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**Master's degree in  
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**THE RIGHT TO FOOD: FROM LAW TO  
PRACTICE**

**LESSONS FROM THE NEPALESE EXPERIENCE  
2007-2016.**

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## **Abstract**

This dissertation focuses on the situation of the right to adequate food in Nepal. The starting point are the constitutional recognition of the right to food sovereignty in this country's Interim Constitution of 2007, and the inclusion of the rights to food, food security and food sovereignty in the 2015 Constitution of the Republic of Nepal. The general objective is to describe and assess the relevance and limits of the legal recognition of this right in this country. In order to do so the dissertation is structured around the identification of structural, process, and outcome indicators that allow for the description of the legal and institutional framework for the right to food in this country; for the identification of steps taken towards the realization of this right; and finally for the analysis of changes in the right to food situation during the analyzed time period.

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## ACRONYMS

ADS	Agricultural Development Strategy
ADSA	Average Dietary Energy Supply Adequacy
AI	Amnesty International
CEDAW	Convention Against All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CPN-UML	Communist Party of Nepal – Unified Marxist Leninist
CRC	Convention on the Rights of the Child
DES	Dietary Energy Supply
ECSR	Economic, Social and Cultural Rights
FAO	Food and Agriculture Organization of the United Nations
FIAN	Food and Information Action First Network
FNSP	Food and Nutrition Security Plan
GDP	Gross Domestic Product
GHI	Global Hunger Index
GNI	Global National Income
GoN	Government of Nepal
HDI	Human Development Index
HRW	Human Rights Watch
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute
IGWG	Intergovernmental Working Group
IMF	International Monetary Fund
MDG	Millennium Development Goals
MOAD	Ministry of Agricultural Development
MPI	Multi-dimensional Poverty Index
MPRF-D	Madhesi People’s Rights Forum-Democratic
NAFSP	Agriculture and Food Security Project
NC	Nepalese Congress

NEKSAP	Nepal Food Security Monitoring System
NGO	Non-Governmental Organizations
NHRC	National Human Rights Commission
NHRI	National Human Rights Institutions
NPC	National Planning Commission
RRN	Rural Reconstruction Nepal
UCPN-Maoist	United Communist Party of Nepal-Maoist
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Program
UNHCR	United Nations Human Rights Council
UNICEF	United Nations International Children's Emergency Fund
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
UPR	Universal Periodic Review
USAID	United States Agency for International Development
WB	World Bank
WFP	World Food Program
WFS	World Food Summit
WTO	World Trade Organization

## Chapter I – Introduction

### 1. Research objectives

The idea of food as a human right is in no way a new concept. Its origins go back to the Universal Declaration of Human Rights (UDHR) and it has been reinstated in some of the core human rights treaties. Nevertheless, ensuring the enjoyment of this right by all individuals remains a complex matter, particularly because having “physical and economic access at all times to adequate food and means for its procurement”<sup>1</sup> is interconnected with the effective enjoyment of a series of related rights (the right to water; the right to property and access to land and productive resources; the right to health and access to basic health care; the right to work and to a fair remuneration). This complexity becomes even greater in the context of the least developed countries where large portions of the population lack satisfaction of their most basic needs.

This dissertation focuses on the situation of the right to food in Nepal. The aim is to describe and assess the relevance and limits of the legal recognition of this right in a country where availability and accessibility to adequate food constitutes a severe problem to a large part of the population. In other words, the goal is to understand if the institutionalization of this right in legal instruments has consequences for its effective implementation, and if it contributes in securing the enjoyment of the right to adequate food for the Nepalese population. The starting point for this research is the constitutional recognition of the right to food sovereignty in this country’s 2007 Interim Constitution (which has been interpreted as an *explicit* form of recognition of the right to food), and the inclusion of the rights to food, food security and food sovereignty in the 2015 Constitution of the Republic of Nepal.

The questions motivating my research were the following:

- How does the conceptual “institutionalization” of the right to food contribute to its effectiveness?
- What are the advantages of a rights-based approach to food security?

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<sup>1</sup> CESCR, General Comment No. 12, Paragraph 6.

- How does the State fulfill this “set of legal obligations”? What are the institutional arrangements set in motion in order to respect, protect and fulfill this right? Is it only a rhetorical commitment?
- Which are the stakeholders that contributed to this institutionalization? Do they mainly come from Nepal or abroad?

Keeping these interrogations in consideration, the general research objective can be stated as follows:

1. Describe and assess the relevance and limitations of including the right to food in Nepalese legislation in the period 2007-2016

The specific objectives can in turn be formulated as the following:

1. Describe the legal and institutional framework for the right to food in Nepal.
2. Identify and assess the steps taken by the Nepalese authorities towards implementation of this right.
3. Analyze whether or not the right to food situation has changed in the selected time period.

The time period was set between 2007 and 2016 in order to allow for the observation of the process of implementation (or lack thereof) of the right to food since the passing of the Interim Constitution, and to include the most recent developments on the subject since the passing of the newest constitutional text.

## 2. Significance of the Study

Nepal is not only one of the poorest countries in the world, but its history has also been marked by almost constant political instability. Moreover, these issues are highly interrelated, as the underlying causes for the most recent civil war that affected the country have been connected to the denial of Economic, Social and Cultural Rights (ESCR), as well as to profoundly rooted inequality and discrimination in this country<sup>2</sup>. Consequently, the inclusion of ECSR in the national legal framework is relevant not only from a development perspective, but also from a political stability point of view.

Nepal’s most recent political turmoil has been in fact linked to the passing of the latest constitutional text, adopted in September 2015 amidst a climate of intense protests

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<sup>2</sup> Raju Prasad Chapagai, *Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal* (FAO 2014).

and controversy over many of its provisions. After an eight-year period during which an Interim Constitution was in place, the passing of the new document was doubtlessly significant. This is because it was the first democratically approved constitution in this country, drafted by a popularly-elected Constitutional Assembly that marked the end of a long period of disagreements between the major political parties. However, this was possible through the implementation of a fast-track procedure that eased formal requirements for the constitutional process –justified under the pretext of post-earthquake reconstruction needs-, which prompted protests from ethnic groups based in the Terai region of Western Nepal. In their opinion the new constitution’s provisions on federalism, political representation, and citizenship rights directly and negatively affected their already marginalized status<sup>3</sup>.

Nevertheless, this legal instrument text includes certain innovations in terms of constitutionalization of second and third generation rights that have been welcome by many international stakeholders. In particular, the inclusion of the right to food and the right to food sovereignty has been deemed very positive by organs such as the Food and Agriculture Organization of the United Nations (FAO). In a country where 25% of the population is below the national poverty line<sup>4</sup> and where food security and under-nutrition are a serious issue, the inclusion of a right to food and to food sovereignty in the national constitution is a relevant matter. As it was aforementioned, these rights had also been included in the 2007 Interim Constitution of Nepal, thus the issue has been in the Nepalese political agenda for a few years.

On a personal level, this dissertation was motivated by an internship partially carried out in Nepal and by subsequent research on this country’s troubled political history. The convergence of human rights and development issues become most evident when faced with the Nepalese context; this research can mark a first step towards the exploration of the processes connecting the legal and institutional framework regarding the right to food and the strategies set in motion for its realization with their subsequent outcomes. Ultimately, the research can contribute to a debate on the effectiveness and

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<sup>3</sup> Charles Haviland, ‘Why is Nepal’s new constitution controversial?’ *BBC News* (London, 19 September 2015). < <http://www.bbc.com/news/world-asia-34280015>> Accessed 5 January 2016.

<sup>4</sup> The percentage becomes higher when considering international standards for poverty and extreme poverty, as it will be exposed in Chapter V.

relevance of right-based approaches to development in the countries where they are most needed.

