reduce diverse forms of malnutrition and poverty in minors and actions to reach the targets in light of the National PSAN.

### **2.2.12. Programs for Pregnant and Lactating Women**

The National Food and Nutrition Security Plan 2012-2019 (PNSAN) mandated that the deriving territorial food and nutrition security plans should include a strategy for:

- Regular assessment of the growth and nutritional status of pregnant women, nursing mothers and children under the age of six, in order to detect signs of malnutrition, health risks associated with malnutrition, establish therapeutic measures and provide guidance for adopting or changing eating habits.
- Supplementation for pregnant women and early childhood with vitamin A, zinc, iron and calcium, as established in the current regulations. Supplementation is provided in health services during antenatal check-ups for pregnant women, for breastfeeding mothers who are malnourished, and in the monitoring of child growth and development for children from six months to five years.
- Significantly increase exclusive and total breastfeeding through the implementation of the Ten-Year Breastfeeding Plan. The latter includes actions in: (i) breastfeeding counseling and good infant feeding practices addressed to community workers, health personnel and mothers. (ii) Education of health personnel and university students in the health sector on appropriate breastfeeding techniques; promotion of exclusive breastfeeding up to the age of 6 months and with adequate supplementary feeding up to the age of two; inclusion of the family in the process. (III) Implementation of the Women and Child-Friendly Institutions Strategy - IAMI and the Kangaroo Mother Method. (IV) Strengthening strategies that enhance access to breast milk for children in vulnerable situations, such as human milk banks. (V) Strengthening community support strategies for breastfeeding. (VI) Communication strategies for the promotion of breastfeeding. (VII) Promotion of business and institutional alliances for the implementation of breastfeeding rooms in the workplace. The rooms must offer actions to promote breastfeeding as part of the strategy of Healthy Organizations.

In addition to these provisions of the PNSAN, the Colombian Family Welfare Institute - ICBF-, in compliance with article 122 of the Law 2008 of 2019, has allocated resources for

food, nutrition, nutritional monitoring and health education programs for pregnant women and children under six (6) years of age in the framework of the national strategy for comprehensive care and the Strategy for the care and prevention of malnutrition. The programs offered are: Pregnant and Lactating Mothers, Food for Pregnant Women and Breastfeeding Mothers, Family, Women and Childhood (FAMI), and A Thousand Days to Change the World.

Pregnant and Lactating Mothers is a program addressed to adolescent girls or over 18 years of age, pregnant or nursing, with rights that are not observed, threatened or violated, and to their children. The program offers psychosocial support, balanced food, support for the construction of the life project and restoration of rights, including linkage to secondary or higher education. The beneficiaries are assisted in homes, boarding schools and half-day homes (ICBF, 2017). The Food for Pregnant Women and Nursing Mothers program consists of the delivery of a fortified powder food of high nutritional value and easy preparation. This food seeks to complement the contribution of omega 3 (DHA, ALA), essential vitamins and minerals necessary for the development of the baby's nervous system and brain in the last third of the gestational period -period in which the requirements of these nutrients increase considerably and the active formation of neurons begins-.The food is distributed free of charge to pregnant women through ICBF program and the sale of the product is prohibited, so it cannot be obtained after the completion of gestation (ICBF, 2020). Family, Women and Children FAMI is a service provided by female community agents who offer educational sessions to groups of 12 to 15 families with pregnant mothers, infants, or children under the age of 5. The educative contents aim to encourage the development of healthy intra-family relationships, healthy nutrition and lifestyle habits (ICBF, 2021). Finally, 1,000 Days to Change the World is a program developed in coordination between the ICBF and the health sector. Children under 5 years of age who are wasted or stunted, underweight pregnant women, and low-birth-weight newborns are taken care of at home by dietitians, social workers, nursing assistants and community managers. The objective is to promote healthy development in the first thousand days of life, generating adequate nutrition and health conditions, strengthening family capacities and promoting protective environments.

It is important to note that all of the above-mentioned programs promote breastfeeding and make mothers and families responsible for following the recommendations for lactation, nutrition, and health promotion. However, in order for a mother to produce good nutritional quality breast milk and successfully breastfeed, she must have an adequate nutritional status, have a safe environment and availability of time and resources to stop working while exclusively nursing the child for his/her first six months of life. The programs provide education for the nursing woman, but do not provide for financial assistance or food assistance for women after the post-partum period. Lactating women are not entitled to free micronutrient supplementation unless diagnosed with malnutrition. Although the name of the product suggests it, the program Food for Pregnant Women and Breastfeeding Mothers, does not provide access to the nursing mothers to the fortified food. Thus, if the postpartum woman is in a situation of poverty or vulnerability; if she lacks a support network to provide sufficient resources to meet her dietary needs without compromising other basic needs of herself and her family, then both the mother and her progeny will suffer food insecurity, be at risk of malnutrition and their right to food will be breached. The programs available in Colombia seem to forget the woman once she is no longer a pregnant woman. The abandonment and invisibility of postpartum and lactating women violates article 43 of the 1991 National Constitution because it results in discrimination. At the same time, such abandonment constitutes a violation of the right to food of mother and child and puts them at substantial disadvantage. At the same time, this discrimination is reinforced by the stigma that arises from the social expectation generated by educational programs that demand that a mother follows the breastfeeding standards, without supporting her with actions that help her realize her right to food and satisfy her nutritional requirements, which during lactation are significantly high.

### **2.2.13. Insufficiencies of the Food and Nutrition Security Measures Aimed at Children and Families**

It is important to recognize that historically, the implementation of public policies on food has contributed to decrease hunger in Colombia (Restrepo-Yepes, 2011). It is also important to acknowledge that with the enactment of the CONPES 113 of 2008 and its PSAN, the

Colombian vision of public policy was advanced to approach policymaking from more inclusive aspects that recognized different dimensions of food security. However, various experts on the right to food, including some FAO experts have pointed out that the PSAN, the National Development Plan, and many of the derived territorial plans fall short of ensuring full observance of the right to food. Critics claim that these policies and plans give origin to programmes whereby individuals are merely understood as recipients of safe and nutritionally balanced meals or packages. This reading reduces right to food to delivering and accessing a set of safe energy and nutrients. Such a reading allows to meet the food security criteria in terms of food availability, access, and food safety (that enhances the biological use of food) but it does not enable the realization of the right to food, understood as the right to participate in substantive equality of the food process. The expounded programs do not serve to enable the transition of the beneficiaries from passive reception of nutrients towards the autonomous, sustainable, free participation in conditions of substantive equality, in all the stages of the food process, including production and transaction (Colombian Platform for Human Rights, Democracy and Development, 2010; DNP, 2015; FAO, 2013; 2021).

The Colombian Constitution of 1991 and the jurisprudence of the Constitutional Court have succeeded in establishing historical opportunities for the protection of the right to food and food sovereignty. However, the national and territorial food and nutrition security policies and programs have fallen short in providing solutions that go beyond charity-based measures to reduce hunger. These provisions do not provide the resources that enable the communities to choose their possibilities to insert themselves in the different steps of the food process to live without hunger and autonomously procure their adequate food. In other words, these measures do not fulfil the right to the food process.

In this regard, Ramírez (2019) analyses that historically Colombia has progressed in terms of coverage of food programs, especially those aimed at early childhood. Nevertheless, the country has regressed in agrarian policies under the premise of development by providing guarantees to multinationals, abandoning the food production of small and medium-sized



farmers, and trying to comply with the international commitments -towards the MDGs, WFS 2002, and SDGs- merely through assistance programs of unequal attention.

While the National Constitution 1991, the current policies and programs on food and nutrition security prioritize the fundamental right of children to adequate food, they seem to forget that these children have families. They fail to recall that, regardless their nutrition instruction, if caregivers lack adequate food, stable income, social security, clean water, sewerage, basic utilities, safe housing, or healthcare, they will not be able to guarantee the right to food of their children.

#### **2.2.14. Challenges and Future of the Right to Food in Colombia**

An overview of Colombia's right to food legal and policy framework allows realizing that the country still faces a series of challenges ahead.

First, Agriculture has historically been a core economic activity, and national food production and dignified rural conditions are constitutionally protected (articles 64, 65, 66). However, Colombia still lacks an ad hoc policy framework to ensure food sovereignty, thus regulating land concentration, which is a chief determinant to the continuation of hunger and armed conflicts.

Second, the economic opening of the 1990s paved the way to a market model in which trade agreements and development strategies mainly supported large-scale industry and extensive food production at the expense of small and traditional producers. Such a model prompted private interests related to the lack of political action to combat land concentration and improve the living conditions of the rurality.

Colombia's market trends seem to counteract the legal framework to protect, respect and fulfill economic, social, and cultural rights. This might be because the legal tools correspond to the model of a social state under the rule of law. Under the rule of law, the social state conceives food and other economic, social, and cultural rights as obligations. In contrast, Colombian welfare programs focus on handouts that reduce food to goods and services that

public institutions can pay for and delegate to third parties, in a demand and supply logic that superimposes on the human rights approach.

In this setting, the right to food legal and policy machinery needs to articulate the obligations of the state to respect, protect, and fulfill with a framework of binding duties for private parties (i.e., industry, media, landowners).

### 3. Interviewing Experts

#### 3.1. Methodology

The present thesis gathered primary data through semi-structured expert interviews to 18 authorities in the fields of food and nutrition policy, mother and childhood policy, defense and justiciability of the right to food. Seventeen interviewees responded in Spanish and one in English. The Interviews took the form of a conversation around a questionnaire of eight semi-structured questions (annex 3). Each interviewee signed an informed consent (annex 4) which recognized the possibility to choose anonymity and to review the contents that would concern them before publication. Along the body of the thesis, the respondents who chose anonymity are referred to with pseudonyms in capital letters. With the interviewee's approval, the researcher recorded each conversation as an mp3 file and next transcribed it (see transcripts in annex 2). Data management followed the updated European Standards on Ethics in social science research.

The interviewees were selected through a mix of convenience and snowball sampling. These non-random techniques best serve the final aim for which data were collected, which was not to represent any specific collective of experts, but to interview experts from the following fields: the academy, international non-governmental organizations (INGOs), governmental institutions (including the National Committee on Food and Nutrition Security CISAN), civil society organizations, and professionals with experience in public health, food industry, and mother and early childhood nutrition. Since the group of interest for this study is relatively rare and difficult to locate, the aforementioned nonprobability sampling approaches were employed: first, *convenience sampling*, collecting data about the professional background of some experts and making a list of candidates that possessed the required profiles. The background and career orientation of the candidates were assessed to ensure including interviewees from the abovementioned fields, who might pose diverse stances vis-à-vis early malnutrition management and the protection of the right to food. The purpose was to ensure the presence of experts who performed in the traditional public institutions and experts from alternative fronts. Second, a *snowball sampling technique* was used to enlarge the number of study participants.

Transcriptions were analyzed through thematic analysis using MAXQDA®, a software for qualitative and mixed-methods data analysis. The first step was to systematically code the interviews. The procedure for coding was based on the methodology proposed by Gajaweera & Johnson (2016), as follows:

1. Transcription and initial reading of the whole interview, posing the following questions: “*what do I see going on here?*”, “*What ideas, themes and concepts do I identify, and how are they related to each other?*”.
2. Writing on MAXQDA® a list of conceptual categories that according to the initial questions are significant and/or that appear recurrently in the interviews.
3. Focused Coding: Re-reading the interviews and identifying sections that relate to the conceptual categories.
4. Data Compilation: Using the MAXQDA® tools, pasting sections relating to each conceptual category.
5. Reorganizing the categories in subcategories and interrelated categories.
6. Theory building: identifying patterns between interviews; commonalities and differences between respondent’s quotes in each of the conceptual categories.

The coded segments were then organized in two broad categories: (A) obstacles to eradicate early childhood malnutrition and attain the right to food of children; (B) features that the current Colombian policy framework lacks but should have to be effective. The segments that would be used in the text were directly quoted or paraphrased and translated to English.

Results for categories A and B were reported in the light of the literature review in segment 3.2. Next, in line with the conceptual framework of the *Food Process and the Standards of Social Realization of the Right to Food* (FIAN, 2021; Morales & PCDHDD, 2010), the results were discussed in a chart that analyzed: (i) which of the elements and standards of the *food process* of Colombian early childhood are breached by each obstacle; (ii) how to redress each of the breached elements and standards. The logic of the analysis is that by redressing each breached element and standard, the *food process* can be guaranteed and so the right to food

of children and their communities can be fulfilled. Chapter 4 presents conclusions and recommendations drafted from the segments of this study: (i) theoretical frame, (ii) juridical review, (iii) primary data collection and interpretation.

### **3.2. Results**

This section develops the main themes obtained from the interviews. These themes point at obstacles and features that impede the existing public policy to combat childhood malnutrition and to protect, promote and fulfill the right to food:

- The reductionist understanding of food as a process, as a right to that process, and the connection between a charity-based approach and corruption
- Corruption through outsourcing services of the public food, health and education programs
- Charity-based approaches might give place to discrimination and inequality
- Impediments to effective participation
- Governmental failure to the Peace Agreement 2016
- Lack of a policy framework to enforce food sovereignty
- Lack of an essential nucleus for the right to food and unclear mechanisms to demand and enforce the right
- Lack of a National Plan to replace the expired Food and Nutrition Security Plan derived from Conpes 113 of 2008
- Lack of a national policy for territorialized nutrition education
- Shortcomings in the national breastfeeding plan and strategies
- Distortions of the role of international cooperation

### **3.2.1. The Reductionist Understanding of Food as a Process, as a Right to the Process, and the Connection between a Corruption and a Charity-based Approach**

All experts pointed out to the fact that the National Food and Nutrition Security Policy (PSAN) established by the State policy document Conpes 113 of 2008, is the main policy document influencing food and nutrition programs in the country. There is total consensus amid interviewees that basing efforts on Conpes 113 is problematic because Conpes is outdated. The contents of the policy document intended to achieve the commitments made at the WFS 2002 to attain the Millenium Development Goals (Consejo Nacional de Política Económica Social, 2008). A significant majority of experts also coincided that basing efforts on Conpes 113 is misleading since the policy aims are limited to the attainment of *food and nutrition security* as defined in Conpes 113 (Consejo Nacional de Política Económica Social, 2008, p.p. 3, 4). This conceptual framework does not provide for understanding and operating food in terms of a human right.

The Conpes 113 definition of food and nutrition security aligns to the food security approach of FAO. Several experts recognized this and underlined that FAO provided technical support to help the Colombian government attain the Conpes 113 goals for years. However, seeing that during the Peace Process 2012-2016 (Cancillería Colombia, 2016), the opposition vehemently requested the government a land redistribution and the guarantee of conditions to ensure food sovereignty (Office of the High Commissioner for Peace Colombia, 2013), FAO changed started advising the government to complement its *food and nutrition security* approach with a right to food perspective.

For the purposes of this study, experts with experience as FAO officers, experts from Intersectoral Committee on Food and Nutrition Security (CISAN), from different sides of the academia, INGOs, and civil society organizations were interviewed. From them, all of those interviewees who have lived in Colombia (16 out of 17), including those with experience as FAO and CISAN officers, expressed that the policy contained in Conpes 113/2008 does not meet the current needs and must be updated with a human right to food-approach. 9 out of 15 experts indicated that this update should include promoting and protecting food sovereignty. In this regard, experts from FAO, CISAN, academic and community

associations, coincided that Conpes 113/2008 has an assistance-centered approach which does not focus on protecting and promoting the autonomy of communities to decide their food system and seek adequate food in a sustainable way. The experts coincide that the perspective of Conpes 113/2008, reduces the guarantee of the right to food to a set of mainly assist interventions. They point out that the reason for this is that the conceptual cornerstone of Conpes 113/2008 is food and nutritional security, which merely recognizes food access, availability, consumption and safety, without considering how these foods are produced. That is, considering that to realize the right to food, policy cannot only consider the last instance of the food process, where the final consumer finds, accesses, consumes and absorbs food. The experts underscored that strategies must ensure food availability, access and safety, and the ways of making foods available, accessible and safe, protect the rights of those who produce, exchange, distribute, and transform food.