### 3. Research Design and Methodology

As it can be inferred from the research objective, case study analysis was the chosen approach for this dissertation. This method involves a detailed investigation of the research objective, and while generally considered a qualitative method<sup>5</sup>, it was decided to follow a mixed social research approach to case study analysis, based on a combination of quantitative and qualitative techniques. Qualitative analysis techniques were useful as they provided an insightful approach to the legal and institutional framework, its potential and limitations, and its relevance within the Nepalese context. Quantitative techniques in turn are of value when analyzing the processes of implementation of the right to food and the outcomes of state action in this sense, as they provide an overview of the weight and impact of these measures. Moreover, single case study was deemed appropriate as the intention was not to produce a representative model of right to food laws' implementation around the world, but rather to focus more in depth in how this process has been shaped specifically in Nepal and to what results it has arrived.

Both primary and secondary sources were used during the research activities. Among the former: both Nepalese and international legislation; Nepalese policy documents and strategies; both national statistics and those produced by international organizations; and meetings, interviews and e-mail exchanges with key informants were fundamental for carrying out this research. Secondary sources included reports and papers elaborated principally by the FAO, the Food and Information First Action Network (FIAN), and the International Food Policy Research Institute (IFPRI).

In order to produce a systematic and organized analysis, it was decided to take advantage of a combination of the right to food monitoring framework elaborated by the FAO and indicators proposed by the IBSA Procedure. The latter was a collaborative project between FIAN International, the University of Mannheim and the German Ministry of Consumer Protection, Food and Agriculture carried out in between 2004

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<sup>5</sup> David E. McNabb, *Case Research in Public Management* (Routledge 2010).

and 2009. The aim of this project was to institutionalize human rights indicators to be used in state reporting before the Committee on Economic, Social and Cultural Rights (CESCR)<sup>6</sup>.

IBSA stands for Indicators, Benchmarks, Scoping and Assessment. Indicators represent the core content of the human right in question; benchmarks are target points for implementing this right; scoping implies an agreement between the Committee and the State party on the indicators and benchmarks to be monitored; and assessment implies a periodic review of results<sup>7</sup>.

### *3.1 Human Rights Indicators for the Right to Food.*

Human rights indicators can be defined as “specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights”<sup>8</sup>. Indicators can be both quantitative and qualitative, and can be separated into three different categories:

1. *Structural indicators*: portray the adoption and ratification of international legal instruments, as well as the present of basic institutional mechanisms aiming at promoting and protecting human rights. They reflect state commitments towards these rights, and can detect loopholes in the legislation and policy strategies<sup>9</sup>.
2. *Process indicators*: provide a measure for the efforts made towards the conversion of human rights commitments into results, through an evaluation of the specific policies and measures adopted by the duty-bearers. They allow for monitoring the progressive realization of human rights<sup>10</sup>.

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<sup>6</sup> Eibe Riedel and others, ‘Indicators, Benchmarks, Scoping, Assessment. A Background Paper’. Friedrich Ebert Stiftung (September 2010).

<sup>7</sup> Ibid.

<sup>8</sup> United Nations Office of the High Commissioner on Human Rights (UNOHCHR), *Human Rights Indicators. A guide to Measurement and Implementation* (United Nations 2012) 16.

<sup>9</sup> Food and Agriculture Organization of the United Nations (FAO) *Procedures for Monitoring the Right to Food* (FAO 2014).

<sup>10</sup> Ibid.

3. *Outcome indicators*: reflect individual and collective achievements and thus portray the level of human rights implementation. They reflect the impact of structural and process indicators, and thus provide information on the state of realization of the right in question<sup>11</sup>.

Each category of human rights indicators relates directly to our specific research objectives; hence they provide a useful tool for approaching the general research objective (“describe and assess the relevance and limitations of including the right to food in Nepalese legislation in the period 2007-2016”) in a systematic and orderly manner. The correlation between the specific research objectives and the category of indicators is elucidated in Table 1:

**Table 1**

<b>Specific Research Objective</b>	<b>Indicator Category</b>
1. Describe the legal and institutional framework for the right to food in Nepal.	Structural Indicators
2. Identify and assess the steps taken by the Nepalese authorities towards implementation of this right.	Process Indicators
3. Analyze whether or not the right to food situation has changed in the selected time period.	Outcome Indicators

Source: Author

The IBSA Project developed 25 indicators focusing specifically on monitoring the right to food and tested them in 3 countries (Spain, Ghana and Colombia)<sup>12</sup>. Moreover, the work of the FAO in Nepal produced a set of structural, process and outcome indicators designed specifically for monitoring ECSR in this country<sup>13</sup>. While based on the IBSA model, this list provides a more extensive list of indicators that was designed to fit the Nepalese context, and thus proves to be useful for the purposes of this

<sup>11</sup> Ibid.

<sup>12</sup> See Annex 1 for the full list of indicators developed by the IBSA Project.

<sup>13</sup> See Annex 2 for the full list of indicators for monitoring Economic, Social and Cultural Rights in Nepal.

research. The indicators for this dissertation were selected on the basis of the information that was expected to be available and in view of achieving the general research objective. While the large majority of them were selected from those proposed by the IBSA Project and the FAO, others were selected independently as they would provide insight into relevant dimensions of the right to food (indicators related to the use of land and land ownership in particular). Table 2 lists the chosen indicators according to each specific research objective and indicator category:

Table 2

Specific Research Objective	Category	Indicators	
1. Describe the legal and institutional framework for the right to food in Nepal.	Structural Indicators	Legal recognition of the right to adequate food and related rights engaged in ECSR	
		Existence of a national independent human rights institution.	
		National strategy on implementing the right to food	
2. Identify and assess the steps taken by the Nepalese authorities towards implementation of this right.	Process Indicators	Coverage of feeding programs for the most marginalized and disadvantaged groups	
		Agricultural and arable land	
		Percentage of households with land	
		Average size of agricultural land	
		Percentage of irrigated land	
3. Analyze whether or not the right to food situation has changed in the selected time period.	Outcome Indicators	State's capital expenditure in agriculture	
		Prevalence of undernourishment	
		Prevalence of underweight, stunting and wasting in children under 5	
		Proportion of population with access to improved sanitation and to an improved water source	
		Proportion of population living in poverty and extreme poverty	
		Food supply indicators	Dietary Energy Supply and Dietary Energy Supply Adequacy
			Food production indexes
			Food imports

Source: Author

#### 4. Limitations of this study

This dissertation was faced with some important limitations, which could be broadly stated to be a consequence of information availability, accessibility to key informants and their testimonies, and geographical distance between the researcher and the research object.

Firstly, while Nepalese legislation is generally available online and translated into the English language, documents produced by civil society and Non-Governmental Organizations (NGO) that would have proven to be very useful for this research were only available in Nepalese language. Moreover, while national and international statistics were easily available, access to disaggregated information was difficult; disaggregation is extremely important for assessing human rights situations as it provides an overview of the most vulnerable social groups.

Secondly, contacting key informants proved to be challenging, as many organizations did not respond to e-mail inquiries about interviewing. Nevertheless, it is important to mention that this research counted with some significant input from a few relevant stakeholders. In September 2015 student participants to the Microfinance in Action Project (myself included)<sup>14</sup> visited the offices of FAO Nepal where they were briefed on the situation of the right to food in this country by Mr. Shrawan Adhikary (a Programme Officer) and Ms. Indira Maya Shankar (a National Consultant on the right to food). In April and May 2016 Mr. Adhikary responded to several e-mail consultations from my part on the matter, and Ms. Shankar kindly agreed to be interviewed through Skype, as well as responding to follow-up questions via e-mail. Moreover, Ms. Yogita Rai (the Program Manager for the NGO Rural Reconstruction Nepal, member of the Secretariat of the National Network on the Right to Food Nepal, and board member for FIAN Nepal) was also interviewed through Skype. Lastly, Ansu Tumbahangfe, an independent consultant was also interviewed in order to clarify some data on food assistance programs in Nepal. Their testimonies were a fundamental input for this dissertation.