G (Anonymous Dietitian Nutritionist and policy expert from a right to food advocacy organization), X, Guerra, Molina, Santos, Mazo and Idárraga illustrate that, for example, a State can ensure food access and safety through assistance programs and ensure food availability through imports or policies that favor large industries. However, while such a scenario could guarantee the elements of food security: access, availability and safety for adequate biologic use, it would still endanger the economies of small and medium producers, traders, entrepreneurs and rural communities. This analysis concurs with the proposals of FIAN (2021), Morales and PCDHDD (2010), addressed in chapters 1 and 2. Comments included:

*“Food and Nutrition Security is a technical measure that ensures access to and availability of food. No matter where food comes from, acceptability does not matter, even if it is part of the dimensions of food security. The important thing is to feed the people, and feeding the people presupposes assistance measures, from which in Colombia we have several... I am not saying they should not exist, but they do not contribute to strengthening the formation of a subject of rights and are not articulated to the formation of food sovereignty, that is, measures that allow the country and the*

*regions to reduce levels of food dependency...*” – Carlos Augusto Molina, lawyer expert in the Right to Food and Public Policy.

G, X, Guerra, Molina, Santos, Mazo and Idárraga also underlined that maintaining the same national policy focused on food and nutrition security since 2008, breaches the Peace Agreement (Cancillería Colombia, 2016). In the Agreement, the government and the Revolutionary Armed Forces of Colombia (FARC-EP) agreed on minimum conditions for land redistribution and securities so that rural communities could autonomously procure their adequate food and attain their rights in a sustainable manner. So, accordingly, after the agreements, the country needed to shift to a national policy and a new national plan with a focus on the right to food that complements food and nutrition security with protections to sustainable, small-scale production, local and traditional economies.

Another problem that interviewees such as Molina, Bejarano and Mendieta reported as derived from the reductionist view that centers on food and nutrition security is food dependency. In this regard, Molina cited the example of Medellín, the second city in the country, which *"only produces 0.03% of the food consumed... It brings about 15% from other territories of Antioquia, 30% from other regions of the country, and imports the rest"*. The massive import of food harms the traditional and local economies, as Molina and Santos pointed out.

Moreover, a factor that all interviewees identified as a major obstacle to overcoming early malnutrition is corruption. G, Cornia, Molina, X, Guerra and Santos converge in that understanding food and nutrition security as the mean to attain the right to food gives place to corruption by misappropriation of funds from the aid programs and by use of the assistive measures as political propaganda for winning votes during elections. Comments include:

*"The approach to food security has been useful for corruption and for the way elections move. The Programs are used openly as a political card to lead the elections"* – G (anonymous), Dietitian Nutritionist and public policy expert who works at a right to food advocacy organization.



*“So, basically if you (as a politician) cannot do that (implement a land redistribution) ... they give you money, or they give you food. So, the problem of access to food has been attacked indirectly... the direct way is caring economy in the rural areas and the urban areas but if they do not do that, then you do... subsidies... because they are with this system of competing elections with subsidies... They will not take away these programs because they know that in the next elections, they will lose...”* - Andrea Cornia, development economist, former Chief Economist UNICEF, NY.

Molina, Guerra, Bejarano, Santos, X, Mendieta point out that the policy of Conpes 113 is too assistance-centered and that is not convenient for the rural population, because there are many rural and remote communities in hunger, to which: either due to transport difficulties the programs do not arrive; or due to corruption they receive negligible packages; or they do receive services but with very inferior quality that of the urban areas. Hence, there is discrimination. Yet, since it is considered that some form of assistance is given, there is no attempt to repair their structural problems.

Marginalization and poverty in the rural areas derived from the effects of the armed conflict, narcotraffic, and the governmental infringement of the Peace Agreement 2016, summed to differences in the quality of food assistance between the main cities, small and remote territories, unleash another cause of food dependence: peasants and their families migrating to the urban centers. According to Bejarano, mainly to Medellín and Bogotá. In parallel, Bejarano and Molina also point at the abandonment of land for food production at the extent of the growing demand of land for recreation houses in the countryside.

Experts X and Guerra address interest reasons, besides of manipulating elections, for which there is a lack of political will to change the charity-based approach. X observes that although such approach does not serve to attain food sovereignty, nor does it provide for *“the possibility (of people) to be rights holders”*, yet it allows to enhance wasting and starvation indicators. In such respect she highlighted that for a long time Colombia kept a positive image at the international cooperation monitoring of the nutritional component when *“informing the amount of money invested in assistance programs”*. Concerning the use of statistics to

maintain a good image, Bejarano made an interesting remark, indicating that figures are often manipulated and deaths by malnutrition are frequently hidden in public hospitals.

On the other side, Guerra reported that the lack of political will is connected to a link between hunger and narcotraffic. He stated: *“rights are guaranteed or interrupted depending on who is leading the guarantee of those rights”*. The *“Constitution is the form in which rights are guaranteed in a territory” and it is administered by* rulers. So, depending on the ruler, more effort is put on defending one right or another”. The current government *“will not mess up with a right they have violated throughout Colombian history. That would be too dangerous”*. Guerra added that *“where there is hunger, poverty, it is where narcotraffic works best”*. Guerra remarked that, if there are historical links between narcotraffic and illegal profits for officers in the government, it is logical to leave hunger unsolved, to respond with charity-based measures that do not solve the structural roots. It is therefore logical to avoid *“institutional presence in regions such as Turbo or Urabá, and others where there is production of narcotics”*. Guerra concluded this analysis with a provoking statement: *“is it convenient to be notorious and take the people out of poverty, hunger and malnutrition in the places where coca is produced? -No, it is not convenient”*.

Guerra’s analysis is consistent with the opinions of lawyer and policy expert Molina and three experts within the field of international cooperation, who claimed that the government and the CISAN already count with many methods, guidelines and routes to make consistent advancements towards the attainment of the right to food. Moreover, they claim, there already are evidence-based analyses of Conpes 113, which indicate the points to correct if the aim is not only to promote food security but to complement it with food sovereignty, and to ensure effective social participation, in order to observe the right to food. Santos underscored that there are even *“strategies in schools for social management”* to educate the civil society to exert democratic participation and the institutions to become guarantors of that participation. Experts agreed that nevertheless, most of the solutions have remained in documents, or in the form of small-scale territorial initiatives, scarcely known.

Furthermore, several interviewees remarked that although international cooperation agencies are in the position to tell directly the government what should be modified, they are not incisive, precisely because many of the big organizations also operate under the premise of a food security/charity-based approach. The words of G in this respect express deep concerns: *“international cooperation has not played such a leading role in encouraging the public policy approach to be a transformative approach to the right to food”*, because many agencies, specifically FAO, understand the right to food as *“subsidiary to food security”*. G finds this fact *“curious, because food security is a condition to achieve the right to food”*. Yet, *“there are very few strong voices in international cooperation in Colombia who demand: - no, this is a human right and right to food approach that must be built in participation”*.

With respect to the role of international cooperation, G and X coincided denouncing that the national government frequently hires professionals to work as consultants for joint development projects and policy documents of the government and international cooperation agencies. Since the government is the employer, these professionals cannot work from the position of independency and neutrality that must characterize the work of international non-governmental organizations. They cannot speak out freely, disclosing openly what should be fixed or freely proposing how to fix it. G highlighted that many documents of domestic policy exhibit names of consultants working at international cooperation agencies. According to G, that is a prove that some of these agencies have turned *“into contract hunters”* and have therefore lost the possibility of neutrality because *“neutrality in international cooperation is lost when the intercession between the state and the international officer is a contract”*. X’s and G’s views also meet with Mendieta, Molina, and Guerra, who remarked that international cooperation agencies should remain autonomous and firm enough to tell the government the way towards a rights-based fully participative approach. G added that if the governmental institutions see that international cooperation comes with a firm stance in defense of human rights and full participation, the domestic government will have at least some shame *“to come up with a public policy as pitiful as those we have had”*.

### **3.2.2. Corruption through Outsourcing Services of the Public Food, Health and Education Programs**

The views of all the interviewees coincide with that of Morales and the Colombian Platform for Human Rights, Democracy and Development (2010): a key impediment to the realization of the right to food is corruption. Charity centered measures increase the odds of corruption. Interviewees pointed at the periodic tenders to outsource the services of the food security, health, and education programs as major opportunities for corruption.

Several experts gave testimonies of corruption in which public officers or private operators misappropriated resources from the assistance programs. Examples from departments such as Chocó or La Guajira were repeatedly cited, where children continually die of undernutrition, despite a large public budget, due to the looting of resources. All interviewees agreed that this is a determinant of child malnutrition amid the most vulnerable and that the problem is greater in rural areas and scattered territories, less visible and with less accountability. Mendieta and B exemplified cases in which corruption occurs on behalf of food suppliers, who receive sufficient resources to deliver high quality food but end up offering lower quality and/or quantity, even expired and rotten products which do not meet the specifications of the official programs' menus. X analyzed that corruption is related to the fact that outsourcing the services increases the distance between the public institutions (supposed to guarantee the program) and the beneficiaries. Whether something is not working well, whether human rights violations or corruption are detected, or whether there are suggestions for improvements, the subjects of the policy have no way to influence the policy and the programs. Nor they can report findings and disconformities to the responsible institutions. In other words, outsourcing prevents civil monitoring. Moreover, X and B indicated that the embezzlement of resources for the programs derives from policy-making centralization. In X's words, the problem owes to *“those circumstances of building policy from the center, implementing it at the regional level but forgetting it when in the territories”*.

The previous analyses are seconded by Mendieta, who claimed to have witnessed that when the scholar food services were on the hands of schools and parental associations, children never received rotten or bad quality foods. Mendieta emphasized that, if the subjects of the

policy lead policy formulation and implementation, they are likely to make sure that programs work. In connection to Mendieta's claims, Bejarano, B, Molina, and X denounced that the government is aware that buying supplies from local producers can both support the local economies and enhance the acceptability of the aid packages. This is because local suppliers know the preferences of the beneficiaries of the programs. B stated: "*the government even discussed once, in the past, the possibility that the School Feeding Program (PAE) should study the alternatives to ensure suppliers from the region*". Still, she said, purchases from local producers remain scarce, firstly because the tenders to assign the food supply contracts are often corrupted. Secondly, most small suppliers cannot meet the standards of food safety and packaging required by the tenders.

X made a perceptive analysis of phenomena around corruption in public outsourcing. She commented that when programs are delegated to third-private-parties, it is "*in the monitory of the monitory of the service*", that the responsible institutions lose "*capacity of control*". Public institutions, such as ICBF might have a "*clear methodology of the offer. Yet, it gets lost in the moment*" it passes to third hands. X highlighted that these dynamics obey to the "*logic of the model of the country, the economic model, the institutional model...based on market demand*". She claimed that such model is applied to all services, including those that are human rights: education, health, food. Subsequently, the State "*is not a guarantor of the right*". This is precisely because those human rights have "*become a commodity for the State, so it outsources everything related...it is about the model: a model that outsources our essential services for health and wellness*".

G.A, from Save the Children, pointed at institutional discrepancies as another fact that sums up to corruption in outsourcing, causing inefficiency in public health, education and food programs: "*ICBF and the Health Ministry have a work desk they try to implement in territories, but they never reach agreements... no results are reflected. There are many intentions but the whole mechanism needed cannot be set in motion*". G.A added that in a talk with UNICEF, Save the Children detected that the inefficiencies also relate with a lack of motivation of the healthcare staff since the staff is not duly paid as a result of institutional

disagreements that leave room for postponement and corruption. Thus, *“although there are efforts, the attentions cannot be concretized”*.

In general, the opinions of the interviewees agreed in that the National Food and Nutrition Security Policy of Conpes 113/2008 falls short to tackle early malnutrition and hunger because it is based on a reductionist understanding. Hence, it has engendered a limited, charity-based system, whose measures operate in a way that is prone to corruption with impunity and does not solve the structural roots of hunger.

Experts also coincided that although corruption is very visible and well identified, the government does not take firm control measures due to a conflict of interest. Interviewees went beyond, expounding in different terms that paradoxically, corruption is at the same time recognized as cause of inefficiency and referred to as a justification for inaction. Hereof, G made an interesting illustration about La Guajira. Guajira is a Colombian department declared under unconstitutional state of affairs due to government neglect regarding massive child deceases by hunger, that render the Wayuu indigenous community in risk of extinction:

*“The excuse is that the National Government invests in Guajira but the levels of corruption are very high, and some characters steal the food of children. Today (01/07/2021), the main midday news item is the verification of the systematic theft of food from the Childhood Development Centers and School Feeding Program in Riohacha and Guajira. The State says: -We gave. But the State itself is with the corrupts, because, how so that a State does not have the possibility of control? It discovers children’s money is stolen when nothing can be done...”*

The interviewees continuously referred to the well-known fact that the School Feeding Program (PAE, Programa de Alimentación Escolar) of the Ministry of Education is one of the programs the most stained by corruption scandals. G underscored that notwithstanding its level corruption, *“the Colombian State uses PAE for international accountability”*. G concluded that, being used as *“as such, PAE should demonstrate advancements each governmental period”*. *“Yet, PAE has shown how public resources are invested in a pillbox of contracting mafias where there is no information to know how the program works”*. G stated

further that the NGO she works at considers that PAE breaches the right to food by offering ultra-processed foods and products that do not match the culture of the territories.

### **3.2.3. Possible Causal Links between the Charity-based Approaches, Discrimination and Inequality**

A problem recurrently referred along the interviews, was the contrast between regions and territories in terms of quality and number of centers for childhood attention. It was mentioned repeatedly that the public policy developed by Bogota D.C and Antioquia are far above the policies of other departments. X stressed that Bogotá is ahead, with a policy focused on *“contemporary behaviors and commitments based on the right to food”*, while *“the rest of the country is still based on the five axes of Conpes 113/2008”*. Rodríguez and Bejarano underlined that even within the same region, very visible and well-tended territories coexist with abandoned areas. They provided the example of the Caribbean region, where, whilst the department of Bolivar has a more updated, more participatory food and nutrition policy, with has more efficient strategies, La Guajira is completely relegated.

The interviews are congruent with the literature that territories are free to formulate their own food and nutrition policy on the basis of Conpes 113. Therefore, there are differences regarding policy contents from one territory to another. In parallel, deep differences are also evident in terms of access to programs and attention centers. Interviewees agreed these differences are both related to asymmetries in regional and territorial budgets and misappropriation of the allocated resources. Some cities are wealthier, larger and more visible to the country, so compared to small and remote territories, they allocate more resources for nutrition, health and education programs, which they sum to the baseline budget assigned by the central government.

Molina, Guerra, Bejarano, Montejo, B and G.A indicated that geography also plays a role, since many aids do not reach territories of difficult access and the aids that arrive are meagre. In addition, many of these territories are hours away from health centers that are not even third-level type. Consequently, the communities in these territories are demoted, without guarantees for health, nutrition and education, including vaccination, instruction on adequate lactation and complementary feeding. As reported by Cornia, the lack of access to these

services is a key determinant of the prevalence of maternal and infant malnutrition and mortality. In fact, Guerra and Bejarano remarked that many starved children from these communities die before they even reach specialized attention in a third-level hospital, hours away from their homes.

Many of the Colombian indigenous, Afro and ethnic minorities communities inhabit many of these sidelined areas. So, as Molina emphasized, the purely assistance management of health and nutrition downgrades them to social exclusion. Furthermore, interviewees coincide that within these high-vulnerability communities, there are also disparities: (i) rates of stunting and wasting are high in all of them, yet more prevalent in indigenous peoples than in Afro or other ethnicities; (ii) amid indigenous peoples, women and girls present the higher prevalence of malnutrition. Indigenous girls under five are the most affected. As Rodríguez points out, knowing the statistics that portray the situation of these highly vulnerable groups, the government's response has mainly limited to a strategy called Ni Uno Más (Not One More), designed *"to prevent more children from dying of malnutrition"*. The strategy identifies *"where the populations are most at risk and monitors them, though no structural actions are evident"*.

Santos, Rodríguez, Guerra, Mazo, Idárraga, X, Molina, Bejarano, G agreed that the program offer disparities amidst territories originate in the fact that the ruling class has not opened to real participation processes. The experts highlight that rulers formulate policies according to theory, documents and figures, but they have not approached to understand the dynamics of the territories, of Colombian rurality. Guerra emphasized that malnutrition is always determined by a context, that malnutrition determinants vary from one community to another. Therefore, combating malnutrition in Colombia requires understanding each context, it cannot be accomplished with a single method. The interviewees repeatedly denounced that the institutional elite has historically endeavored to copy on rurality the assistance programs developed in the cities. They call this a homogenizing approach. Rodríguez provided an example of homogenization by referring the fact that in a number of rural areas, ICBF has built childhood centers similar to the ones first established in the cities. When very few



children enroll to the centers (because the communities were small) and the operativity is found unsustainable, the centers close without seeking other answers.