The greatest limitation was without doubt the geographical distance to the research object. Field work would have been an important asset for this Dissertation as

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<sup>14</sup> Organized by the Human Rights Centre of the University of Padua and Apex College in Kathmandu

it could have provided access to other relevant informants and possibly to significant data regarding results.

## 5. Structure of the dissertation

The dissertation is composed of six chapters, including this introduction. Chapter II presents the literature review and conceptual framework of this research. Firstly, it provides a framework of the existing literature that aims at contextualizing the issue of hunger in the contemporary world. Secondly, the focus is placed on the differences between the concepts of the right to food, food security and food sovereignty. Thirdly, the attention is fully placed on the definition of the right to food, its components and state obligations regarding this right. Lastly, an overview of the international instruments regarding the right to food is provided.

Chapter III introduces the Nepalese context by elucidating certain facts about this country's economy and its highly complex social and political background. Firstly, I expose a few of basic facts about the Republic of Nepal and its economic situation. Secondly, I focus on this nation's complexity in terms of social, religious and ethnic differences. Finally, an outline of the intricacies of Nepalese political history is presented, placing special emphasis on the most recent constitutional process.

In Chapter IV, the focus is shifted towards structural indicators, particularly on the legal, policy and institutional framework for the right to food in Nepal. Firstly, the legal framework for the right to food in Nepal is presented, from the adoption of international treaties, to constitutional provisions and jurisprudence. Secondly, the attention is placed on policies and strategies that have been proposed in order to advance this right. Thirdly, reference is made to the role of the National Human Rights Commission. Finally, the chosen structural indicators proposed by the IBSA project for this particular case are identified.

Chapter V is centered on implementation and impact of the right to food in Nepal. For this purpose, I first focus on the analysis of the selected process indicators that reflect the actions taken by the Nepalese state so as to advance this right. Secondly, outcome indicators are presented. These allow for witnessing changes in the right to food situation, through individualizing certain aspects that are fundamental for the

realization of this right. Lastly, I summarize the strengths and weaknesses of the situation of the right to food in this country.

Finally, on Chapter VI the main conclusions for this dissertation are presented.

## Chapter II - Literature Review and Conceptual Framework

### 1. Introduction

This Chapter presents relevant theoretical and legal definitions regarding the right to food. Firstly, through a brief literature review, the context in which right to food studies are to be framed is presented. Secondly, the center is shifted to clarifying the differences between this concept and those of food security and food sovereignty. Thirdly, the focus is specifically placed on the right to food's concept, its components, and the corresponding state obligations. Finally, a review of international instruments regarding the right to food is provided, including treaties, declarations, as well as tools elaborated by the FAO; particular attention is also dedicated to the work of the Special Rapporteur on the Right to Food.

### 2. Framing the Issue: understanding hunger in the contemporary world

The first of the Millennium Development Goals (MDG) aimed at eradicating extreme poverty and hunger. MDG 1 comprised two targets: the first one was to halve between 1990-2015 the percentage of people living on less than one US dollar per day, while the second was to reduce by fifty per cent the proportion of people suffering from hunger<sup>15</sup>. The indicators to measure this last objective were to be provided by the percentage of underweight children under the age of five, and by the percentage of the population below the minimum level of dietary energy consumption<sup>16</sup>. A decade and a half later from the Millennium Declaration, the Food and Agriculture Organization of the United Nations' The State of Food Insecurity in the World (SOFI) report from 2015 stated that 795 million suffered from under-nourishment globally<sup>17</sup>. In percentual terms, this meant that the proportion of undernourished people had been reduced from 18.6% in 1990-1992 to 10.9% according to the provisional estimates for the 2014-2016 period<sup>18</sup>, thus being close to achieving MDG 1. The United Nations Development

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<sup>15</sup> UN Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals. Overview.* (2005).

<sup>16</sup> *Ibid.*

<sup>17</sup> FAO, *The state of food insecurity in the world. Meeting the 2015 international hunger targets: Taking stock of uneven progress'* (2015).

<sup>18</sup> *Ibid.*

Program's (UNDP) 2015 report on the progress of the Millennium Development Goals shared this achievement, adding that the proportion of underweight children under the age of five had been reduced from one in four to one in seven<sup>19</sup>.

Nevertheless, UNDP also highlighted the regional differences in the achievement of this goal. In particular, hunger prevalence reduction has been two slow to reach the MDG 1 in regions like the Caribbean, Southern Asia, and Sub-Saharan Africa. Southern Asian countries, in particular, showed the highest hunger burden, with 281 million undernourished people<sup>20</sup>. The FAO's report, on the other hand, highlighted the fact that certain factors, such as inequality and political instability, obstructed progress in regions such as Central Africa and Western Asia<sup>21</sup>. Furthermore, the MDG 1 was neither the first nor the only target concerning hunger reduction that members of the UN had set themselves to meet by 2015. During the World Food Summit (WFS) in 1996, country representatives of 182 states committed themselves to reducing the number of undernourished people by half. This would have meant to bring down the number of people suffering from undernourishment to about 515 million people<sup>22</sup>. While population growth must be considered in order to qualify these results, the data shows that the goal has not been met.

Moreover, this set of data evidences that regardless of the progress made, access and availability of food continues to be a relevant problem for a significant part of the world's population. Consequently, the issues of production, distribution and consumption of food have received significant attention from various disciplines; this can be evidenced, for example, from extensive literature on agri-food studies, the right to food, and food sovereignty.

Food regimes theory provides a rich conceptual background to contextualize the issue of food accessibility and the right to food in the global economic system. In their groundbreaking article "Agriculture and the state system. The rise and decline of national agricultures, 1870 to the present", Harriet Friedmann and Philip McMichael provide a historical analysis of the agrarian question, through an examination of the role

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<sup>19</sup> United Nations Development Program (UNDP), *The Millennium Development Goals Report 2015* (2015).

<sup>20</sup> Ibid.

<sup>21</sup> FAO (n 17).

<sup>22</sup> Ibid.

of agriculture in the development of capitalism and in the trajectory of the state system<sup>23</sup>. Food regimes can be defined as “stable periodic arrangements in the production and circulation of food on a world scale, associated with various forms of hegemony in the world economy: British, American, and corporate/neoliberal”<sup>24</sup>. In other words, the processes of production, distribution and consumption of food experience change in each regime in order to advance the power of the hegemonic power<sup>25</sup>. The relevance of this category is derived from the fact that each food regime

influences what individual farmers produce and how much they earn, the class structures in which they exist, the international division of labour in the world’s food production, the flow of agricultural trade and hence what people around the world eat. Food regimes, then, shape the world economy so as to determine not only what will be produced and where it will go, but also who will profit from agriculture and who will be vulnerable to food crises.<sup>26</sup>

Two aspects become key to characterize and differentiate food regimes: the degree of state intervention in the market and the direction of trade flows<sup>27</sup>. Using these parameters as a reference, the first food regime under Great Britain’s hegemonic power (1870-1914) was based upon free market relations that allowed for European economies to import wheat and meat from settler states and export manufactured goods, capital and labor to these economies<sup>28</sup>. According to Friedmann and McMichael this configuration was the fundamental basis for the later creation of a post-colonial system of independent states. The second food regime (1947-1973), on the other hand, is defined by the United States’ hegemony and by an extensive state control of the economy, particularly in the form of subsidies and production controls<sup>29</sup>. Moreover, the direction of the flow of agricultural trade shifted, now flowing from core to periphery<sup>30</sup>. Briefly, “the essence of

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<sup>23</sup> Harriet Friedmann and Philipp McMichael, 'Agriculture and the state system: The rise and decline of national agricultures, 1870 to the present' (1989) 29(2) *Sociologia ruralis* 93.

<sup>24</sup> Philip McMichael 'A food regime analysis of the 'world food crisis'' (2009) 26(4) *Agriculture and Human Values* 281, 1.

<sup>25</sup> Charles R.P Pouncy, 'Food, Globalism and Theory: Marxian and Institutionalist Insights into the Global Food System' (2011) 43(1) *The University of Miami Inter-American Law Review* 89.

<sup>26</sup> Bill Winders, 'The vanishing free market: The formation and spread of the British and US food regimes' (2009) 9(3) *Journal of Agrarian Change* 315, 316.

<sup>27</sup> *Ibid.*

<sup>28</sup> Friedmann and McMichael (n 23).

<sup>29</sup> Winders (n 26).

<sup>30</sup> *Ibid.*

the US food regime, then, was a system of trade protections and farm subsidies that resulted in agricultural surpluses, which were dumped in the periphery as food aid”<sup>31</sup>.

The ‘corporate food regime’ is different as it is not organized around the hegemonic power of a particular state, but purely around the market<sup>32</sup> and the interests of transnational agribusinesses and financial stakeholders such as hedge-funds<sup>33</sup>: “finance capital has emerged as an independent player in the processes of food production, distribution and consumption”<sup>34</sup>, at the expense of smallholder agriculture and local economies<sup>35</sup>. Capitalism’s long term dependency on fossil fuels promoted the proliferation of agro fuels, which in turn provoked the increase in price of agricultural products or ‘agflation’<sup>36</sup> thus hindering the accessibility to food of a large part of the world’s population, as it became evident during the 2007-2008 food crisis<sup>37</sup>. According to McMichael, food crisis are endemic in the corporate food regime.

Access to food, in other words, is not merely about the availability of supply, but rather about the configuration of the system that conditions the distribution of supply, and the interests of the stakeholders in control of this system: “the growing power of capital to organize and reorganize agriculture undercuts state policies directing agriculture to national ends, such as food security, articulated development and the preservation of rural/peasant communities”<sup>38</sup>.

From a different perspective, one that’s centered around individual access to food, Amartya Sen puts forward a similar idea by stating that “starvation is the characteristic of some people not having enough food to eat. It is not the characteristic of there being not enough food to eat”<sup>39</sup>. His ‘entitlement approach’ to starvation links

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<sup>31</sup> Ibid 319. The ‘Food for Peace’ Program administered by the United States Agency for International Development (USAID) is a case in point because of its detrimental effects on recipient countries. James Bovard ‘How Food For Peace Hurts Foreign Farmers’, *The Wall Street Journal* (New York, April 29 2013) <<http://www.wsj.com/articles/SB10001424127887324482504578452751341751038>> Accessed April 22 2016).

<sup>32</sup> McMichael (24)

<sup>33</sup> Pouncy (n 25)

<sup>34</sup> Ibid 100.

<sup>35</sup> McMichael (n 24).

<sup>36</sup> Ibid.

<sup>37</sup> ‘Cheap No More’, *The Economist* (6 December 2007) <<http://www.economist.com/node/10250420>> Accessed 22 April 2016.

<sup>38</sup> Friedmann and McMichael (n23) 95.

<sup>39</sup> Amartya Sen, *Poverty and famines: an essay on entitlement and deprivation* (Oxford University Press 1981) 1.

access to food in terms of ‘ownership’ to certain legitimacy rules<sup>40</sup>. Sen understands that starvation is to be analyzed as a question of entitlements, and not as a matter of food availability; so the most important issue is to detect the determinants of the distribution of supply<sup>41</sup>. The ‘entitlement’ of each person is composed of a set of ‘alternative commodity bundles’ that can be acquired by means of the legal channels of acquisition that are available to them<sup>42</sup>. In a market economy, the ‘entitlement set’ of each individual will be determined by his ‘endowment’ (or original ownership bundle) and the various alternative bundles that he or she is able to acquire through trade and production<sup>43</sup>. If this entitlement set does not provide for adequate amounts of food, the person will starve, thus making starvation a matter of ‘entitlement failure’ that can be attributed to a wide range of economic shifts<sup>44</sup>

The notion of entitlements is complemented in Sen’s theory by that of ‘capabilities’. Understood as a concept that goes beyond that of ‘living standards’<sup>45</sup>, capabilities are defined as “the opportunity to achieve valuable combinations of human functionings — what a person is able to do or be”<sup>46</sup> placing the focus on people’s ability to do the things they *value* doing<sup>47</sup>. Thus, capabilities are understood as the alternatives that people are able to achieve given their social, economic and personal characteristics<sup>48</sup>. The concept acquires interest in relation to the right to food as in this theoretical framework public action is to be directed towards enhancing human capabilities, “from such elementary capabilities as the ability to avoid undernourishment and related morbidity and mortality, to more sophisticated social capabilities such as taking part in the life of the community and achieving self-respect”<sup>49</sup>.

Amartya Sen’s theory is found to be relevant to this study given his extensive work and influence within the UN system. The capabilities approach in particular gained importance in the UN’s Human Development Reports as a dimension for

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<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Jean Dreze and Amartya Sen *Hunger and public action* (Oxford Clarendon 1991).

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Amartya Sen, ‘Human Rights and Capabilities’ (2005) 6 (2) *Journal of Human Development* 153.

<sup>47</sup> Ibid.

<sup>48</sup> Dreze and Sen (n 42)

<sup>49</sup> Ibid 12.

measuring human well-being<sup>50</sup>. Moreover, his entitlement perspective is featured in documents on the right to food, such as former Special Rapporteur on the Right to Food Oliver De Schutter's briefing note entitled "Countries tackling hunger with a right to food approach". De Schutter further emphasizes that food access is not entirely dependent on food availability, and that hunger does not necessarily stem from a lack of food production: "the implication of Sen's approach is that hunger stems from disempowerment, marginalization and poverty. People are not hungry because we produce too little: they are hungry because they can't afford the food that is available on the markets or because they lack the necessary resources to produce food themselves"<sup>51</sup>.

De Schutter then states that the right to food is an appropriate instrument to combat hunger as it can direct attention to the most vulnerable sectors of the population, while ensuring that governments are subjected to accountability and forced to take action in these situations<sup>52</sup>. The contents of the right to food will be clarified in the following sections.

### 3. The right to food, Food Security and Food Sovereignty

Throughout this chapter, reference will be made to three strictly interrelated but distinctive notions: those of the right to food, food security and food sovereignty. The clarification of the similarities and differences among them becomes of the utmost importance for the purposes of this dissertation.

The right to food is the oldest concept out of the three, its origins date back to the UDHR. Its most distinctive trait stems from its legal nature: it provides for individual entitlements and corresponding state obligations<sup>53</sup> which are spelt out both in national and international legislation. It allows individuals to demand for state respect, protection and fulfillment of their right to access adequate food, and in this sense "empowers oppressed communities and individuals against the state and other powerful

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<sup>50</sup> William Schanbacher, *The politics of food: the global conflict between food security and food sovereignty* (ABC-CLIO 2010).

<sup>51</sup> Oliver De Schutter, *Countries tackling hunger with a right to food approach. Significant progress in implementing the right to food at national scale in Africa, Latin America and South Asia'* (2010) 1.

<sup>52</sup> *Ibid.*

<sup>53</sup> Michael Windfuhr and Jennie Jonsén, *Food Sovereignty. Towards democracy in localized food systems*. (ITDG Edition 2005)

actors”<sup>54</sup>. The fact that the foundations of this right can be found in some of the core human rights treaties, further strengthens its potential as a tool for the defense of individuals and communities. The notion does not encompass a particular set of policies regarding its implementation; it only emphasizes states’ legal obligation to guarantee this right, with regards to both individuals and groups<sup>55</sup>. Moreover, as Mechlem rightfully points out, its realization calls for the inclusion of basic human rights principles such as “accountability, transparency, people’s participation, the independence of the judiciary, and the rule of law”<sup>56</sup>.