From a broad perspective, the interviews converge in that the scaffolding on which the current assistance programs operate, generates direct and indirect discrimination. Moreover, they coincide expressing that national and territorial policies must be differentiated to prioritize highly vulnerable groups and leverage them towards equal opportunities.

### **3.2.4. Impediments to Effective Participation**

The Voluntary Guidelines on the Right to Adequate Food (VGs) is an instrument that Colombia has recognized as a standard for the elaboration of food and nutrition policy and in pillar 1 of the Peace Agreement (FAO, 2019). VG 6 indicates that national food and nutrition policies must be conceived, implemented, monitored, and evaluated through “*a multistakeholder approach with full participation of civil society and the private sector*” (FAO, n.d.). The views of all the interviewees coincided with the literature review, pointing at the fact that a major cause of inefficiencies in food, nutrition and childhood policies is precisely the lack of civil society participation. The experts provided different examples and testimonies to demonstrate that the civil society, who are the subjects of the policy, are not effectively included in policy-making in Colombia, and even less in policy implementation, monitoring and evaluation.

As above mentioned, the experts denounce that policy design is disconnected from the different realities of each territory; is based on theoretical views of the political and institutional elite. Quintero, who has participated in nutrition policy design, expressed: “*one of the characteristics of our policies is that they are the expression of very institutional views*”. Quintero states that policy-making in Colombia merely and sporadically counts with the participation of civil society in the form of NGOs or academic groups but is focused on the institutional governmental perspective. The interviewees coincided that communication between the subjects of the policies and the decision-makers is difficult and the participation mechanisms are very technical, complex and unknown. They further coincided that enhancing the channels for communication is not a priority of the political and institutional

agenda. According to Guerra, not inserting platforms for civil participation does not owe to the monetary cost. Guerra said that decision-makers propose an ideal exercise to design food security strategies. Then, when they find the challenge that entails real participation with a territory and gender approach, decisionmakers refrain and claim there is no need for such complications. In terms of Guerra, decisionmakers choose to think the problem is solved by distributing some food packages, some education and some hand-wash instruction.

Guerra, Molina, Quintero, X, G agreed that choosing this reductionist understanding of policy related to conflicts of interest: be it to favor big economic powers, to avoid tensions with them, or to keep the opportunities for corruption. Regarding politicians' conflict of interest with economic powers; all the interviewees referred that the interest to favor the food industry is evident (some interviewees provided examples); 71% (12 of 17) interviewees underlined interests in property ownership and fear to redistribute land; 18% (3 of 16) denoted a veiled interest on profits from narcotraffic. One expert (6%) referred to food speculation and two experts referred to interests in the agribusiness sector and limiting the use of traditional seeds and agro-inputs. Guerra sharply asserts:

*“there is constant tension with the powers that exist around food security, which is so diverse. And that kind of discussion is not yet won, it is not yet won over to the one who has the economic power in the country. This causes the country not to be inclusive, not to have a territorial approach, not to have a real participatory approach”*

Guerra, Santos, Mazo, G, Molina, X also met underlining that for the current line of government, which has been for decades in the power, it is especially difficult to hear the voice of the territories because it does not know how to handle such information. Experts state that due to this political deafness, the country has experienced the massive and under investigated slaughter of social leaders and waves of protests that have swelled in recent years, especially in 2021. The experts also aligned in the analysis that avoidance to approach food, nutrition and childhood policies from right to food approach is linked to the political elite's fear to hear: the government is aware that talking in terms of right-entitlement implies

encouraging participation, rights-demand, and enforceability. In line with the experts, the government is of the views that a participative human rights-based approach implies a “risk” of raising the voice and number of the already growing share of population expressing utter dissatisfaction.

Some of the facts that interviewees cited to prove that, for the most part, the institutions have been closed to hear the voices of the civil society, are particularly conspicuous:

Referring to the formulation of the National Food Security Plan, which expired on 2019, and no replacement plan has been adopted ever since:

*“The National Food Security Plan 2012-2019 did not have an ethnic component. Thus, an ethnic annex to the plan had to be prepared. After the ethnic groups expressed that the initial proposal did not make them visible as Afro, Indigenous, Rom, Raizal peoples, they (decisionmakers) had to build an ethnic annex to the plan. But they (ethnic groups) did not really participate in the design and definition of strategies and even less in the implementation”* – Mazo, FAO.

Referring to Conpes 113 of 2008, which provides for the National Food and Nutrition Security Policy:

*“Although there was data that said Conpes 113 and the National Plan for Food and Nutrition Security had consulted the civil society, and that broad deciding participation on food topics was exerted.... that was not so. So it was not, that we (FAO)... we did all the analysis with the civil society of the Conpes 113 by year 2016 and we visited the six regions in which the country was subdivided at that time, and the conclusion was that almost 90% of the civil society with which we worked -who were leaders and representatives of all sectors of civil society, from academia to indigenous associations, producers, women, victims- did not know what the Conpes 113 of 2008 was, which by then had been into force for 8 years. So, the conclusion, no, in Colombia food policies have not had that robustness of effective participation”.*

– Mazo, FAO.

Also denoting the formulation of the National Food and Nutrition Security policy, Molina concurred with Mazo:

*“In the public policy of Food and Nutrition Security a lot of very knowledgeable people participated, international organizations, academia... but the parents’ confederation did not participate. Aren’t them the first interested in understanding an early childhood policy? Nor did the Community Mothers<sup>27</sup> who have worked in Colombia for more than 30 years; who have accompanied the development of the most abandoned children and adolescents that are in a condition of vulnerability”.*

When an interviewee was asked whether any NGO or foundation was present in representation of the civil society during the definition of the current National Dietary Guidelines:

*“I tell you that here in what I see (in the attendees list) I do not see them registered absolutely at the time of the consultation... Probably at the time the pieces were validated, the participation of the civil society was included. The National Institute of Health (INS) was commissioned and went to the territories. So, they were taken into account for the validation of the instruments but not in the technical contributions”.*

-B.

Concerning the meeting for the drafting of document Conpes 109/2007, which provides the Colombian policy for early childhood:

*“that Conpes had its origin in a unit for an action plan where participated, among others, ICBF, international organizations, public and private health organizations, NGOs... the Inter-American Agency for Cooperation and Development, the National Planning Department, the Ministry of National Education, the Pan American Health*

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<sup>27</sup> Community mothers is the term coined within the Community Welfare Homes program of the Colombian Institute of Family Welfare (ICBF) to denote the women hired and trained by ICBF to run a Community Welfare Home that provides to integral attention (nutrition complementation, basic pedagogy, psychology, social work) to low-income early childhood.

*Organization, some universities... UNICEF, Save the Children... as you can see, it is a fairly technical, inter-institutional, public, private, academic composition, but... with an obvious absence of the participation of civil society organizations that absolutely represent the interests of the population subject to public policy, which in this case is the early childhood. One would not expect boys and girls to be involved in the formulation, but civil society organizations that were interested or could represent the interests of children and adolescents, such as organizations of Community Mothers, Substitute Mothers, of parents in public and private schools..."*

Mazo and Idárraga expressed that the evident failure to participation is linked to the attitude of CISAN, which centralizes information and takes decisions based on theory and figures, without the input of society:

*"One must consider the basis for the consolidation of nutrition policies in the country. The CISAN is a very closed institutional structure, where civil society is not involved, where information is not decentralized. Policies are built on official information as data, but it must be information that collects the territories' capacities to implement those policies or the regulations of those policies".*

Outsourcing the services of the food, nutrition and education programs was also reported as an impediment to participation. X, Mendieta, Guerra, Molina agreed that instead providing a direct link with the subjects of the policies (who should participate actively in the formulation, implementation, monitoring and evaluation of the policies), outsourcing enlarges the distance between them and decision-makers (be it CISAN, ICBF, health and education ministries). In reference to VG 6, when X was asked whether childhood nutrition policies are built through a participatory multistakeholder approach, she answered that regarding "the proxy" stakeholders, "which are the family", there "is no participatory logic that gives space to subjects of the policy, such as caregivers, forms of community related to children, to have a real participation". X shared that her doctoral thesis analyzed the genesis of the public policies in Colombia, focused on ICBF's Community Welfare Homes. She stated: "I found that although it is a program whose fundamental imprint relates to a participatory premise of protagonist action of caregivers, community mothers, families, communities... There was

*no participation, they were rather second-rate users for these programs and policies*". X continued: *"Nowadays, there is even less connection for effective participation"*: although ICBF's newest strategy, the Childhood Development Centers (introduced after the Community Welfare Homes) is institutionally considered as *"the card to show"* because they *"theoretically have a higher investment, higher qualifications"*, their scope of participation is still *"quite limited"*.

Another problem frequently reported along the interviews, was the lack of engagement of civil society along the life cycle of public policies. Experts reported that some national and territorial processes called for the presence of civil society either during formulation or validation of a policy or an instrument (as denoted in the previous statements by B, Mazo, X, Molina). However, interviewees concur in that no process has incorporated the civil society from policy design to evaluation and reformulation, passing through implementation and monitoring. B, Rodríguez, Santos observe that in general, Colombian public policies and strategies lack evaluation. Therefore, adjustments, reformulation, or design of new policies and strategies lack evidence. In connection to evidence, B stresses that there is no sense that ENSIN (Colombia's periodic Nutrition situation survey) reports on incidence and prevalence of food insecurity, malnutrition, hunger, lactation, morbidity and mortality, if there are no indicators to measure the impact that policies and programs have over the figures. The experts converge in that the civil society should be a key source of information and operation at each moment of a policy. As reported by Rodríguez: *the lack of participation "might be reflected when something in the policies and programs does not work, because they were not designed according to the context and needs of the groups"*.

Mazo asserted that alongside participation throughout the moments of a policy, public institutions must ensure full participation in the formulation of regulations meant to allow policy implementation. Mazo, Molina, Santos, X observed that ensuring full participation requires timely and transparent information to all stakeholders about the context of any project of policy or regulation. Cornia, Molina, X, Bejarano, Mazo, Idárraga, Santos, G, G.A, Guerra, B, Quintero, Restrepo agreed that full participation requires the State to implement,

design, communicate strategies to educate all civilians on civil participation, human rights, and enforceability of the right. Moreover, Mazo, Santos and Molina underscored that a structure for participation must align with a structure for institutional accountability. They highlight that mechanisms for accountability in Colombia are difficult to implement and understand, disperse, and lack transparency. Mendieta and Mazo underlined that it is difficult for civilians to trace how resources are being allocated, prioritized, and used inside every program.

Santos proposed a way to build a structure for accountability through full participation. She called for a shift of paradigm through which rulers move from seeing civilians as “program users” to understanding them as right holders and therefore, allies: *“Understanding people as a subject of law not only allows to work with them to identify problems, but also to turn these people protagonists in the implementation of policies” “...and program monitoring”*. Santos asserted that there are methods of positive deviation, which prove that when people in the territories have good practices in malnutrition prevention, those people can become allies in the process of sensitizing their community. *“And it is a way not only to involve them in their transformations, but to dynamize local economies, to make endogenous development”* -she added. Quintero’s views harmonize with Santos’. Quintero claimed a that a factor that has prevented real participation is *“the charity mindset”* that is *“installed”* in the government, the people, the programs, and even dietitians. She described such mindset as understanding food and nutrition *“not as a matter of rights but as charity”*. Quintero asserts that successful participation and generating solutions require understanding nutrition as a right, overcoming the idea *“we are giving you a package of food but the bean has weevil, though be thankful that something is being given”*.

Mendieta supported Santos’ and Quintero’s readings, underlining that when policies and programs are designed, implemented, monitored by the subjects of the policy, they do not only comply with being territorialized, differentiated and decentralized, but further, they are likely to be successful. This is because they are implemented for those who will suffer the effects if the measures are not functional, so they will care. Mendieta stated that, for the same

reason, civil society is key in accountability and should also be protagonist defining budget allocation and budget-monitoring. Connected to this, Mendieta, Santos, B, Molina, Bejarano, aligned in that the beneficiaries of the policies can also be the best food and material suppliers for public programs, since they care about the safety of the community, and they can ensure supplies are culturally acceptable.

In line with Molina, the absence of de facto participation contravenes the elements of public policy that the Constitutional Court established in 2008, through sentence 760. Molina emphasized that *“The Constitutional Court ruled that public policies must meet three requirements”*: first, public policy must exist. Policy cannot be a set of good intentions; it should exist instrumentalized through plans, programs, projects. The fact that policy exists also implies that it has resources. Second, policy must be *“aimed at satisfying a need identified as a public policy problem”*. *“Third, public policy must be democratic, from its design and formulation, passing through its implementation and evaluation”*. The Court clarifies that citizen participation cannot just be informative, their participation must be ensured. *“If not, this is not a public policy”* – Molina remarked. Furthermore, Molina highlighted: *“the Constitutional Court speaks of the existence of a right to public policies, that is, Colombians have a right to public policies”*. He stressed that if the three criteria for public policy were not fulfilled, one could *“sue for remedy of tutela so that a public policy is set, so that it is oriented to a need, and so as to be consulted about it”*.

Mendieta<sup>28</sup>, gave examples of evidence-based solutions to food insecurity that were built by the civil society. He noted that the absence of channels for participation impedes such type of solutions to be seen and upscaled. He underscored that due to governmental corruption, centralization of decision-making, and elite-disconnection with the communities, many communities have lost trust on public institutions long ago. Mendieta coincides with Restrepo, B and Molina that an effective way to overcome hunger and malnutrition is through shedding light on the functional strategies of the civil society to attract attention and support

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<sup>28</sup> Nestor Mendieta is the founder and coordinator of OBUSINGA, an organization that works to empower the civil society for decision-making and solving community problems related to public health, food safety and sovereignty. See more at: <https://obusinga.com/sobre-nosotros/>



from foundations, social business, the industry, the academia, and, ideally, the government. In connection to this, Mendieta, G, X, Molina, and Restrepo concurred in the opinion that one of the best ways in which international cooperation organizations can contribute to overcome early malnutrition is through making the existent solutions visible and gathering funds, technical support, and networking to upscaling them.

All the interviewees agreed in that there is an institutional trust crisis that also erodes civil participation. Interviewees report as causes of the trust fracture: permanent scandals of corruption, disconnection of the political elite from the realities of the territories, centralization of resources and decision-making, lack of platforms for participation and the distance between institutions and program beneficiaries, lack of transparency managing data and budget, and governmental failure to the Peace Agreement.

For Molina, this crisis of confidence also stems from the fact that the constitutional mechanisms for political participation are difficult to understand and *“are very weak” “in their practical effects because it is very difficult to carry them out”*. Molina indicated that the appeals of plebiscite, referendum and motion of censure do not work in the country. He said that, for example, *“there have been 56 constitutional reforms in Colombia, of which only one have been exerted through a referendum”*; the others have been implemented by the legislative branch. Molina points out that civic political education that does not leave anyone behind is essential. He claims that society knows very little about participation mechanisms *“and is hardly interested in knowing them because people have apathy, delegitimize the democratic model, do not trust the institutions”*. All experts agree that education for political participation is needed, in particular for the understanding of food as a right and demanding it, for children and their families. G points out that Colombian society is politically an *“absolutely passive”* actor and that a determining factor is that the right holders have not had the possibility to approach to its understanding and the spaces of participation that would allow to make it enforceable.

Santos supported these views and added that, because *“there are many weaknesses at the institutional level that must be addressed”*, international cooperation organizations should rethink their role, because they have tried to assume the part of the State. She said that, for

example, international organizations build “*productive projects*”, “*public infrastructure*”, “*collection centers*”, and have even “*influenced the educational programs of some institutions in the territories*”. According to Santos, these are tasks that correspond to the State, but which cooperation organizations assume because they know “*it is very difficult for the State to make a presence in all territories in a country like Colombia*”.

### **3.2.5. Governmental Failure to the Peace Agreement 2016**

Nine of the interviewees (56%) referred to the governmental breach to the Peace Agreement 2016, concerning land redistribution, as an impediment to overcome early malnutrition and realize the right to food of children and families. G and Molina converged underscoring that failure to redistribute land in conformity to the accords, fractured beyond and deeply the already shattered societal trust towards the government. Both experts remarked that the amount of land settled for redistribution in the accords was a minimum, considering the extent of land concentration in the country. However, most of the society still considered the Peace Accords as a historical progress. Nevertheless, as also X, Guerra, Mendieta, and Mazo underlined, the State did not even comply with the minimum.