Regardless of the right to food’s historical precedence, the concept of “food security” has been the most widely used one -particularly within the UN system- since its introduction in the late 1970’s<sup>57</sup>. According to Schanbacher, the development of this concept should be historically contextualized within the second food regime and in line with the growing importance of multilateral institutions such as the World Bank (WB), the International Monetary Fund (IMF), the World Trade Organization (WTO), the FAO, and the International Fund for Agricultural Development (IFAD). It first appeared as “national food security” in a 1979 FAO Conference, describing alternatives to attain improved food distribution at the national level: “these notions of food security were, at that time, concentrating on the availability of enough food supplies in national markets and based on population/food availability ratios, and lead strategically to policies for increasing production”<sup>58</sup>. Largely due to Amartya Sen’s influence, the emphasis shifted towards individual or household food security during the 1980’s<sup>59</sup>.

The most widely accepted definition of food security was drafted in the 1996 World Food Summit Plan of Action<sup>60</sup>: “food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet

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<sup>54</sup> Ibid 3.

<sup>55</sup> Karim Mechlem 'Food Security and the Right to Food in the Discourse of the United Nations' (2004) 10(5) European Law Journal 631

<sup>56</sup> Ibid 644.

<sup>57</sup> Windfuhr and Jonsén (n 53).

<sup>58</sup> Ibid 3.

<sup>59</sup> Ibid.

<sup>60</sup> Christine Kaufmann and Simone Heri, 'Liberalizing Trade in Agriculture and Food Security-Mission Impossible' (2007) 40 Vand.J.Transnat'l L. 1039.

their dietary needs and food preferences for an active and healthy life”<sup>61</sup>. For Schanbacher<sup>62</sup>, the concept of food security can be placed between developmental and neoliberal models of globalization (embodied in the work of the FAO and the IFAD, and the WB, the IMF and the WTO respectively). The common element to both policy models is “a conception that understands the human qua human as homo economicus, or the economic man”<sup>63</sup>, thus placing the focus on economic growth through market liberalization. Food is conceived merely as a commodity, and the ultimate aim of food security policies is to integrate the rural poor into the global market system<sup>64</sup>.

While some analysts conceive food security as a constitutive element of the right to adequate food<sup>65</sup>, others highlight the contrasting differences among the two of them. Windfuhr and Jonsén, for instance, underscore the lack of accountability mechanisms within the food security framework, as well as its emphasis on the aggregate level (generally taking into account global and national measures of food availability) and, most importantly, its focus on the amount of food available, rather than on the ways that food is accessed<sup>66</sup>. Likewise, Mechlem stresses the consequences that the different concepts have on monitoring procedures, as the right to food indicators require a certain level of disaggregation in order to analyze the situation of vulnerable groups and potentially discriminatory practices<sup>67</sup>. Moreover, the right to food does not only revolve around access to food, but to income or even productive resources as well<sup>68</sup>. For Ziegler and others<sup>69</sup> the right to food is a much stronger concept than food security, since it entails the element of accountability. They consider food security as a corollary of the right to food, that provides the minimum nutritional standards for food adequacy.

A common element between both conceptualizations is that they place most of their emphasis on the access to food resources, rather than to productive resources. This marks the biggest difference between these notions and the concept of “food

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<sup>61</sup> World Food Summit (WFS), *Rome Declaration on World Food Security and World Food Summit Plan of Action* (FAO 1996) 3.

<sup>62</sup> Schanbacher (n 50).

<sup>63</sup> *Ibid.* 2.

<sup>64</sup> *Ibid.*

<sup>65</sup> Kaufmann and Heri (n 60)

<sup>66</sup> Windfuhr and Jonsén (n 53).

<sup>67</sup> Mechlem (n 55).

<sup>68</sup> *Ibid.*

<sup>69</sup> Jean Ziegler and others, *The fight for the right to food: lessons learned*. (Palgrave Macmillan 2011).

sovereignty”. Food sovereignty highlights the international causes of hunger and malnutrition. It has been characterized as an “umbrella term” that proposes an alternative to the mainstream development model, a mainly political concept that aims at changing the broad paradigm of agricultural production worldwide<sup>70</sup>. The People’s Food Sovereignty Network has defined it as

the right of peoples to define their own food and agriculture; to protect and regulate domestic agricultural production and trade in order to achieve sustainable development objectives; to determine the extent to which they want to be self reliant; to restrict the dumping of products in their markets; and to provide local fisheries- based communities the priority in managing the use of and the rights to aquatic resources. Food Sovereignty does not negate trade, but rather it promotes the formulation of trade policies and practices that serve the rights of peoples to food and to safe, healthy and ecologically sustainable production.<sup>71</sup>

This definition manifests a rights-based approach in the food sovereignty model that, from the basic recognition of food as a human right, claims for peoples’ and national governments effective ability to design their own agricultural policies<sup>72</sup>. Distinctively, the promotion of food sovereignty has been largely carried out by social movements. Windfuhr and Jonsén underline that within this framework, “the rights-based language is used to support the political demands by showing that these objectives have to be implemented to fulfil rights that are considered as basic by the affected communities”<sup>73</sup>. Both the right to food and food sovereignty concepts place the focus on human dignity, the main difference is that the latter provides for a broad policy framework<sup>74</sup>.

In sum, the three concepts are interrelated in the sense that they all target the issues of food access and distribution, but while the nature of the notion of the right to food is legal, food security is to a large extent a technical concept while food

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<sup>70</sup> Windfuhr and Jonsén (n 53).

<sup>71</sup> Ibid 11.

<sup>72</sup> Schanbacher (n 50)

<sup>73</sup> Windfuhr and Jonsén (n 53) 24.

<sup>74</sup> Ibid.

sovereignty is predominantly a political notion<sup>75</sup>. The third section of this chapter deals with the right to food in greater depth.

#### 4. The Right to Food

The origins of the right to adequate food can be traced back to 1948 in the UDHR, whose article 25 Paragraph 1 states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food [...]”. This idea was later reinforced in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which is deemed to be the most relevant international codification of this right<sup>76</sup>. As a matter of fact, General Comment No. 12 by the Committee on Economic, Social and Cultural Rights elaborates upon the normative content of the right to food and the scope of state obligations in the respect, protection and fulfillment of this right. In Paragraph 4 of this General Comment, the CESCR states that the right to food is “indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights”.

The definition of the right to adequate food can be found in this same instrument, particularly in Paragraph 6:

The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. 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.

This definition has been further developed through the work of the UN’s Special Procedures. In a 2006 report the Special Rapporteur on the Right to Food Jean Ziegler stated that

The right to food is the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions

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<sup>75</sup> Ibid.

<sup>76</sup> Mechlem (n 55); Kaufmann and Heri (n 60); Humberto González 'Debates on food security and agrofood world governance' (2010) 45(7) Int J Food Sci Tech 1345.

of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.<sup>77</sup>

Furthermore, Oliver De Schutter (Special Rapporteur on the Right to Food from 2008-2014) emphasizes the institutional aspects of this concept by arguing that the right to food is

the right, for all, to have legal frameworks and strategies in place that further the realization of the right to adequate food, as a human right recognized under international law. By directing the adoption of these policies, the right to food is a compass to ensure that policies are geared towards alleviating hunger and malnutrition.<sup>78</sup>

The right to food has also been a subject of the UN's General Assembly's deliberations. In particular, the Human Rights Council (UNHRC) has dealt with the issue on several occasions. By way of example, in a 2015 Resolution the Council puts forward a definition of this right by stating that "the right to food is the right of every individual, alone or in community with others, to have physical and economic access at all times to sufficient, adequate and culturally acceptable food that is produced and consumed sustainably, preserving access to food for future generations"<sup>79</sup>.

Civil society organizations and movements have also dealt with the concept of the right to food. For instance, FIAN underlines the accessibility of land and natural and productive resources as a basic requirement for the realization of this right:

The right to adequate food is foremost a right of each person to safe, nutritious and culturally acceptable food. To fully implement the right to adequate food all people need to have physical and economic access to sufficient quantities of safe, nutritious, and culturally appropriate food and food-producing resources, including access to land, water, and seeds<sup>80</sup>.

Additionally, the right to food is one of the principles guiding the activity of La Via Campesina, the international peasant movement<sup>81</sup>. The organization particularly underscores the importance of the development of the primary sector in order to ensure

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<sup>77</sup> Jean Ziegler, 'Economic, social and cultural rights, the right to food. Report of the Special Rapporteur on the right to food, Jean Ziegler' (2006) 4(2006) United Nations Economic and Social Council.E/CN.44.

<sup>78</sup> De Schutter (n 51)1.

<sup>79</sup> UNGA Human Rights Council, 'The Right to Food' Res.28/10 (24 March 2015) 3.

<sup>80</sup> Windfuhr and Jonsén (n 53)14.

<sup>81</sup> Ibid.

the attainment of the right to food, and stresses the need for all countries to declare this right as a constitutional entitlement, as it is considered a basic requirement to “sustain a healthy life with full human dignity”<sup>82</sup>.

These definitions are proof of the multidimensional aspects of the right to food. This right encompasses not only the accessibility to culturally adequate, acceptable and sufficient food, but also the preservation of this accessibility for future generations, as well as a legal and institutional framework to ensure this accessibility. In the following section, the different elements of the right to food will be discussed with further detail.

#### *4.1 Components of the Right to Adequate Food.*

The CESCR’ s General Comment No.12 on the Right to Adequate Food states that the core content of this right entails, firstly, the notions of “adequacy” and “sustainability”. The idea of adequacy implies an evaluation on whether accessible foods can be considered appropriate under certain social, economic, ecological, cultural and climatic circumstances Sustainability, on the other hand, requires food to be accessible to both present and future generations, thus including long-term considerations into the equation. Moreover, the Committee establishes that the Right to Adequate Food involves

the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;

The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights

Elaborating upon the elements of this definition, General Comment No.12 specifies that “dietary needs” are to be understood as a basic requirement of a nutrient mix for physical and mental growth, development and maintenance, and physical activity accordingly to physiological needs throughout all stages of live, and in accordance to gender and occupation (Paragraph 9). “Free from adverse substances” requires certain measures of food safety by both public and private means in order to prevent contamination, whether it occurs through adulteration, inappropriate

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<sup>82</sup> Ibid 17.

environmental hygiene, or inadequate handling at the different stages of the food chain (Paragraph 10). Moreover, “cultural or consumer acceptability” emphasizes the need to take into consideration the non-nutritional aspect of food, particularly issues related to the values that are linked to food and food consumption, as well as concerns by consumers regarding the nature of accessible food (Paragraph 11).

Finally, the Committee pays considerable attention to the notion of “availability” and “accessibility”. While the former makes reference to the possibility to acquire food -either from productive land or other natural resources, or from the market system- (Paragraph 12), the latter has an economic and a physical dimension. Economic accessibility entails that the acquisition of adequate food does not result in compromising the satisfaction of other basic needs, whereas physical accessibility implies that adequate food should be accessible to everyone, including individuals that are in a situation of vulnerability - children, the elderly, individuals with disabilities, and those suffering from illnesses or medical problems, victims of natural disasters, and indigenous populations- (paragraph 13).

#### *4.2 State obligations*

The right to adequate food constitutes a binding obligation, put forward in International Law. Article 2 of the ICESCR proclaims that State Parties will take steps, both individually or through international cooperation and using the maximum of their available resources, to progressively achieve the full realization of the rights set out in the Covenant. In relation to the means that are to be used, the ICESCR is quite broad, stating that State Parties are to accomplish this task through “all appropriate means, including particularly the adoption of legislative measures”. General Comment No. 12 on the Right to Adequate Food accentuates that progressive realization “imposes an obligation to move as expeditiously as possible towards that goal” (Paragraph 14).

Furthermore, the CESCR distinguishes what the three levels of state obligations (the obligations to respect, to protect, and to fulfil) entail regarding the right to food. Firstly, the obligation to respect the right to adequate food implies that State parties are not to take any measures that result in obstaculizing the access to food (Paragraph 15). This is a negative obligation that in practice establishes certain limits on state activities,

preventing state power to set arbitrary constraints on people's access to food<sup>83</sup>. Failure to comply with this obligation can take different forms, from governmental actions that restrict or eliminate access to land, to insufficient social security provisions and lack of controls over the food chain that allow for the presence of adverse substances<sup>84</sup>.

The obligation to protect, on the other hand, constrains states to take all necessary actions to ensure that individuals are not deprived of their access to adequate food by the conduct of other individuals or enterprises<sup>85</sup>. In other words, "the obligation to protect means that the Government must pass and enforce laws to prevent powerful people or organizations from violating the right to food"<sup>86</sup>. Protecting the right to adequate food also entails providing sufficient investigation and effective remedies in case of violations, i.e. justiciability. Lack of government intervention in case of private violations of the right to food constitutes an infringement of the obligation to protect<sup>87</sup>. Thirdly, the obligation to fulfil comprises an obligation to facilitate and an obligation to provide. Both of them entail the identification of vulnerable groups and the setting in motion of policies to ensure these persons' access to food<sup>88</sup>. To facilitate the right to adequate food calls for states to take on activities aimed at strengthening individuals' access and use of resources to ensure their livelihoods, including food security<sup>89</sup>. Finally, the obligation to provide obliges states to take measures in order to directly provide this right to people or groups who are unable to enjoy it through the means that are available to them, for reasons beyond their control<sup>90</sup>. The fulfilment of the right to adequate food thus imposes a positive obligation upon State Parties to the ICESCR,

The Committee also recognizes that some of these measures possess a more immediate nature, while others are of a "long-term character". For the CESCR, states incur in violations of the right to adequate food when they have not ensured the satisfaction of the minimum basic needs necessary to be free from hunger, and violations can occur both by action or by omission<sup>91</sup>. Nevertheless, the Committee also

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<sup>83</sup> Ziegler and others (n 69).

<sup>84</sup> Ibid.

<sup>85</sup> CESCR, (n 1) para 15.

<sup>86</sup> Ziegler and others (n 69) 19.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> CESCR (n 1) para 15.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid para 17.

acknowledges the need to differentiate the unwillingness of state parties to comply with their obligations from their inability to do so. States, on the other hand, need to demonstrate that they have taken every effort and used all the resources available to them in order to satisfy their minimum obligations regarding the realization of the right to adequate food. In other words, while less developed countries will not be expected to provide the same level of benefits that a developed country would, it is expected that the poorer states will provide the maximum level of protection according to their available resources<sup>92</sup>. Moreover, and in line with the content of the ICESCR:

any discrimination in access to food, as well as to means and entitlements for its procurement, on the grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant<sup>93</sup>.

In addition, the Committee acknowledges that states are not the only ones to be held responsible to violations of the right to food, as these can occur both through the direct action of states or that of other entities that states are meant to regulate. By way of example, these violations include

the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to food; denial of access to food to particular individuals or groups, whether the discrimination is based on legislation or is proactive; the prevention of access to humanitarian food aid in internal conflicts or other emergency situations; adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to the right to food; and failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others, or the failure of a State to take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organizations<sup>94</sup>.

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<sup>92</sup> Ziegler and others (n 69)

<sup>93</sup> CESCR (n 1) para 18.

<sup>94</sup> Ibid para 19.