G stated that food sovereignty was a strong point of request from FARC during the negotiations. FARC asked the government to ensure minimum conditions and land to small farmers and rural communities so that they could sustainably procure adequate food, decide and manage their food system and economy. G, X, Mazo, Guerra underlined that during the Havana negotiations, the government did not agree to leave the term food sovereignty in the final document of the accords. The experts emphasize that the term food sovereignty has been historically labeled by the dominant political stream as a left-sided speech. Henceforth, the government and FARC ended up agreeing on the term human right to food instead of food sovereignty. For G, this shift of terms was a form of diplomacy. G commented with the interviewer that arguing whether keeping one term or the other was an “*empty argument*”, a “*false dichotomy*”, because both FARC and the government were broadly documented. G remarked that both sides had an advisory technical team seating at the negotiation table with them, who knew about the technical definitions of food sovereignty, food security, and the right to food understood as the right to the food process. Thus, they knew that food security

is not exclusive of food sovereignty because realizing the right to food entails guaranteeing dignified conditions to those who produce and distribute the food.

G explained that in Colombia, politics have sought a conceptual clash between the terms food security and food sovereignty. So, replacing them by the concept human right to food in the Peace Agreement, was a way to mediate politically between opposites: *“FARC defending food sovereignty, which has been read like a guerrilla discourse, a left discourse and state defending food security as the discourse introduced and championed by the FAO”*, the international community and *“the traditional line”* of institutionality. No side was going to give in, so the right to food was proposed as a conciliatory point. For the government, this middle point was acceptable, because in the end it refers to obligations that the State already had acquired by signature of various international treaties. For FARC, *“it was a superior gain to have left a wider focus than Food Security”*. G added that a professor who worked with the technical negotiating team for FARC, points out that if the peace agreement is carefully read, food sovereignty elements are found disperse along the document, especially in point 1. He claims the technical team made sure to leave those points, even if not under the term food sovereignty. G stated that according to the professor, the team knew they could not leave *“an expression of that level in the agreement with the government with Juan Manuel Santos”*. Then, G underlined: *“I think if we had had another government at the time, we might have made more progress in a human rights approach”*. *“I think that is badly missing because we are still in a whirlpool, looking at the problems by their expressions and not by the causes”*.

Conforming to G, the framework in which the human right to food is recognized in the Agreement remains reductionist because *“it lacks political elements”* that the formal recognition of food sovereignty can provide to translate the right to food from formality to practice. Here, G agrees with Molina that the right to food cannot be fulfilled unless legal instruments are set to guarantee adequate food, sustainability, productive means and health to those who are at the base of the food process. Furthermore, G underscored that *“hunger is a motor of war”* and that unfortunately, nowadays the country continues with the food security/ right to food/food sovereignty conceptual clash. She emphasized that *“the social*

*standards of realization of the right to food have that capacity” of reconciling the clash because they explain the “essential conditions to attain the right to food”, without polarizing any concept as a left or right-sided. G noted that special attention is essential because, despite that capacity, the Social Standards discourse has been before and still is vulnerable to speech cooptation to be used “in favor of particular interests”.*

### **3.2.6. Lack of a Policy Framework to Enforce the Food Sovereignty Protections**

The right to food and law expert, Molina, developed an explanation that further supports the above exposed analysis by G. He emphasized that the Colombian Constitution recognizes national food sovereignty through article 64: *“article 64 enshrines national food production... so, food sovereignty does exist in Colombia but there are no policies to guarantee it”*. Molina observed that in contrast, the Colombian policy framework enshrines food and nutrition security as if it amounted to provide for the right to food, but *“no demandable state obligations derive from food and nutrition security regarding food availability and safety, as it is not a juridical term”*. Molina remarked that to respect, protect and fulfill the right to food, food security must be complemented with food sovereignty, because the first merely refers to the State provision of food, whereas food sovereignty, *“a political concept, provides for the communities to define what to produce and consume”* and to produce sustainably *“not only for their self-sufficiency but also for the country”*.

Molina pointed out that Article 64 of the Colombian Constitution of 1991 establishes *“that the State has the responsibility to protect the access to land of agrarian workers... and what the Peace Agreement did in 2016 was recognize that”*. Molina asserted that this obligation was recognized long before the 1991 constitution, with the decision to redistribute rural property in 1936 and Law 1200, which is still in force. The expert added that, in addition, article 64 of the 1991 Constitution is legally supported by articles 65 and 66. He said that he calls this triad of articles *“the constitutional foundation of agrarian law in Colombia”*, given that: (i) Article 64 *“guarantees redistribution of land in the hands of those who produce food”*, guarantees them access to rural property, other goods and legal rights (education, housing, recreation, credit, communication, technical and business assistance) necessary to ensure their quality of life. (2) Article 65 provides special protection for national food

production. (iii) Article 66 sets out the financial and credit criteria for securing national food production in the hands of farmers and for securing the guarantees referred to in article 64. Thus, according to Molina, having a legal machinery that allows to start this triptych, would guarantee the right to food, because it would guarantee the local and national production of culturally acceptable food and with the necessary technical controls to ensure safety and biological use.

Molina noted, however, that in the Colombia *"there is no political will"* for such machinery and it is not possible to guarantee food sovereignty without guaranteeing domestic food production, which *"is not guaranteed because there are high levels of concentration of rural land"*. Molina added a note that coincides with the positions of Parra and G: *"I am convinced that this is the origin of the armed conflict in this country. We are a fairly feudal country, with brutal levels of concentration of property"*. Molina indicated that the armed conflict cannot be solved nor can the national food sovereignty provided for by article 64 be guaranteed, if national agricultural production is not guaranteed through a redistribution of land that includes *"a multipurpose census to know who is the owner of the land and what happens to the land in Colombia to be able to make decisions... to ensure the redistribution of this rural property into the hands of those who work it"*. Molina emphasized that the redistribution of land must be accompanied by a *"strengthening of the country's industrial production"*. He claimed that Colombian industrial production has remained battered since the wave of liberalization and economic opening subsequent to the Washington Consensus. This opening meant the replacement of the economic model from the beginning of the 20th century, which was focused on substituting imports by domestic production. A strong deindustrialization followed the opening and caused the domestic industry to be coopted by the multinational industry. As reported by Molina, thereafter Colombia was limited to producing raw materials that would be processed abroad, and then reintroduced as elaborated imports. Molina emphasized that in this market logic, *"producers buy at low prices"* and consumers get extremely expensive food. This system generates food dependency, impeding the right to food by a dynamic where *"intermediaries win, ultimately financial market*

*intermediaries, stock exchange futures speculators and commodity processors abroad" - explained Molina.*

For her part, G made a contribution that connects both with Molina's previous explanation, and the afore reported obstacle: reductionist understanding of the right to food. G stressed that many organizations for peasant mobilization claim food sovereignty as their imprint, but without understanding it as intrinsically linked to and thus defensible with the right to food. For G this is because these organizations have not had an educational opportunity to *"get closer to understanding the right to food"*.

### **3.2.7. Lack of an Essential Nucleus for the Right to Food: Unclear Mechanisms to Demand and Enforce the Right**

When interviewees were asked whether they considered that the difficulty in achieving child nutrition targets was related to problems enforcing the right to food, a difference of opinions was evident. On the one hand, eight interviewees indicated that hunger and early malnutrition in Colombia is related to difficulties in demanding the right to food and that the existing legal framework is insufficient for this purpose. On the other hand, two experts expressed that the existent juridical framework is sufficient for enforceability; yet, the policy framework falls short and the mechanisms to demand the right are complex, unclear and unknown.

The first group of experts stressed that the Colombian Constitutional explicit recognition of the right to food as fundamental only for minors, has various negative impacts that cause a sort of oblivion of the other age groups. That oblivion makes it difficult to demand their right to food.

G emphasized that, during the peace accords 2016, one of the requests of FARC was precisely the adoption of a law that would explicitly recognize the right to food for every Colombian and create an ad hoc institution. G reported that the government did not accept that request and the rejection created a new *"clash between the FARC and the government"*. G pointed out that this petition made *"very clear that for FARC, to guarantee a right implies giving it a constitutional rank"*. G mentioned that she and many human rights organizations agree with that viewpoint. In line with G, other six interviewees emphasized that, in order to improve

the nutritional conditions of children, families, and for right-holders to understand food as a right, explicit constitutional recognition of the right to food for everyone is essential. These experts claimed having explicit constitutional recognition of the right to food as fundamental only for children, has the effect of neglecting adults, who make up the family and community nucleus of children. Mendieta and Rodríguez underlined that if constitution is not explicit for the other stages of life, in practice, the State's obligations to the right to food might remain *"to the free decision of the governments or institutions"*.

Mendieta, Rodríguez, Guerra underscored that a big share of the population neglected is the productive age segment. They claimed that the children-focused legal framework results in children-focused policies and programs that overlook needs of the rest of the population. Disregarding these needs results in a high prevalence of nutritional deficiencies, chronic non-communicable and cardiovascular diseases related to malnutrition. Such outcomes generate work absenteeism and family budget constraint, which put caregivers, and therefore children at risk of hunger and malnutrition. Rodríguez highlighted that *"targeting in policy is important when there is a shortage of resources or when prioritizing a population group is required, but in a family, there are people from different population groups"* and children's nutrition and well-being depend on the one of their family and environment. Guerra added that constitutional explicit recognition of the right to food limited to children has contributed to a lack of prioritization to have a national plan on physical activity. Guerra emphasized that sedentarism or even injuries caused by movement without orientation, amount to morbidity, work absenteeism, reduced family incomes and psychological affectations. Mendieta, Rodríguez, Guerra agreed with Quintero and G that constitutional recognition of the right to food as fundamental only for children, has a causal association with the fact that the majority of adults do not understand food as a human right of everyone. Thus, most adults do not demand the right accordingly. The five interviewees emphasized that this ignorance determines a passive attitude that limits people to receiving assistance or to think of themselves in terms of *"users of a program"* and not as right holders in position to demand their rights and monitor public programs. In this regard, G.A, from Save the Children, emphasized that most right holders do not know *"which is an adequate nutrition; in that*

*sense, they cannot demand and exercise that right".* G.A added that in the popular ideary, nutrition is often observed *"as something so basic, that sometimes it is not understood as a right; hence, it is not demanded in an adequate way".* X observed that, notwithstanding the constitutional prioritization of the right to food for children, the legislation and policy framework do not harmonize with such prioritization. The framework disharmonizes because it does not consider the child as a *"true subject of rights"*, who requires prioritization *"from his/her family and community nucleus"*, X asserted.

Castillo, Bejarano, Guerra, Molina aligned with X's statement and pointed at the impact of the high rates of families' work informality over children. The experts underlined that labor informality is even more prevalent in rural areas, which are affected already by forced displacement, environmental damage and land concentration. Parents in informality cannot access paid leave to start breastfeeding, nor do they access social security or resources to cope with emergencies.

Restrepo's stance followed this line, by emphasizing the importance of prioritizing women's and mother's conditions. Restrepo denounced that law and policy prioritization to children and pregnant women, renders invisible women before pregnancy and after postpartum. According to Restrepo, the health system puts pressure on mothers to breast-feed without ensuring them the essential conditions for a safe lactation. Restrepo states that this pressure is arbitrary, generates discrimination, and is highly detrimental for women at the nutritional, social and psychological level. Cornia further supported Restrepo's viewpoint, stating that public strategies to combat childhood malnutrition cannot set aside the conditions to guarantee women an adequate nutritional status and a safe environment before and during pregnancy, during breastfeeding and complementary feeding. Cornia and Restrepo converged explaining that public measures should guarantee social security, parental leave, adequate food, nutritional supplementation, housing, and contextualized nutritional education, to women and their net of support from pregnancy to breastfeeding.

In the second group of experts, Molina and Mazo agreed stating that the Colombian constitution recognizes all the international treaties that protect the right to food. Therefore,



the Colombian legal framework is formally sufficient to protect and demand the right to food of children and the other age groups. To this statement, Molina added an enlightening explanation about the criteria to categorize a right as a fundamental human right.

Molina explained that explicit constitutional recognition of a human right as fundamental (as in the case of Children's right to food) is not the only criterion to enshrine the fundamentability of a right. Molina underlined that it is often understood that fundamental rights are categorized as fundamental because they are more important. However, Molina claimed, fundamental rights are not more important than other human rights. The universality of human rights implies that all human rights are interdependent, and thus equally important. Whether a right is categorized as fundamental "*depends on having a strengthened protection mechanism within the legal system*". In Colombia this strengthened mechanism is the Tutela action. Molina stated that fundamentability is not a substantive but a procedural concept, which is not merely formal. He explained that Chapter one of the second title of the Colombian Constitution 1991 presents a list of fundamental rights. Still, being within the constitutional list of fundamental rights is not the only criterion to determine that a right is suitable for protection through tutela; there are other fundamental human rights beyond those of the list. Molina explained that there are four criteria to establish the fundamentability of a human right.

According to Molina, one of the criteria is "connection", which implies that when a right that formally is not fundamental, is threatened, and thereby a fundamental right is also put at risk, the non-fundamental human rights can be protected through tutela by connection. A second criterion corresponds to "subjects of special constitutional protection", which recognizes that there are rights which, although not fundamental to all peoples, are still fundamental to those considered "special population" or vulnerable groups. This is the case for children in Colombia, for whom article 44 of the Constitution, upholds explicitly their right to food. Yet, the Constitutional Court also has the authority to define to which other subjects or groups, a right should be guaranteed as fundamental. A third criterion is the "vital minimum", granted to rights associated with social security. Molina clarified that when neither an individual, nor his/her family, nor society can guarantee the individual the minimum standard not to die of

hunger, this criterion falls to the State. In other words, the State has the obligation to provide *"the minimum nutritional level that allows a person to remain alive, not to die of hunger"* *"even if the person is not a subject to special protection"*. As reported by Molina, the fourth criterion of substantiality is the essential nucleus. This criterion implies that the Constitutional Court determined that *"all rights have a core that is untouchable"*. The legislator *"cannot touch those elements that are intangible of the law ... that make a right to be such right and not another right, and, hence, disappear"*. *"In the case of the right to food, there is also an essential untouchable core but the Constitutional Court has not defined it"* Molina added. The expert closed the fundamentability criteria explanation with the following words:

*"...from my legal perspective, the right to food is a fundamental right if any of these criteria are met; and is closely linked not only to food security but also to food sovereignty, by the duty of the State to promote domestic production"* (duty stipulated by the Colombian Constitution (1991) in articles 64 to 65).

Mazo noted that, while in formal terms, the existing legal framework is sufficient to demand and protect the right to food, *"there is a legal vacuum, a technical inability"* in the *"governance structure"*. For Mazo, this gap is related to the reductionist understanding of the right to food, since the gap consist in that *"the right to food is comprehended under a tool, which is food security"*. Mazo stressed that, therefore, priority is given to food security as an element conducive to the human right to food. For Mazo, such vacuum *"represents an absence of opportunity"* to demand the right, because the governance structures the source of programs and tools for enforceability. Consequently, since the current governance framework does not require them, some enforcement tools do not even exist. Mazo underscored that if the current intention to move from a food security-focused approach to a right-to-food approach is realized, opportunities can open up for having *"a little more enforcement and governance tools"*.

Next, Mazo drew a conclusion that aligned with the positions of X, G, Mendieta, Guerra, Idárraga and Santos: if the government launches a new policy and national plan with a so-declared focus on the right to food, but put in practice, they continue a food assistance focus

centered on food security, ignoring food sovereignty, centralizing and hindering full participation, then, the change will be only nominal. And, a merely nominal change would amount to concepts cooptation.

Despite the different interpretations on the implications of the Colombian right to food legal framework, all the experts agreed that children's policies on food and nutrition, must have a human rights approach and consider the family unit and the close environment close of the child. The interviewees converged that policies must provide for basic conditions so that the child's surrounding can guarantee the best interests of the child.

### **3.2.8. Lack of a New National Plan to Replace the Expired Food and Nutrition Security Plan derived from Document Conpes 113 of 2008**

The Colombian National Food and Nutrition Security Policy, set by Conpes 113/2008, is the ground of the National Food and Nutrition Security Plan 2012-2019. After the expiry of such plan, no subsequent plan has been yet adopted. In this regard, Santos, X, and Mazo agreed that the official version on why the country has remained without a national food and nutrition plan, points to that, between 2016 and 2018, the National Planning Department made an evaluation of Conpes 113/2008; next, FAO (under its "First" program, aimed at supporting governments on policy) made an evaluation of the plan. The results of the evaluations showed that: there was scarce civil society participation in public policy; there were gaps in intersectoral work; and despite some attempts to articulate the civil society in the territories with the local and central governments, those attempts did not equate to real participation.

According to the interviewees, on the basis if the evaluations, the government and the CISAN considered adopting a new national food and nutrition policy, and a new plan to implement it. In parallel, the peace negotiations were stirring; and in the negotiations, FARC was requesting the government to update the legal and policy framework to explicitly enshrine food sovereignty and the right to food for every person. Consequently, the government perceived a need not only to adopt a subsequent food and nutrition security plan, but to adjust the national policy, so that it would shift from a focus on food and nutrition security, to the

right to food. Ever since, the CISAN has been in a process of reformulating the national food and nutrition policy and building a new plan, without any concrete result.

Santos, X, Molina, G aligned in the opinion that the process to adopt a new right-to-food-based national policy and plan has had little progress, because, even after the peace accords, the mainstream of government, CISAN and ICBF, still have a hard time taking on the Human Right to Food approach. In line with the five experts, these entities have a perception that recognizing food as a right has legal, financing, and social participation implications that they find difficult to appropriate. The interviewees agreed on the view that the government “*is afraid*” to listen to the civil society and involve it in the life-cycle of policy and plan-making, partly because the main debate on the right to food took place within the framework of the Havana dialogues, which the mainstream institutions perceive as destabilizing. The interviewees highlighted that the debate around food sovereignty and the right to food during the peace dialogues was very intense. FARC incisively asked the government to recognize them for everyone and with especial protection to the rurality, in the national policy and legal framework. Subsequently, in an attempt to placate, the government proposed the elaboration of a new national food and nutrition security policy with a right to food approach, and a derivate new plan.

The three interviewees who have worked at FAO, coincided that the Colombian government admits that the institutions in charge of the food and nutrition policies, exhibit high reluctance towards a shift from the contents of Conpes 113/2008 to a rights-based policy. The experts stated that, therefore, by governmental request, FAO is now counseling the institutions to decide the conceptual framework for the new national policy and plan. The interviewees added that FAO has indicated to the government that policy and legal recognition and protection to food sovereignty and grounding the new food and nutrition policy on a right-to-food-approach is necessary. The interviewees stated that such remarks remain controversial. They asserted that FAO has proposed the government some schemes for bottom-to-top social participation, exerted with vote and voice, and inclusive of all regions. Mazo assured that there are evident controversies in FAO’s accompaniment in the Front Against Hunger and Food Insecurity (which in Mazo’s words, is a program to guide

governments "so that policies have the impacts that society needs"). The expert explained that, once the cooperation guidelines are provided, political interests pass through a "negotiations in the chamber", after which FAO's original guidelines get so "mutilated", that the final published document does not resemble the initial recommendations. In this regard, Santos noted that controversy and deviations from the proposal of the cooperation agencies are largely due to the fact that CISAN officers perceive *participation* "as a space for social organizations to fight and criticize", not as an opportunity to build policies that are "more efficient", "more modern" and "closer to the realities of the territories". Santos highlighted that "a generational relief of the people who are part of CISAN is necessary". This is because CISAN officers have worked in the committee since 2008, so, it is difficult for them to "get out of the gaze of food security" (the cornerstone concept of Conpes 113/2008); to stop limiting food to "the institutional offer"; to transcend the understanding that food and nutrition policy "is a space of the government alone". In line with Santos, it is difficult for CISAN "to understand that food sovereignty is not a subversive concept, as it is often proposed in the country, but is a demand of social organizations in response to initiatives of economic openness, of free trade agreements" that have hit the farmers and "several lines of the economy", thus rendering the country "dependent on imports". Molina's interview seconds this perspective. Moreover, G reported that there was a precedent of attempt to modify CISAN's structure during the Peace negotiations. G noted that, however, when the proposal for CISAN's restructuration was ready for presidential signature, the bill fell, due to a technical reason: "that CISAN was created by a law, and a resolution does not have the hierarchical level to amend a law".

Mazo remarked that institutional disinclination to adopt a new right-to-food-based policy and plan, also has to do with the fact that many of the Senate and Camera representatives, who are elected by popular vote, are often people who lack the technical elements to promote bills that respond to the needs of the country.

Finally, Santos, G, X, Idárraga, Molina, and Mazo agreed that years ago, the challenge was to decide whether the food and nutrition policy framework should be grounded on food security or the right to food. Now, that there is a theoretical consensus that the right-to-food-

approach is needed, the challenge is an institutional averseness to incorporate the transformative elements that a rights-based approach requires. According to these interviewees, it is that averseness, which, explains the current lack of a relief national plan and an updated policy.

### **3.2.9. Lack of Specific Legal and Policy Instruments to Tackle the Epidemiologic Transition**

Ten of the experts referred to the raise in the prevalence of overweight, obesity and related health conditions in children and adults, as a crucial problem and a result from infringing the right to adequate food. These experts converged that the right to food is breached when children and families cannot access adequate nutritious foods and are forced to look for some energy and satiation in low-cost foods that are calorie dense, poor in essential nutrients, oftentimes ultra-processed and not matching preferences and culture. The experts further coincide that the country lacks specific instruments to prevent and manage the epidemiologic transition where, whilst undernutrition remains a public health problem, more than 50% of the population is in weight excess, and many of them coursing with deficiencies of essential nutrients. Restrepo, Mendieta, Bejarano, X, Guerra stressed the irreversible impact of nutritional deficiencies during pregnancy, lactation, and early childhood. X highlighted that even while the national figures are clear about the extent of the epidemiological transition, the prevalence of nutrient deficiencies, and their effects on childhood growth and development, the problem remains invisible and the country has not yet adopted a national micronutrient plan.

Restrepo, an expert in maternal and child nutrition, stressed that within the epidemiological transition, there is another problem that has remained invisible and unknown, but contravenes the right to food of women and children: fetal macrosomia due to over-intake during pregnancy. Restrepo shared that she is working with the Colombian Association of Obstetrics and Gynecology to raise awareness among health personnel about overweight and obesity in pregnant and childbearing-age women. Restrepo assured that during this campaign, she and her partners found that //many women arrive with low weight to the prenatal program and the healthcare staff prescribe them an excessive food intake that makes them quickly gain

around 20 kg. Restrepo underlined that the women who arrive to the prenatal program with low weight are too much intervened, those who arrive with excess weight, are *"left to free will"*. The expert reported that, from these findings, she and her research group began to wonder *"if there is so much excess weight in women, how would the macrosomia figures be?"* They started researching and found that very few countries in Latin America, the United States, and Canada, include macrosomia as a public health indicator. The group traced the alive-born child records up to eleven years back, finding that even more macrosomic children were born than underweight children. According to Restrepo, the research group also found that most of these macrosomic children (75%) were born macrosomic due to mother's caloric over-intake during pregnancy. They saw that only 25% of macrosomic children presented the condition as a result of pregnancy diabetes, which is the factor that the literature has reported as the main cause for macrosomia.

The ten experts who emphasized the problem of the nutritional transition, aligned in that a determining factor is the influence of the food industry and a lack of state intervention to regulate it. These experts pointed out that a lack of regulation towards industrial production and food marketing, is usually owing to conflicts of interests of some decisionmakers with the food industry, national and multinational agribusiness, as well as the financial sector. Parra, Molina and Mendieta agreed that the intercession of these interests ends up favoring multinationals that mostly produce food that does not contribute to a healthy diet, at the extent a lack of financial and technical support to farmers who sustainably produce healthy foods. The three experts indicated that, consequently, the prices of healthy nourishing foods raise, so the majority of the population cannot access adequate foods regularly and sufficiently, thus generating nutritional deficiencies. In Parra's words: *"is a system that puts people in competition between their health and the economy of the home"*. Mendieta remarked that the conflict of interests between the government and the main economical powers favors the adoption of agricultural policies that undermine rural economies and the environment, by favoring single-productive-chains of the country's best-selling products, i.e., cane or coffee. Single-productive-chains encourage monocultures and large-scale production practices that are unsustainable and displace the production of nutritious, diverse, traditional foods.

On the other hand, Molina and Mendieta highlighted that the lack of regulation has favored a phenomenon of centralization of food in large supply plants in the biggest and wealthiest municipalities. Supplies centralization generates both food dependence and malnutrition. Mendieta explained that centralization triggers a problem of availability of healthy food *"in municipalities with less than 100 inhabitants, which correspond to approximately 90% of the Colombian territory, where about 40% of the Colombian population is located"*. Mendieta noted that, since they are *"small"*, with *"little population"*, these municipalities are not attractive to trade. Consequently, in these territories and their surroundings *"there are no fruits or vegetables and no micronutrient-rich foods"*; and, when some arrive, they are leftovers from the central sales, which arrive *"with high price and low quality"*. Mendieta emphasized that this problem is exacerbated in *"small populations, within the poorest municipalities"*. Mendieta noted that OBUSINGA has conducted studies of a basic food basket in approximately 30 small municipalities, finding a common problem of availability, which results from a globalization-oriented type of trade. Mendieta stressed that those studies prove that notwithstanding a widespread belief that malnutrition and hunger in Colombia is mainly a problem of access, but not of availability, evidence prove these views wrong.

Bejarano, Cornia and Mendieta discussed about a lack of regulation of food advertisement messages, especially those addressed to children and promoting breastmilk substitutes. The three experts coincided that there is profound nutrition disinformation, especially regarding ultra-processed foods. Bejarano stressed that, especially in remote rural areas, where there are no health professionals, the closest means for information are the radio and television. These media often promote unhealthy products or breastmilk substitutes, which are often even endorsed by medical associations or communicated by health professionals who lack scientific rigor. Bejarano concluded that, in addition to ensuring universal coverage for health services, the government must regulate advertising to require it to be based on up-to-date, sufficient scientific evidence.

### **3.2.10. Lack of a National Policy for Territorialized Nutrition Education**

All the interviewees are of the opinion that the Colombian population is deeply misinformed about nutrition, about adequate food as a right and how to enforce such right. X emphasized



that Colombia lacks a nutrition education policy and needs it urgently. All experts agreed that nutrition education strategies contextualized to the territories are needed. The experts coincide that nutrition education must not prescribe food or practices that are inaccessible or contrary to the local culture. They underscore that contextualized nutrition education should teach socially and environmentally sustainable consumption and instruct in the analysis of adequate food as a human right and in the ways to make it enforceable. The experts noted that nutrition education should stress the value of food producers, distributors, and food cultures, while instructing on civil participation for: decision-making, engagement in the whole cycle of policies, accountability, budget allocation for the programs, and providing quality supplies for public purchases.

### **3.2.11. Shortcomings of the National Breastfeeding Plan**

Bejarano, Restrepo, G.A, Tobar, B agreed that breastfeeding remains a challenge in the fight against child malnutrition. They noted that despite the ad hoc strategies that the country has been implementing for years, including a National Breastfeeding Plan (Plan Decenal de Lactancia Materna) (Ministerio de Salud y Protección Social, et al, 2010), the figures of exclusive and total breastfeeding remain derisory. The five experts' opinion aligned with Cornia's and Restrepo's in that, in addition to strengthening programs that reach the entire country to promote breastfeeding and instruct on adequate technique, it is crucial to support education with a policy framework that ensures adequate food, access to health and social security to mothers. The experts agreed that without such guarantees, it is arbitrary to put pressure on women to breast-feed, because, on the one hand, the economy of many households depend on the mother, so women cannot abandon work. On the other hand, because many lactating mothers suffer undernutrition as a result of poverty and labor informality. Restrepo stressed that it is not fair to require a woman to breast-feed, even to stigmatize women who lactate, if no entity watches over their safety.

Rodriguez said that in 2021 the update of the national breastfeeding plan is being implemented, in collaboration with ACOFANUD (Colombian Association of Nutrition and Dietetics Faculties). In line with the perspectives of Bejarano, Restrepo, G.A, Tobar, B, Cornia, the plan or any breastfeeding strategy can only be effective if they can articulate with

economic and social policies that guarantee the conditions for the mother to breast-feed in a safe environment.

### **3.2.12. Distortions of the Role of International Cooperation**

In the responses to the interview's *question* "How can international nongovernmental organizations (NGOs) better support civil society and local institutions to eradicate early childhood malnutrition and move towards the full realization of the right to food?" interesting convergences were found between the interviewees. G and X stated that foremost, to be able to help in a transparent and effective way, NGOs must operate independently of the State. The two experts emphasized a well-known fact in Colombia: NGOs officers are frequently hired by the government, under the form of contractors for the effects of a cooperation project. That is, international cooperation officers will work within the NGOs, but employed by the local government, for the duration of a project.

G and X agreed that such hiring dynamic does not allow the NGOs to act with neutrality and independence, talking horizontally with the government, openly pointing out what needs to be corrected or improved. G highlighted that this phenomenon has turned international cooperation agencies into "*state resources coopters*" "*contract hunters*", which is evident from seeing the names of NGOs officers in many of the national public policy documents (as the NGO was involved to outsource counseling services for the development of the document). X and G observed that FAO is in that role.

Mendieta, Parra and Bejarano, agreed that NGOs should empower civil society to exercise legitimate participation and program monitoring to prevent corruption. Mendieta suggested that a way to strengthen institutional and program accountability is by creating a system, like an international ranking, to bring shame on the State, whenever corruption is found. Something like the label "*the worst country to be a child*", he said. At a general level, there was convergence among interviewees in the opinion that international cooperation agencies should support the state to comply with the contents of the Peace Agreement 2016, especially regarding land redistribution, guarantees for the rural population, and the mechanisms for protection of the right to food. Another point of general convergence amid interviewees, was

the idea that organizations must create bridges of communication between civil society and the government, including the visibility and attraction of resources to upscale and continue community initiatives that have proven effective in fighting hunger.

Moreover, the interviewees coincided that NGOs should pressure and help the government to develop evidence-based mechanisms to ensure civil participation with voice and vote, from problem identification and policy design, to policy evaluation and reformulation, passing through budget allocation, implementation, and monitoring. Five experts agreed that international aid also requires articulation: of the solutions and voice of the civil society, the government, the academia, and the industry. Articulation ensures that efforts are not redundantly repeated (which, according to the experts, happens frequently), so resources are efficiently used, and actions are synergistic and more effective. Regarding the support to communities' solutions, three of the experts agreed on the importance of facilitating technical sustenance and resources to scale-up projects that raise awareness on sustainability, i.e., urban gardens, community farms, digital platforms to communicate the final consumer with local farmers and markets, and to facilitate transaction of services between communities. Concerning articulation, Santos made an important observation: NGOs must be articulated to help the government fulfill its obligations of respect, protect and fulfill human rights, without pretending to replace the role of the State. In other words, without exerting indefinitely obligations incumbent upon the State.

Finally, amidst interviewees there was also general agreement that international cooperation organizations should not focus on the assistance-centered or charity-centered approach, but to keep assistance measures only as a transitional mechanism and in cases of emergency. Experts converged that, in place of the massive investment in aid packages, more resources should be used for technical support that is sustainable for the communities and amplifying the solutions already developed by society. The experts' views aligned stressing that NGOs should ensure that technology transfer and technical support can be continued over time, as progress is often lost once the NGOs leaves the territory, because the community alone lacks the resources to maintain the acquired systems. In this respect, Mendieta suggested that an effective strategy might be that NGOs would enable low-interest loans; transparent and fair

connections between small farmers, local markets, investors, microfinance services providers, and social business to sustainably provide the resources needed to start or maintain those civil society's solutions.

Furthermore, three experts remarked that NGOs should support the strengthening of breastfeeding, including conditions for a safe motherhood.

Finally, it is worth highlighting a contribution by Parra, which coincided with Mendieta's and Guerra's standpoint: international agencies must know the context of the territories, since they often do not know the causes of their malnutrition and automatically mobilize resources to reduce micronutrient deficiencies through food fortification. Food fortification does not help to overcome the roots of hunger. All the above-mentioned perspectives support what Morales and PCDHDD (2010) point out: by decontextualizing the problems of the territories, the modus operandi of many cooperation organizations ends up violating their Food Autonomies.