Only State Parties are to be held accountable for compliance with the content of the Covenant, but the CESCR emphasizes that all members of society have certain responsibilities in realizing the right to food, and that states should take necessary actions to provide an adequate environment for the set in motion of these duties<sup>95</sup>.

As it was aforementioned, state obligations to respect, protect and fulfil the right to adequate food are derived from the fact that this is a binding obligation expressed in several instruments of International Law. The following section will provide an overview of the history of the right to food through its inclusion in international instruments.

## 5. The Right to Food in international instruments

The following sections provide a general review of some of the most relevant international instruments regarding the right to adequate food. These include both hard law and soft law, emerging from the UN, regional systems, as well as declarations and activities from civil society networks. While the content and relevance of some of them has been clarified in the sections above, their reiteration proves useful in order to obtain a clear and orderly view of this notion's evolution throughout time.

### *5.1 The Right to Food in International Law*

#### 5.1.1 The Universal Declaration on Human Rights (1948)

The foundations of International Human Rights law are to be found in the Universal Declaration on Human Rights<sup>96</sup>. The first proclamation of food as a human right is featured in Article 25, Paragraph 1 of the UDHR: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control". In this instrument, the right to food is included within the right to an adequate standard of living, and is

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<sup>95</sup> Ibid para 20.

<sup>96</sup> Asbjorn Eide, 'Freedom from hunger as a basic human right: principles and implementation' in Per Pinstrup Andersen and Peter Sandoe (eds) *Ethics, Hunger and Globalization* (Springer 2007).

thus within the framework of Social, Economic and Cultural Rights. As it was previously described, this rather general provision would be elaborated in further detail in the ICESCR, its optional protocol and through the work of the CESCR.

5.1.2 The International Covenant on Social, Economic and Cultural Rights (1966) and General Comment No.12 (1999)

Article 11, Paragraph 1 of the ICESCR also includes food as part of the right to adequate standard of living, by stating that

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 cooperation based on free consent.

Moreover, in Paragraph 2 the Covenant specifically recognizes the right to be free from hunger and the need for State Parties to take the necessary measures, both individually and collectively to ensure realization of this right, which includes:

- (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.

As it was previously stated, General Comment No. 12 by the CESCR provides a thorough definition of the normative content of the right to food, the different elements that are at its core, and the scope of state obligations to respect, protect and fulfil this right. This instrument also points out certain practices that constitute violations of the right to adequate food, and sets a series of recommendations regarding implementation, adoption of legislation, monitoring, and providing for remedies and accountability. With respect to this last element, the Covenant declares that victims of violations of the right

to food are to have access to judicial or other appropriate remedies at both the national and international levels, and that they are entitled to reparation<sup>97</sup>. As it was explained in previous sections of this chapter, this is a fundamental aspect of the definition of access to food as a human right that clearly distinguish this concept from the notions of food security and food sovereignty.

Moreover, the CESCR highlights the international obligations of states and international organizations regarding this right. In particular, the Committee underlines the importance of international cooperation towards the realization of the right to food<sup>98</sup>, the potential danger of economic sanctions such as embargoes<sup>99</sup>, and the possible adverse effects of food aid in national economic systems<sup>100</sup>.

### 5.1.3 The right to food in other binding international instruments

The 1979 Convention Against All Forms of Discrimination Against Women (CEDAW) does not directly reference the right to adequate food. It does, however, protect equal rights in access to land, property, credit, income, and social security nets, which all constitute basic requirements for the realization of the right to food<sup>101</sup>. Women are deemed to be particularly vulnerable to violations of the right to food, which is why these provisions are of the utmost importance.

Children are also in need of special protection when it comes to the right to adequate food. This might explain why the 1989 Convention on the Rights of the Child (CRC) in its Article 24 urges states to take appropriate measures 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”. In this Convention, access to adequate nutritious food and drinking water are a constitutive element of the right of the child to the highest attainable standard of health. Furthermore, in Article 27 of the CRC the State Parties

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<sup>97</sup> CESCR (n 1) para 32.

<sup>98</sup> Ibid para 36.

<sup>99</sup> Ibid para 37.

<sup>100</sup> Ibid para 39.

<sup>101</sup> Ziegler and others (n 69).

recognize each child's right to a standard of living that is adequate for his or her physical, mental, spiritual, moral and social development. Its realization includes, as it can be inferred from Paragraph 3 that makes reference to the "nutrition" element of this right, the access to adequate food.

#### 5.1.4 The Right to Food in Regional Systems

The right to adequate food can also be legally justified in regional human rights protection systems. Firstly, the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the "Protocol of San Salvador") explicitly recognizes the right to food in its Article 12:

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.

Secondly, Article 15 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003) recognizes the right to food security, which implies that "States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to: a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food; b) establish adequate systems of supply and storage to ensure food security".

#### 5.1.5 The Right to Food in International Humanitarian Law

The right to food is also present within international law on the rules of armed conflict. The 1949 Geneva Conventions state that prisoners of war shall be provided with daily and sufficient food rations in terms of quantity, quality and variety, as well as sufficient drinking water<sup>102</sup>. Likewise, it is also established that occupying powers must ensure food and medical supplies for the civilian population, and that they should "bring

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<sup>102</sup> Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949, Art. 26.

in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate”<sup>103</sup>. Moreover, Additional Protocol I of 1977 to the 1949 Geneva Conventions, in its Article 54 establishes that the use of starvation as a method for warfare is prohibited. The same article also outlaws to attack, destroy, remove or render useless objects that are fundamental for the survival of civilians, including “foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works”<sup>104</sup>.

### *5.2 International Declarations and Conferences*

The right to food has also been put forward in a number of non-binding declarations and global conferences, which have helped to mold international consensus on the norms that constitute this right<sup>105</sup>. These elements of soft-law emerged not only from U.N organs, but from civil society as well. Their brief review becomes fundamental in order to grasp the extent to which this right has been internationally recognized.

In the 1992 World Declaration on Nutrition, the participants in the International Conference on Nutrition organized by the FAO committed themselves to reduce hunger and eliminate the various forms of malnutrition<sup>106</sup>. The signatory parties recognized that “access to food is a right of each individual and that each nation has the prime responsibility for promoting the nutritional well-being of its people, and especially to protect vulnerable groups”<sup>107</sup>. While advocating for further liberalization of international trade, the Declaration also admitted that this might have adverse consequences on vulnerable groups from developing and low-income countries, and it thus called for compensatory measures<sup>108</sup>.

The International Conference on Population and Development (ICPD) took place in Cairo in September 1994, and was particularly relevant due to its recognition

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<sup>103</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Art.55.

<sup>104</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, Art 54 (2).

<sup>105</sup> George Kent *Freedom from want: The human right to adequate food* (Georgetown University Press 2005).

<sup>106</sup> FAO, *World Declaration and Plan of Action for Nutrition* (FAO 1992).

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

that reproductive and health rights, women empowerment and gender equality were prerequisites for development<sup>109</sup>. In “Principle 2” of the Programme for Action of this event, the right to food is included within the broader right to an adequate standard of living, in line with the UDHR and the ICSECR. Moreover, Paragraph 3.15 also states that investments in adequate food supply are necessary to achieve sustained economic growth, which in turn is fundamental for the eradication of poverty, and this is completed in Paragraph 3.20’s requirement of investments in food security<sup>110</sup>.

The World Summit for Social Development that was held in Copenhagen in 1995 resulted in the Copenhagen Declaration, that in its 10 Commitments reaffirmed the State Parties’ adherence to the realization of the right to food (Commitment No. 1, point ‘f’); declared that efforts would be put forward towards the elimination of hunger and malnutrition, as well as the provision of food security (Commitment No. 2) particularly in developing countries and in Africa (Commitment No. 7). The relevance of this document is linked to the fact that at the time it had been the largest assembly of world leaders, managing to reach “new consensus on the need to put people at the center of development”<sup>111</sup>.