### **3.3. Discussion**

This segment analyzes the policy-related obstacles to realizing the right to food of children in Colombia that this work identified through the documentary review and the interview results. The analysis seeks to recognize the components of the Food Process and the Social Standards of Realization of the Right to Food (FIAN, 2021) that each obstacle breaches. Therefrom, this discussion pretends to propose guidelines with policy solutions to redress the infringed components and so restore the food process and enable the right to food. The macro-goal is to build a helpful approach to Colombia and other countries with shared features in their development model or policy framework.

#### **3.3.1. Policy Reductionist Understanding of Food and Diverse Forms of Corruption**

The Colombian government has attempted to comply with the state obligations to the right to food through the National Food and Nutrition Security Policy (PNSAN) established by the policy document Conpes 113/2008. All the national and territorial food policies, plans, and actions must derive from the PNSAN. PNSAN presents two key problems. First and

foremost, it is based on a reductionist understanding of food, limited to interpreting as goods and services that must be available, accessible, and microbiologically safe to everyone. This interpretation fails to understand that food is a process which entails several subprocesses from production to biological use. These processes imply two spheres of food: a collective sphere, that implies guaranteeing the rights of the communities who produce, transform, transport, distribute, exchange foods, as well as the rights of peoples and states to adequate food sustainably produced, and to define their own food and agriculture systems without dumping. And a private sphere, where individuals and households find adequate sufficient food available, can access it, and biologically use it to be healthy and develop to their full potential. The PNSAN interpretation of food is constrained to *food and nutrition security*, a concept that concerns food availability, access, and intake at the private level of households and individuals but does not consider the collective sphere of food. To fulfill the right to food and the state obligations towards it, the efforts to ensure food at the individual/household level must be coupled with actions to guarantee the collective rights regarding food. Since PNSAN does not recognize this integral coupling, it gives place to a charity and market-oriented approach in which the state buys food and services from third private parties to provide food access and availability to the those who cannot procure it by their own means. Such approach does not allow to identify and solve the structural roots of hunger and it does not consider how the ways in which food is made available and accessible impact the rights of the peoples at different steps of the food process (i.e., imported food aid might affect local economies and some aid packages do not match the culture).

Moreover, the concept *food and nutrition security* is not a juridical concept, so it does not imply specific obligations of the state. In contrast, the right to food implies specific state obligations, as well as the concept of food sovereignty (through articles 64, 65, 66 of the Colombian Political Constitution (1991)).

The second key problem of PNSAN is that it is outdated, as it was designed for the attainment of the Millenium Development Goals and the commitments made at the WFS 2002.

In line with the charity-market-oriented optic, the government aims at guaranteeing food and nutrition security to the most vulnerable through food assistance programs that are outsourced to private companies. The results of the interviews demonstrate that the outsourcing of the aid programs favors diverse forms of corruption linked to a paradigm that understands the civilians enrolled to the aid programs as program users and subjects of charity and not as right holders with the right to participate in the whole cycle of policy. These ways of corruption emerged as subthemes from the thematic analysis and are all associated to another theme: outsourcing of aid programs. After analysis of the corruption subthemes, the study identified that following forms of corruption derive from outsourcing the aid programs: corruption in tenders assignation; as embezzlement in public contracts and food purchases; delivery of lower quality or even rotten and expired foods; embellishment of the figures of hunger to justify the efficacy of the programs; cooptation of state's resources at the hands of cooperation agencies.

Regarding the subtheme embellishment of public figures, this work found that international cooperation resources are conditioned to the justification of their allocation. The Colombian government justifies the budget destined to food assistance programs by showing reductions in the national rates of death and morbidity related to hunger. The results of the interviews suggest that malnutrition-related deaths are sub-reported because hospitals and health centers, mainly from remote territories, receive official orders not to specify malnutrition as the cause of decease, when a death occurs due to a complication derived from malnutrition but not directly due to starvation. For example, if a child died from a pulmonary or gastrointestinal condition induced or exacerbated by hunger, the death would be reported as a decease from infection. In addition to this finding, it is inferred that sub reporting is also related to the lack of access to healthcare centers and hospitals in remote areas.

By progressively reducing figures, the state keeps receiving international cooperation funds that are mainly allocated in aid programs, which are outsourced to private companies. Thereby, cooperation resources indirectly end up funding the forms of corruption that derive from the outsourcing of charity-oriented programs.

Another downside of the purely assistance approach is that, although the aid programs are theoretically focalized on the most vulnerable, they still do not reach many of the disperse, marginalized, and most in need territories and ethnic communities. In fact, due to its hard-to-reach-location, public officers find it easier to misappropriate resources in remote, disperse areas, as it happens in Guajira and Chocó, often referred in the interviews.

Moreover, much of the aid packages consist in low quality, sometimes even expired foods that do not match the culture and preferences of the target community and does not even comply with the menus prescribes by the central institutions. Since aid is not equitably distributed, the assistance programs end up widening pre-existing disparities. In addition, the menus approved by the governmental institutions usually include ultra-processed foods that are not healthy and benefit large corporations, oftentimes at the expense of local food production and trade.

Another sub-theme related to corruption and outsourcing of the program, is cooption of state resources by international cooperation agencies. As G and X reported, some international organizations lead projects, studies, official documents and policy assessment for the domestic government. For these purposes, the international organizations open public tenders to recruit professionals, but the professionals get hired by human resources agencies of the local government and not by the international organizations. Thereby, the international agencies might coopt local resources while the hired professionals cannot exert their duties from the position of impartiality and neutrality that should characterize international cooperation.

Indirect promotion of drug trafficking is another subtheme linked to the reductionist understanding of food and the charity-oriented approach. Disperse, remote, impoverished territories, oppressed by armed groups and lacking state intervention, are prone to be coerced to plant coca or to engage in the production or distribution of narcotics. The results of the interviews suggest that the government is aware of the exact location of the narcotics production centers and the transport routes but it has not intervened. Hunger and poverty push marginalized communities to turn illicit activities. Mitigating hunger through food

assistance programs that are unevenly distributed does not solve the roots of the problem. Instead, leaving hunger unsolved indirectly maintains illicit activities from which even politicians get profit, in a context without faces of potential perpetrators that can be investigated and held accountable.

The results of this study suggest that the reductionist understanding of food gives place to a purely assistance-based approach which is implemented through outsourcing aid programs to private parties. For-profit third parties cannot take on the responsibility of the state; their priority is private profit over ensuring human rights. Profit interest is what prompts the diverse form of corruption around the program outsourcing. Additionally, assistance-based social programs are focalized. That is, they aim at optimizing public expenditure by targeting only the most disadvantaged among the vulnerable. In the Colombian Constitution (1991) and the policy framework, children are a focalized population. Strict focus on children and pregnant women causes indirect discrimination by rendering other groups invisible. The other groups conform the family and the community of children, so they must be healthy to ensure the best interest of the child. Focalization on children and pregnancy also engenders discrimination against women by making women out-of-pregnancy invisible. After post-partum, a woman becomes invisible to public policy, except for her duties as a mother. Many children-focused programs campaign the many benefits of breastfeeding and state that lactation is free. These campaigns put pressure over women to lactate but disregard the importance of guaranteeing their nutritional, economic and social needs for a safe lactation. Expecting women to lactate without ensuring them conditions to do so is arbitrary and generates stigma against women who are unable to breastfeed. Furthermore, focalization on the child and the pregnant woman, overlooks the fact that the breast milk of a malnourished mother has lower nutritional quality. In a country with 54,2% prevalence of food insecurity, numerous women in the lactating phase suffer from malnutrition. These problems demonstrate that the focalized assistance approach has a limited perspective of families and women around the child as simple beneficiaries of the childhood-oriented programs and not as right-holders and policy actors.



All in all, the reductionist approach of PNSAN and its derived programs breaches every element every element of the *food process* (small-scale food production, transaction, transformation, consumption, biological use), the collective dimensions of the right to food (*food autonomies* and *food sovereignty*), and even the *food and nutrition security*, because the quality and distribution of aid does not meet the *food and nutrition security* adequacy and safety criteria.

### **Policy Solutions**

- The food and nutrition national policy and normative framework must have a right to food-approach, which means complying with the State's obligations to respect, protect, and fulfil the human right to food at each level: national, community, and private. Recognizing the three standards of realization of the right to food (food sovereignty, autonomies, and security) enhances the interpretation and therefore the enforceability of the policy.
- Assistive measures must be always kept as complementary transitory aid for highly vulnerable groups. They must be articulated with integral targeted actions in health, education, housing, social security, and access to production means, to progressively overcome the roots of hunger and not to merely mitigate hunger. Measures must be differentiated, territorialized, with ethnic and gender-focus, keeping into account that the context and determinants of hunger and malnutrition in each community are different.
- International cooperation organizations can condition the aid to indicator that not only allow to monitor the changes of the incidence and prevalence of malnutrition but allow to measure the quality and the longitudinal impact of the food programs.
- Food policy must address the beneficiaries of the programs as right holders and not as mere program users. Thus, the programs to implement the policy must provide a direct link between the institutions responsible of the programs and the right holders. This means that the policy must provide participation channels through which the civilians can monitor and evaluate the problems; identify problems of the policy and the programs and propose solutions along the whole policy cycle.

- The menus of the food programs should not include sugary ultraprocessed foods. They should prioritize the purchase of natural nutrient-dense foods from local producers over food from corporations. The policy must consider a program to train and support local food suppliers to meet the official quality and safety standards.
- Creating a system through which the territorial branches of ICBF along with territorial attention centers from CISAN, and the ministries of Health, Education, Development, Agriculture, Social Protection directly implement the policies and programs aimed at children and families. Attention centers must count with an ethnic and gender team that ensures the attention to have an ethnic, gender, territorial, differential approach. The centers must identify the highly vulnerable groups in their territory in order to extend them resources to access equal opportunities and outcomes.
- Remove, immediately, any measure with a sense of positive discrimination that generates exclusion (for example, positive discrimination towards children which results in the marginalization of non-pregnant women).
- Guarantees of social security, paid parental leave, adequate food, nutritional supplementation and contextualized nutritional education, to mothers at least during the first 1000 days of life of the child.
- Measures to mitigate labor informality and lack of social security.
- Universal program of education in civil political participation that instructs on the selection of competent representatives and revocation of mandate. The educative contents should be socialized to all population segments, through formal and informal means.

### **3.3.2. Impediments to Effective Participation**

Most of the interviewees converged that the lack of civil participation in public policy is a cause of the inefficiency of the available food policies and the rates of hunger. Although Colombia has declared to be bound by the 2004 Voluntary Guidelines on the Right to Food (VG), the state lacks mechanisms to allow for civil participation in the full policy cycle (from problem identification to evaluation), as stipulated in VG No. 4. Results indicate that many processes of food policy elaboration and evaluation that are claimed as pioneers in

participation, have merely limited to invite certain civil society groups or social leaders, give them voice but not vote, or to socialize a pre-approved policy.

The results also pointed at the theme trust rupture, derived from other subthemes, as a major impediment to participation. Recurrent corruption scandals, disconnection of the political elite from the reality of the territories, centralization of decisions, resources and programs, lack of communication between the institutions and the right-holders, lack of transparency managing data, resources, and investigating human rights violators, noncompliance with the Peace Agreement, and violent repressions to social leaders, appear to fracture the trust of a majority of Colombians towards the public institutions. In addition, the constitutional mechanisms for civil participation are largely unknown and extremely complex. Interestingly, the interviews suggest that the participation mechanisms are not even fully understood by policy experts. The lack of full therefore seems to be the sum of a crisis of institutional distrust, widespread disinformation, disinterest, and a lack of political will to update the participation mechanisms, make them more accessible, create channels for effective participation throughout the full policy cycle, and provide collective education on civil participation.

Impeded participation is associated with two other themes from the thematic analysis: centralization of policy and outsourcing the public programs. Due to the impediments to participation, policy and decision making tend to be centralized in the central government and the capital cities. This gives place to a homogenizing approach that copies in the rurality and ethnic communities, programs that seemed to be functional in the main cities.

The outsourcing of assistance programs further hinders participation because it breaks the communication between the civil society and the responsible institutions. One tender after the next, the programs pass from one company to another, so there is no participatory follow-up of the programs; no steady channel through which those who suffer the programs can identify and communicate the problems of the program and propose solutions.

Two themes appear to derive from the disconnection between civilians and the institutions. On the one side, low quality public data, as the national figures reported in the ENSIN

(National Survey of the Food and Nutrition Situation) do not indicate the impacts that a certain policy and program has over the national nutrition figures and the feedback from program affiliates is not considered for this purpose. On the other side, many proven solutions to food insecurity that are created by the civil society, remain invisible to the government and the cooperation agencies. These civil solutions could be upscaled and generate high-impact change if civil efforts were articulated with the government, the cooperation sector, the academia, the industry, the microfinance and finance sector.

### **Policy solutions**

- Policies must highlight the importance that civilians and programs affiliates are not just program users but right holders. A shift of perspective in the way in which institutions see right holders, allows to overcome the charity mindset, improve the quality of the programs, bring upon solutions, and enhance data. The most interested in the efficiency of policies and programs are those who suffer them. Seeing them as allies in raising problem identification, monitoring, evaluation, readjustment, community sensitization, and sources for public data might strengthen public strategies, motivate and engage the community, dynamize and preserve local economies, foster peacemaking, and endogenous development.
- Ensuring, by means of policy and law, that small and medium local producers and distributors are the first eligible as suppliers for the programs offered in their territory. Locals are likely to care about the safety and wellness of their community, ensure that foods are safe and acceptable, and be close to the voice of the community. This step might foster participation and enhance institutional transparency through civil monitoring.
- Creation, by means of law of a monitoring system to ensure that any national and territorial policy complies with the three requirements of public policy provided by the Colombian Constitutional Court (Constitutional Court Colombian Republic, n.d.)
- Creation, by means of the national plan of education, of strategies for educative formal, informal, and media to encourage and instruct citizens for effective participation in public life (OSCE HCNM, 1999, 2012; Medda-Windischer, Åkermark, & Schulte, 2021). These strategies must prepare citizens to understand food as a human right, its implications and mechanisms of enforcability.

- Education strategies must reach all stakeholders and promote a shift of perspective, from seeing civilians as program users or consumers, to understanding them as right-holders and policy subjects.
- Understanding themselves as policy actors, civilians can help ensure that policies are contextualized, territorialized, differentiated, decentralized, gender-sensitive, ethnicity-sensitive. They can also help the institutions to identify the highly vulnerable groups and measures of discriminative outcomes. That way, vulnerable groups can be effectively leveraged towards equal opportunities.
- Educating and enabling civilians to participate, increases the probabilities of success of public measures, because right-holders know their needs and care about them, knowing that they are the main sufferers of wrong decisions.
- A problem associated to impaired participation, is that the mechanism to hold accountable the institutions in charge of the food and nutrition policy, are difficult to understand, disperse, and lack transparency. Therefore, the mechanisms to foster participation must align with the creation, by means of law and policy of a system for institutional accountability. The structure could be led by democratically elected representatives and have channels of participation open to right-holders. Through those channels, civilians may formally report problems, inconsistencies, corruption, policy needs, and assess how resources are allocated, prioritized, and used. At all times, right holders must be protagonists in the definition, allocation and monitoring of the public budget. The accountability system must exist at the territorial and at the national level with representation from all the territories.
- Creation of a national platform and articulated platforms for each territory to allow equal participation of civilians, academy, industry, government, and international organizations along the whole cycle of policy. These platforms must also provide channels of knowledge exchange and articulation of efforts for the creation, maintenance and expansion of solutions to hunger and malnutrition.
- Amid other benefits, these channels might shed light on functional civilian projects and strategies to solve food insecurity and poverty. Visibility can attract technical and economic support from the regional and national governments, foundations, cooperation agencies,

social business investors, the industry, the academy, the international community, and the financial sector.

- Specific laws to protect civil solutions from possible abuses on behalf of the private and/or public sectors.

### **3.3.3. Centralization Dynamics, Lack of Food Access, and Food Desserts**

A recurring theme resulting from the interviews analysis was centralization. The results suggest three main forms of centralization that are a major obstacle to food access:

1. Centralization of public policy: policies and programs are designed and implemented from the top to the bottom, formulated in the capital and the main cities. Following the same scheme, programs and actions that show to be mildly effective in the main municipalities are copied and reproduced on other territories. Consequently, many programs and attention centers in disperse, rural, and ethnic communities close after realizing that there are not enough children to attend. Moreover, decontextualized assistance ends up violating traditional gastronomies, economies and cultural heritage of many communities.

2. Centralization of food supplies: food supplies are becoming more and more centralized in the main municipalities and bigger territories, as smaller, disperse territories are not of economic interest to food suppliers. Consequently, the smaller, remote, often poorer and marginalized territories are turning into food desserts, where, on one side, nutrient-dense foods such as fruits, vegetables, tubers, unprocessed diversified cereals, and legumes do not arrive, or arrive as scarce leftovers from the central markets, with poor quality and inaccessible prices. In contrast, small local stores in these territories, offer long-shelf-life, palatable, easy to prepare and consume ultra-processed products that are poor in essential nutrients but provide satiety at low cost and are intensely advertised in radio and TV.

On the other side, rural families are pushed to focus on one or a few lines of agricultural production with high demand in the market (i.e., sugar cane, rice, coffee, a few types of corn). The decline of production variety prevents rural families from self-supplying the foods that they cannot access in the local market. In addition, extensive single line production reduces biodiversity, promotes unsustainable practices, and outdoes traditional forms of growing.

3. Centralization of the assistance programs: although charity-based programs cannot solve the structural causes of hunger, not even these are evenly distributed amid the most vulnerable. Many of the most impoverished communities, many of them indigenous and afro, live in remote territories to which aid programs do not arrive, either justifying difficulties of geographical access, or owing to misappropriation of funds -which goes more unperceived, hence more unpunished than in central territories-. Oftentimes, the aid does not arrive consistently; arrives in lower quality and quantity in comparison to one for bigger municipalities; and does not respect the culture and food preferences of the target population

### **Policy solutions**

- Programs to create and maintain home, community, school and university vegetable gardens and small-scale sustainable breeding of minor species
- Stipulation of measures to discourage large-scale breeding through taxation
- Limitation, by law, of the number of animals reared and the maximum amount of land for livestock and monoculture
- Subsidize and provide technical support for the sustainable, small-, and medium-scale production of fruits, vegetables, legumes, tubers, cereals.
- Deduct the prices of basic foods of high nutritional value
- Deduct the necessary materials for sustainable food production.
- Fairtrade Certification or similar initiatives to ensure that market fluctuations do not lead to a reduction of food prices below the level that guarantees a dignified living standard for the food producing and transforming communities.
- Immediate adoption, through full-participation, of a policy and ad-hoc regulations framework for the improvement of the rural infrastructure for healthcare, sewerage, basic utilities, and roads, in harmony with the environment and the communities.

- Support to small-scale food producers to access financial resources, technical support and technologies. Facilitation requires transparent actions to articulate NGOs, microfinance service providers, social-business investors, the industry, the academia, and civil society organizations with producers and communities, in order to favor the mobilization of resources for sustainable production of healthy foods, implementation and escalation of community solutions to hunger and food insecurity. The articulation must be coupled with a legal infrastructure that protects small entrepreneurs and communities from potential abuses.
- Due to impairments of access to a quality diet, the prevalence of nutritional deficiencies in Colombia is very high. Therefore, the above explained measures must be coupled with a national plan for micronutrient supplementation. The micronutrient plan must ensure first, general access to micronutrient supplementation of the nutrients whose deficiency is a proven public health problem. Second, supplementation of Iron, Folic acid, Zinc, Complex B, Vitamin D, eicosapentaenoic acid and docosahexaenoic acid for early childhood, pregnant and lactating women. Third, specific supplementation and monitoring of nutritional progress for every person in nutritional deficiency or at risk.

#### **3.3.4. Infringements to the Peace Agreement 2016**

The government has not fully complied with the land redistribution accorded in the Peace Agreement 2016, nor granted access to productive factors and minimum protections for rural communities as signed in the pact. The lack of access to land, productive factors, financial and credit inclusion for rural and ethnic communities increases the food dependence of the country and its subregions.

This breach proves that the government conserves a reduced approach to food and has not prioritized food sovereignty and food autonomies and further shatters the already exhausted confidence of the civilian population towards the institutions and breaches all the elements of the food process, as well as food sovereignty, food autonomies, and food and nutrition security.

#### **Policy solutions**



- Immediate action to enforce the measures agreed upon in the Peace Accords.
- Social assistance measures must be articulated with comprehensive actions to ensure access to health, education, housing, land and economic factors. These actions must be differentiated, territorialized, with an ethnic and gender-focus, which means that measures for the urban areas, even if successful, cannot simply be copied on rurality, but any measure has to be decided with full participation and contextualized to the needs of the community
- Adoption of anti-trust laws and penalties
- Adoption of laws to impede imports that harm national and local food production, distribution, transformation, and marketing
- Consultation and agreement with the civilian population on the contents of international Trade Agreements
- National agricultural production and the provisions of the constitutional articles 64, 65, 66 must be guaranteed through a redistribution of land that includes, first, a multipurpose census to know who are the current landowners and how the land is used. This information must be made public and used to take participative decisions to implement the Peace Agreement integral rural reform in a way that ensures that rural property is placed in the hands of those who work the land. Second, it must include an ad-hoc food sovereignty framework.
- The food sovereignty framework must aim at strengthening the country's industrial production, prioritizing support to small and local producers and distributors, and regulating production to fully shift to a sustainable model. The policy must ensure: (i) dignified conditions for those who grow, transform, exchange foods; (ii) the right of the communities to choose their own sustainable food systems; (iii) strengthening the national industrial production that prioritizes support to small and local producers and protection from dumping; (iv) decentralized distribution of food.

### **3.3.5. Lack of Definition of an Essential Nucleus for the Right to Food by the Constitutional Court**

The Constitutional Court has not defined an essential nucleus for the right to food. In the absence of an essential nucleus, the demand and justiciability of a right are difficult. The standpoint of the FARC'S technical team during the Peace Negotiations coincide with the views of many NGOs. They assert that if the right to food is constitutionally explicit as fundamental for every person, its enforceability and justiciability will improve. However, the results of the interviews indicate that, while explicit recognition of a right is useful, it must align with the enactment of an essential nucleus. Therefore, the lack of an essential nucleus threatens each of the standards of realization of the right to food.

#### **Solutions**

The legislative branch and the Constitutional Court must pair an explicit constitutional recognition of the right to food as fundamental for everyone with the enactment of a comprehensive essential nucleus. The essential nucleus of the right to food must be based on an understanding of food as a process, so that it provides for the rights of all the agents involved in the food cycle, from collective food production to individual utilization.

### **3.3.6. Disarticulation and Opportunities in the International Cooperation Field**

The efforts to mitigate and solve hunger are disarticulated. There is wide consensus amid the interviewees that the actions of the local government, the international cooperation agencies, the academia, the civil society, the industry, the financial, legal and juridical sector are disarticulated and uncommunicated. Therefore, many actions are repeated, or the same territories receive repetitive aid whilst other are neglected. As previously explained, several communities and civil groups have developed solutions that have been proven effective but remain unknown, though if scaled-up through technical support from the academia and/or financial support from diverse sectors, could be amplified. Here, the international cooperation sector might play a determinant role: it has the authority to stand in a horizontal position with the government and ask it to build, with international support, platforms of articulation between the civil society, the government, the different cooperation agencies,

the academia, the health sector, the industry, the financial (traditional and social business) sector, in order to coordinate efforts, recognize and potence existent developments, and fully participate in the whole policy cycle (problem identification, design, implementation, monitoring, evaluation, re-adjustment). The international cooperation sector can also provide the stakeholders, mainly the civil society, with education for effective participation in the public life and right to food enforceability. Taking a share of the budget that has been traditionally allocated in food assistance, might be more effective than solely looking after charity-based actions.

#### **4. Limitations of the Study**

Human nutrition and child nutrition in particular, are a complex and multidimensional matter. The development of targeted human rights-based policies that combat the causes of child malnutrition, requires the analysis of multiple social, economic, cultural, environmental, and historical determinants. This study tried to cover those determinants in a comprehensive way, but it recognizes the limitation to delve into each one. Some of the determinants of childhood hunger and malnutrition in Colombia, that this thesis acknowledges, but does not delve into, and which might require further research, are: the relations between drug trafficking, hunger, and political corruption; the association child malnutrition-power dynamics (industrial, political, financial) in the food system; the impact of food price speculation on the stock market; neoliberalism and the commodification of health, food, and education.

## 5. Conclusions

Colombia has a comprehensive legal framework on the right to food, including mechanisms to respect, protect, and fulfill the right to food of everyone. The Colombian Political Constitution (1991) recognizes the binding force of the human rights treaties signed and ratified by Congress, including the ICESCR. Children are recognized as a particularly marginalized population, as early childhood malnutrition might result in relatively high impacts on the enjoyment of the right to food and other human rights. However, the legal framework still has some significant gaps. First, while ICESCR enshrines the right to food of every person, the Colombian Constitution (1991) explicitly identifies this right as fundamental only for children. Second, there are few judicial mechanisms in case of violations, and the Constitutional Court has not defined the essence of the right. A clear definition of the essence of a human right facilitates access to enhanced protection. Therefore, an explicit constitutional statement that recognizes the right to food as fundamental for every person, coupled with a Constitutional Court's definition of the essence of the right to food, can improve the interpretation, practical implementation, and judicial protection of the universal right to food.

While the Colombian Constitution (1991) sets obligations towards food sovereignty through the protection of national food production, the dignified living conditions, and land access of the rural peoples (articles 64-66), Colombia lacks an ad hoc policy framework. The national food and nutrition policy aims to attain food and nutrition security as defined by the policy document Conpes 113/2008. Unlike food sovereignty and the right to food, food and nutrition security is not a juridical concept, so it does not imply state obligations. Basing the state policy on a non-juridical definition is problematic, as state obligations will remain at the discretion of the government in office.

This study observed that the reductionist approach to food is an obstacle to the right to food transversal to every other policy impediment found in the study. Food and nutrition policy in Colombia presents a reductionist understanding of food. The "National Food and Nutrition Security Policy" established by the National Council for Social Economic Policy, is the policy that rules every public action on food and nutrition in Colombia. Its overarching goal

is to attain food and nutrition security, which the policy defines as adequate and timely availability, access, and consumption for every person of safe and good quality food under conditions that allow for its appropriate biological use. The food and nutrition security approach is incomplete because it fails to understand food as a process from food production to food utilization. Before being available and accessible to individuals, food is grown, transformed, exchanged by groups of people. Therefore, the right to food entails both the individual dimension of food (food security) and the collective sphere that ensures a sustainable environment, dignified conditions of the groups that participate in the food process, and the right of societies and nations to decide their food system without external dumping. A national policy limited to food security might endanger the shared environment and society at the expense of private food. It gives engenders a market-based/charity-based optic that sees food as goods and services that can be made available and accessible through demand and supply. In this logic, the programs derived from the policy do not aim to solve the structural causes of hunger -which are collective- but only at improving hunger statistics by buying, from private companies, foods for those who cannot access the market, and services to deliver them.

Through this outsourcing of charity, the state allocates its responsibilities to the right to food on third-for-profit hands. Outsourcing therefore hampers participation by disarticulating the subjects of the policy and the responsible institutions. It also facilitates diverse ways of corruption that increase preexisting inequalities and perpetuate hunger. The forms of corruption that this study found associated with outsourcing food aid are: corruption in the assignation of tenders; embezzlement in public contracts and food purchases; misappropriation of public funds, including delivery of lower quality or even rotten and expired foods; embellishment of the figures of hunger; cooptation of state's resources at the hands of cooperation agencies; indirect support to illegal economies that emerge in marginalized communities for which criminal activity such as drug production and trafficking becomes a mean of survival.

The “National Food and Nutrition Security Policy” is outdated. It was established by Conpes 113 in 2008, and the national plan for implementation (2012-2019) is expired. Although an

adjustment of the policy for a right-to-food approach was established by the Peace Agreement 2016, the government continues postponing the modifications. The results of this study suggest that the delay of the adjustment does not come from technical ignorance regarding the concepts food and nutrition security, right to food, food sovereignty. It neither comes from a conceptual clash between the terms. Instead, the results point to private interests within the political and economic elites. Continuing the ‘National Food and Nutrition Security Policy’ or even replacing it with a new policy, whose contents are as close as possible to the current policy, would allow continuing the outsourcing of aid. Outsourcing aid generates opportunities for licit and illicit enrichment for various agents of the political and economic sectors.

Disperse, impoverished territories, especially when coerced by armed groups, often turn to the production/distribution of narcotics. The interviews results indicate that aid packages and government interventions do not reach many of these territories. Results also suggest that the authorities know the location of many narcotic production centers and transport routes. In Colombia, scandals of links between politics and narcotics are reiterative. Hunger and poverty appear to indirectly prompt illegal activities; if hunger remains unsolved, different parties can continue to benefit from the persistence of the illegal activities, in a context where culprits remain unclear.

The charity-oriented approach supports the continuation of land concentration because it does not require land equitable access and conditions to guarantee food sovereignty. Colombia has the largest land concentration in Latin America (OXFAM, 2020) and most of the land lays in hands of the political, financial and industrial elite. Evolving the current policy towards a rights-based, participatory approach might be therefore perceived as a threat. The postponement of policy adjustment and the conceptual clash around the terms food and nutrition security, food sovereignty that took place during the Peace Agreement 2016 negotiations and that still exists within the public institutions are hints of this association.

The Colombian legal machinery for protecting the right to food cannot materialize into practice in a context of a charity-based policy that outsources the delivery of food, health,

and education. Right to food legal protections come from the logic of a social state under the rule of law, as defined by article 1 of the Colombian Political Constitution (1991). Such logic understands food and other economic, social, cultural rights as a responsibility of the state. Consequently, it is not compatible with an interpretation of food as a marketable good or a service that the government can delegate to third parties in exchange for payment. The outsourcing of aid programs puts market principles before human rights principles, thus hindering the implementation of the existing legal tools.

After economic liberalization, Colombia has focused on increasing food availability without understanding food as a process and the right to food as the right to that process. As a result, the state has attempted to expand the amount of food available via extensive food production, increased imports, and public purchases to big manufacturers. Although these actions may increase the availability dimension of food security, they simultaneously endanger the other dimensions (access, biological utilization, and stability over time) due to environmental damage and the deterioration of multiple small economies.

The efforts to mitigate and solve hunger are disarticulated. The study found broad consensus among the interviewees that there is no synergy between the actions of the local government, the international cooperation agencies, the academia, the civil society, the industry, the financial and legal sectors. Therefore, many actions are repeated, or the same territories keep receiving the same programs while others are neglected. Moreover, several communities and civil groups have developed solutions that prove effective but remain unknown. If these solutions were communicated, they could be scaled up through technical support from academia and financial support from diverse sectors. In this regard, the international cooperation sector might play a determinant role: it has the authority to stand in a horizontal position with the government and ask it to build, with international support, platforms of articulation between the civil society, the government, the different cooperation agencies, the academia, the health sector, the industry, the financial (traditional and social business) sector, to coordinate efforts, recognize, potentialize existent developments, and fully participate in the whole policy cycle (problem identification, design, implementation, monitoring, evaluation, re-adjustment). The international cooperation sector can also provide the



stakeholders, mainly the civil society, with education for effective participation in public life and education to enforce the right to food. Devoting to this purpose a share of the budget traditionally allocated in assistance might be more effective than solely looking after charity-based actions.

When asked to point out the major causes of child malnutrition in Colombia, most interviewed experts pointed to “corruption”. It was necessary to ask further for details about the specific forms of corruption they were referring. Similarly, political leaders of responsible institutions explain the persistence of extreme hunger in certain communities by alluding to the disappearance of public funds due to “corruption”. In those speeches, the term corruption denotes a broad array of actions. Referring those actions under the umbrella of the concept of corruption without establishing possible mechanisms or culprits gives place to an unclear imaginary. There is a risk that such imaginary becomes an excuse for political and civil inaction. Its unclearness does not allow finding the structural problems that compose it nor identifying, investigating, and punishing the perpetrators. This study concludes that speaking about corruption without identifying its forms and context is dangerous as it lends itself to impunity, postponement of solutions, and prolongation of corruption itself.

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## Annex 1: Key Nutrients for Child Cognitive Development

The following chart presents the main essential nutrients for brain and cognitive development during conception and early childhood, the effects and prevalence of their deficiency.

<b>Nutrient</b>	<b>Effects of deficiency</b>	<b>Prevalence of deficiency</b>
<b>Iron</b>	Alterations in myelination, dopamine metabolism, and energy metabolism of the hippocampus. Such alterations produce impaired memory, motor and social-emotional abilities (Lozoff, 2007) for life (Walker, et al., 2011). In most cases these consequences are not reversed by iron therapy.	Overall anemia affects 47.4% of preschool children, 25.4% of school-age children, and 41,8% of pregnant women, where the majority of cases are caused by iron deficiency (De Benoist et al., 2008). 42% of pregnant women in low and middle-income countries are anemic, and 60% among them iron deficient. It is worth noting that maternal iron deficiency is the main cause for reduced iron supply for the fetus
<b>Zinc</b>	Zinc is determinant for brain structure, functioning, and neurobehavioral development (Wesells & Brown, 2012). Its deficiency reduces cognitive and motor functioning. In animal models, the deficiencies during pregnancy and lactation caused irreversible cognitive impairment (Benton, 2010).	There is no figure for zinc deficiency, but in 2008 Maret and Sandstead calculated that the worldwide prevalence is of at least 20%. Therefore, it is inferred that fetal and early childhood deficiency are also common.
<b>Iodine</b>	Iodine deficiency is a preventable main cause for stunting, mental retardation, and derived intellectual disability. It can easily be avoided through daily fortification of salt and the daily consumption of iodinated salt. Deficiencies during pregnancy or early childhood, even if mild, can lead to lower IQ, disruptive behavior (Muela Martínez, et al., 2008; Pineda-Lucatero, et al., 2008), and substantial learning impairment (Unicef, 2019).	From 2013 to 2018 about 88% of households worldwide were consuming salt without iodine.
<b>Folate</b>	Folate is needed for neural tube and fetal brain development (Yakoob & Lo, 2017). Women of reproductive age that undergo pregnancies with folate deficiency, develop anemia, peripheral neuropathy (Greenberg, et al., 2011), and the fetus can present neural tube defects that alter brain	Defects in the neural tube affect about 260,100 pregnancies every year and remain to be a major congenital burden although folate deficiency is avoidable with low-cost supplementation during the first trimester of pregnancy. These supplements are

Nutrient	Effects of deficiency	Prevalence of deficiency
	and cause bifidum spine, producing either premature death or irretrievable disability. Deficiency prevalence is superior (>20%) in several low-income countries than in most high-income countries (>5%) (Rogers, et al., 2018).	nowadays available for most prenatal healthcare programs. (Popa, et al., 2013).
<b>Vitamin D</b>	Deficiency of vitamin D during early childhood might cause neurodevelopment and neurofunction problems with permanent consequences (Anjum et al., 2018).	Although there are no figures of global prevalence, the deficiency of vitamin D is currently regarded as a global epidemic. Yet, the problem could be easily prevented through education on adequate sun exposure and proper supplementation. For deficiency prevention, 400 IU is the daily recommendation for infants and children with inadequate sun exposure. For adults with inadequate sun exposure, it goes from 400 to 600 IU daily. In an established deficiency, the maintenance dosage ranges from 800 to 1,000 IU per day (Ghetu, Bordelon, & Langan, 2009).
<b>Omega-3 long-chain polyunsaturated fatty acids (ω-3 LCPUFA) -EPA, DHA</b>	Essential for the development of vision and the central nervous system. Adequate intake during pregnancy and early childhood, especially the first 1000 days of life, has been found associated to increased visual capacity, improved performance in different parameters of cognitive function, immune response, and better regulation of blood pressure and prevention of related cardiovascular disease (González & Baez, 2017; Mejía 2021). Low levels of ω-3 LCPUFA have been found in minors diagnosed with depression, schizophrenia, dyslexia, and hyperactivity. in children with dyslexia, hyperactivity, depression and schizophrenia (Neggers et al., 2009). There is strong evidence of correlation between DHA plasma levels in lactating mothers and higher attention and memory performance in children. (Cheatha et al., 2015; Mejía, 2021).	No data on ω-3 LCPUFA early childhood or global deficiency was found. Yet, a global survey by Stark et al., 2016), allowed to calculate that low and very low blood levels at different ages are widespread globally. Most population is at risk of ω-3-LCPUFA deficiency because natural sources of the EPA and DHA forms of omega 3 are few and of difficult access to many communities: trout, salmon, tuna, sardines, seabass, mussels, oysters, cod, seaweed, algae, fish eggs, snow crab, herring, clams. The only plant-based sources of DHA and EPA are seaweed and algae (i.e., Clorella, spirulina, nori). Other omega 3 plant-based foods, only provide ALA fatty acid (i.e., seeds and nuts), are source of ALA fatty acid but not DHA and EPA. Therefore, supplementation of DHA and EPA is recommendable during pregnancy and the first 1000 days of life (Olsen, 2020; Mejía, 2021).

## **Annex 2: List of Interviewed Experts with Profile Description**

1. Cesar Augusto Molina (interviewed on June 23, 2021): Lawyer, a specialist in Administrative Law, and Master in Landscape Design. Professor and Coordinator of the Legal Clinic of Public Interest at the Pontifical Bolivarian University, Medellin. Researcher in constitutional law, administrative law, urban law, and landscaping. Member of the Observatory of the Right to Food in Latin America and the Caribbean (ODA LAC).
2. Jhon Jairo Bejarano (interviewed on June 23, 2021): Dietitian Nutritionist, expert on food services for food and nutrition security programs. Professor, Academic Coordinator of the Nutrition and Dietetics Career, and Director of the Food and Human Nutrition Program at the Faculty of Medicine of the National University of Colombia.
3. María Teresa Quintero Morales (interviewed on June 26, 2021): Dietitian Nutritionist with experience in childhood public policies, nutritional recovery strategies, food and nutrition public programs (MANA, Buen Comienzo Medellín, Buen Comienzo Antioquia). Her master's thesis focused on evaluating the Buen Comienzo program in Medellín. Quintero works as a Researcher and Professor of the Food and Nutritional Planning course at the University of Antioquia. The course concerns the management of public policies.
4. Carolina Santos (interviewed on June 28, 2021): Dietitian Nutritionist, expert on food security public policy and international cooperation. Santos clarifies that her views during the interview are personal and do not represent the perspective of FAO, the agency where she works.
5. 'B' (anonymous) (interviewed on July 2, 2021): Dietitian Nutritionist, Specialist in Food Management and certified in Food Regulation. Representative of an academic association.



6. Nestor Mendieta (interviewed on July 2, 2021): social entrepreneur, founder, and coordinator of the food and nutritional security area of OBUSINGA, a social organization dedicated to innovation processes aimed at finding a socially, politically, and environmentally sustainable response to the problems of chronic hunger in Colombia and its different regions. OBUSINGA has designed participatory food security solutions contextualized to the territories. The organization has developed the tool 'food geopolitics' in Colombia and a famous sustainable social business strategy, called '10,000 Sustainable Farms', which works directly with peasants and their families. OSUSINGA works mainly with the communities and sometimes with public institutions, accompanying the design of food and nutrition security and sustainability plans.
7. 'G' (anonymous) (interviewed on July 1, 2021): G is a food security, public health nutrition expert who works for an international organization. The organization researches and advocates protecting the right to food and intersectional human rights, empowering rural communities, and holding governments and corporations accountable. G has experience in food and nutrition public policymaking and implementation as well as research on the link right to food and peace agreements.
8. Mylene Rodríguez (interviewed on July 2, 2021): representative of the Metropolitan University at CISAN (Colombian Intersectoral Commission on Food and Nutrition Security). Professor and Researcher at the Metropolitan University. Rodríguez has a B.Sc Nutrition and Dietetics and a Master in Health Management, with emphasis on education. Rodríguez has experience in planning, social management, delivery of nutrition, education, physical training services, and public program evaluation. Rodríguez was part of the Food and Nutrition Security Committee of Caldas and Manizales and participated in the formulation of the Food and Nutrition Security Policy for Manizales and in the Food and Nutrition Security Plan of Caldas. She also worked in food services and public health at the governorate of Caldas, and the Family Compensation Fund.

9. Jhon Libardo Guerra Morales (interviewed on July 3, 2021): Delegate of ACOFANUD in CISAN, researcher, and university professor. RDN, Master in public policy. Guerra has experience in Food and Nutrition Security policy and intervention projects in malnutrition. He contributed to assessing the Food and Nutritional Security Plan of the Government of Antioquia 2020-2030.
10. Carolina Montejo (interviewed on July 5, 2021): Dietitian Nutritionist with experience in Public Health Nutrition, particularly with early-childhood nutrition programs and in the food industry. She currently works for the Secretary of Social Integration of Bogotá, D.C., and the Colombian Institute of Family Welfare.
11. Daniela Idárraga (interviewed on July 6, 2021): Dietitian Nutritionist, Master in Public health, sustainable food system, and circular economy, working at FAO Colombia
12. Santiago Mazo (interviewed on July 6, 2021): Dietitian Nutritionist, expert in food and nutrition public policy and work in territories. Master in Epidemiology, Specialist in Gastroenterology and Pediatric Nutrition, working at FAO Colombia
13. Sandra Lucía Restrepo (interviewed on July 8, 2021): Dietitian Nutritionist, Master in Collective Health, Specialist in Maternal and child nutrition coordinator of the research group on food and human nutrition at the University of Antioquia. The group has strong lines of research in micronutrients and food, a human lifecycle line with a sub-line of maternal-infant nutrition. Sandra is also an associate professor of graduate and postgraduate studies at the Nutrition and Dietetics School of the University of Antioquia, Colombia. Her main area is mother and child nutrition, in which she has developed research and intervention projects in the institutional, local and departmental fields. Her projects have shed light on the nutritional situation of pregnant women and have contributed to developing targeted interventions. Restrepo has participated as a speaker in national and international events and has several scientific publications in her research area.

14. G.A (anonymous) (interviewed on July 9, 2021): nutrition expert working at Save the Children
15. Luisa Fernanda Tobar (interviewed on July 27, 2021): Dietitian Nutritionist, M. Sc. Biology, M.Sc. Community Social Psychology. Professor and researcher in public nutrition, human nutrition, communication technologies in nutrition. Director of the Nutrition and Dietetics Career at Javeriana University, Bogotá.
16. 'X' (anonymous) (interviewed on July 27, 2021): RDN, Master of Social Development, Ph.D. in Social Sciences. University professor, researcher and expert in public policy, planning and management on food and nutrition security.
17. Andrea Cornia (interviewed on July 28, 2021): expert in development economics. Former Economist at UNICEF Office of Research-Innocenti, in Florence and former Chief Economist, UNICEF, New York. Researcher and author of works in asset inequality, poverty, child well-being, transition economics, human development, institutional economics, and practical development economics.
18. Diana C. Parra (interviewed on August 2, 2021): Researcher. Post-doctorate in Nutrition and Epidemiology, Ph. D in Public Health and Social Work, M.P.H Public Health. Expert in disease control and prevention. In 2003 and 2004 worked as the Physical Activity Promoter at the Institute for Sports and Recreation, Bogotá, Colombia.

## **Annex 3: Interview Questionnaire**

### **Interview (English version)**

The purpose of this interview is to compile information that may contribute to: (i) identifying the characteristics that efficient public policies should have to best prevent malnutrition and realize the right to food in Colombian vulnerable early childhood; (ii) understanding the mechanisms that could explain the effectiveness of such policies; (iii) identifying the challenges main challenges to eradicate early malnutrition from a human rights perspective.

This interview will be used as a resource for the master's thesis of Carolina Mejía Toro, a Master's candidate in Human Rights and Government, Università degli Studi di Padova.

### **Questionnaire:**

**Profile of the expert:** \_\_\_\_\_

1. Do you consider that the high prevalence of childhood malnutrition in Colombia is associated to difficulties in the enforceability of the right to food?
2. Do you believe that food and childhood nutrition policies in Colombia are built through an approach that includes all stakeholders and civil society in the development of knowledge and solutions?
3. What are the current challenges to overcome malnutrition in vulnerable early childhood in Colombia?
6. How should a public policy be to efficiently tackle early malnutrition and progressively attain full observance of the right to food of Colombian early childhood?
7. Do you consider that there are specific vulnerabilities for certain groups of children? For example, differences between boys and girls, differences in family income, migrants, ethnicity.
8. How can international organizations better support civil society and local institutions to eradicate early childhood malnutrition, protect and fulfil their right to food?

## Annex 4: Informed Consent Form (Spanish version)



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### Formulario de consentimiento informado

Título del estudio “POLICY SOLUTIONS TO REALIZE THE RIGHT TO FOOD OF CHILDREN IN COLOMBIA: AN INTEGRATIVE APPROACH”

1.	<p>Acepto participar en el proyecto de investigación de la Universidad de Padova arriba mencionado. Me han explicado el proyecto y he leído la hoja de información para los participantes la cual puedo conservar para mis archivos.</p> <p>Entiendo que esto implicará: ser entrevistado por el investigador, permitir que la entrevista sea grabada en audio, que se utilice un ordenador para leer y aprobar la transcripción de mi entrevista.</p>	
2.	<p>Esta información será conservada y procesada con el siguiente propósito: escribir y discutir la tesis de Maestría, así como en la futura publicación de la tesis o de parte de ella.</p> <p>Entiendo que se me entregará una transcripción de los datos que me conciernen para mi aprobación antes de que se incluyan en la redacción de la investigación.</p> <p>Entiendo que he dado mi aprobación para que mi nombre y el nombre de mi lugar de trabajo y el papel que desempeño en él se utilicen en el informe final de la tesis, y en futuras publicaciones.</p> <p>Entiendo que, si lo solicito, mi contribución será anónima y sólo se hará referencia al nombre del lugar de trabajo y/o a la función que desempeño (o he desempeñado) en él.</p>	
3.	<p>Entiendo que mi participación es voluntaria, que puedo optar por no participar en parte o en la totalidad del proyecto, y que puedo retirarme en cualquier fase del proceso sin ser penalizado o perjudicado de ninguna manera.</p>	
4.	<p>Acepto que la Universidad de Padova registre y procese esta información sobre mí. Entiendo que esta información se utilizará únicamente para los fines establecidos en esta declaración y mi consentimiento está condicionado a que la Universidad cumpla con sus deberes y obligaciones en virtud de la Ley de Protección de Datos de 1998.</p>	
5.	<p>Estoy de acuerdo en participar en esta entrevista.</p>	

Nombre del Participante

Firma

Fecha

**Una vez completado, 1 copia para el participante y 1 copia para el archivo del investigador.**

## Annex 5: Informed Consent Form (English version)



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### ***Informed consent form***

Title of Study: “POLICY SOLUTIONS TO REALIZE THE RIGHT TO FOOD OF CHILDREN IN COLOMBIA: AN INTEGRATIVE APPROACH”

1.	<p>I agree to take part in the above University of Padova research project. I have had the project explained to me, and I have read the participant information sheet, which I may keep for my records.</p> <p>I understand this will involve: be interviewed by the researcher, allow the interview to be audio taped, use a computer to read and approve the transcript of my interview.</p>	
2.	<p>This information will be held and processed for the following purpose: write and discuss a master’s degree Dissertation as well as in the prospective publication of the dissertation or of part of it.</p> <p>I understand that I will be given a transcript of data concerning me for my approval before it is included in the write-up of the research.</p> <p>I understand that I have given approval for my name and for the name of my workplace and for the role I play in it to be used in the final report of the project, and future publications.</p> <p>I understand that if I request it, my contribution will be anonymous and referred to only with the name of the workplace and if approved by myself, with the role I play (or I have played) in it.</p>	
3.	<p>I understand that my participation is voluntary, that I can choose not to participate in part or all of the project, and that I can withdraw at any stage of the project without being penalized or disadvantaged in any way.</p>	
4.	<p>I agree to University of Padova recording and processing this information about me. I understand that this information will be used only for the purpose(s) set out in this statement and my consent is conditional on the University complying with its duties and obligations under the Data Protection Act 1998.</p>	
5.	<p>I agree to take part in the above study.</p>	

\_\_\_\_\_

Name of Participant
Signature
Date

**When completed, 1 copy for participant; 1 copy for researcher file.**