The 1996 World Food Summit in Rome deserves special attention. The purpose of this summit was to reactivate global commitment against hunger<sup>112</sup>, aiming at reducing the number of people suffering from undernourishment in half by 2015 (as it was mentioned in the first section of this chapter). The Rome Declaration and Plan of Action that resulted from the Summit focus mainly on the concept of food security. As a matter of fact, right to food is conceived in this instrument as a means for achieving food security: “promotion and protection of all human rights and fundamental freedoms, including the right to development and the progressive realization of the right to adequate food for all and the full and equal participation of men and women are also indispensable to our goal of achieving sustainable food security for all”<sup>113</sup>.

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<sup>109</sup> UNFPA, “International Conference on Population and Development Programme of Action - at: <<http://www.unfpa.org/publications/international-conference-population-and-development-programme-action#sthash.AFB9vadz.dpuf>> Accessed: 20/04/2016

<sup>110</sup> Ibid.

<sup>111</sup> UN ‘World Summit for Social Development, Copenhagen, 1995’ at <<http://www.un.org/esa/socdev/wssd/text-version/>> Accessed: 20/04/2016

<sup>112</sup> FAO, “Why the Summit?” at <http://www.fao.org/WFS/> Accessed: 20/04/2016.

<sup>113</sup> WFS (n 61).

Most importantly, the Plan of Action set the precedent for General Comment No. 12<sup>114</sup>. Objective 7.4 of the Plan of Action urged for clarification on the right to food and the fundamental right of everyone to be free from hunger stated in the ICESCR. Furthermore, it expressed the need for increased attention in the implementation dimension of this right, in line with its view of this right as a prerequisite for the achievement of food security<sup>115</sup>. Specifically, the document invites the UN High Commissioner for Human Rights (UNHCHR) “to better define the rights related to food in Article 11 of the Covenant and to propose ways to implement and realize these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all”<sup>116</sup>.

In 2002, the World Food Summit: Five Years Later reaffirmed the previous commitments, and also called for the formation of an intergovernmental working group in order to develop voluntary guidelines on the right to food (which will be dealt with in another section of this chapter)<sup>117</sup>. In the review of the progress made since 1996, the main flaws highlighted by participants were the lack of political will and the lack of resources. Furthermore, this Summit constituted a debate arena for various types of stakeholders other than state representatives (NGOs and civil society organizations, indigenous groups, forestry and fishing communities)<sup>118</sup>.

This marked a difference from the 1996 Summit, where NGO’s did not directly participate, but organized a parallel NGO Forum<sup>119</sup>. In their final declaration “Profit for Few or Food for All: Food Sovereignty and Security to eliminate the Globalization of Hunger” the NGOs concluded that “International law must guarantee the right to food, ensuring that food sovereignty takes precedence over macro-economic policies and

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<sup>114</sup> Kaufmann and Heri (n 60).

<sup>115</sup> Ibid.

<sup>116</sup> Ibid 31.

<sup>117</sup> FAO, “World Food Summit: Five years later reaffirms pledge to reduce hunger”, at <<http://www.fao.org/WORLDFOODSUMMIT/english/newsroom/news/8580-en.html>> Accessed: 20/04/2016

<sup>118</sup> Ibid

<sup>119</sup> Michael Windfuhr, 'NGOs and the right to adequate food' (1998) FAO, Legal Office.

trade liberalization. Food cannot be considered as a commodity, because of its social and cultural dimension<sup>120</sup>.

In the same document, these organizations highlighted the need for a code of conduct to guide the activities of those working towards the realization of the right to food. This was deemed important in order to reduce weaknesses in human rights instruments, particularly regarding the clear definition of the right to adequate food; and also to address the possible impact of both intergovernmental organizations (distinctly the World Bank, the International Monetary Fund, and the World Trade Organization) and private actors (such as transnational businesses) on the achievement of this right<sup>121</sup>.

By 1997, some of these NGOs (sponsored by FIAN International, the Human Rights Organization for the Right to Feed Oneself, the World Alliance for Nutrition and Human Right, and the Jacques Maritain Institute) had finalized the drafting process, resulting in the International Code of Conduct on the Human Right to Adequate Food. In sum, the Code aimed not only at clarifying the content of the right to food and the responsibilities of all actors involved, but also to be included into the agendas of the late Commission of Human Rights (now Human Rights Council) and the FAO<sup>122</sup>. Their lobbying activities paid off, and in the 2002 Summit an Intergovernmental Working Group (IGWG) was established by the FAO Council in order to work on a set of Voluntary Guidelines that came to be adopted in 2004<sup>123</sup>.

### *5.3 The FAO's Voluntary Guidelines on the Right to Food*

While the adoption of General Comment No.12 provided for a standard for interpretation of the right of adequate food<sup>124</sup>, there persisted a need for clarification regarding practical and policy aspects of the realization of this right; the FAO's "Voluntary Guidelines to support the progressive realization of the right to food in the context of national food security" aimed at filling this gap. They consist of several

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<sup>120</sup> NGO Forum to the World Food Summit, 'Profit for Few or Food for All?' (Institute for Agricultural and Trade Policy, March 20 1998) < <http://www.iatp.org/news/profitforfeworfoodforall> > Accessed May 16 2016.

<sup>121</sup> Windfuhr (n 119).

<sup>122</sup> NGO Forum to the World Food Summit (n 120).

<sup>123</sup> FAO 'Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security' (2004).

<sup>124</sup> Windfuhr and Jonsén (n 53).

policy recommendations that can be seen as a complement to the legal content of General Comment No.12, transcribing the right to food into operational terms<sup>125</sup>. The 19 Guidelines are far-reaching in the sense that they include policy areas as various as economic development, nutrition, agriculture, market systems, education and social policy<sup>126</sup>. Moreover, the recommendations revolve around the areas of design, implementation and monitoring of public policies.

The Guidelines underline the importance of the principles of participation, accountability, non-discrimination, transparency, human dignity, empowerment and the rule of law (the “PANTHER” principles) in the realization of the human right to adequate food. These principles should act as guide throughout the different processes involved in policy design, implementation and monitoring<sup>127</sup>. Their importance is also linked to the fact that they can serve as a tool for mainstreaming the right to food, as an instrument for social mobilization around the economic, social, cultural and political issues surrounding the achievement of the right to food<sup>128</sup>.

The following table briefly summarizes the content of each guideline specified in Section II of this document:

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<sup>125</sup> Food and Information First Information and Action Network (FIAN) *How to use the Voluntary Guidelines on the Right to Food. A manual for Social Movements, Community-Based Organisations and Non-Governmental Organisations* (FIAN International , 2007).

<sup>126</sup> Ibid.

<sup>127</sup> FAO, “Mainstreaming, at <<http://www.fao.org/righttofood/our-work/mainstreaming/en/>> Accessed: 22/04/2016.

<sup>128</sup> FIAN (n 125).

**Table 3**

<b>Guideline</b>	<b>Content</b>
1- “Democracy, good governance, human rights and the rule of law”	Elements for a democratic society that provides a suitable environment in which individuals can access food in freedom and dignity.
2 - “Economic development policies”	Promotion of broad-based sustainable development that is based on a thorough assessment of food insecurity and its causes, targeting both rural and urban poverty.
3 - “Strategies”	Human rights perspectives should be included in strategies towards the right to food, which should be based on transparency and social participation.
4 - “Market systems”	Markets should be improved in order to promote sustainable economic development. States are obliged to ensure that market players are committed to realizing the right to food.
5 - “Institutions”	Importance of public institutions in achievement of the right to food. Suggests the creation of a specific institution for the overseeing of the Voluntary Guidelines.
6 - “Stakeholders”	Promotes a multistakeholder approach, where participants from civil society and the private sector are included.
7 - “Legal framework”	Suggests the adoption of legislation on the right to food, as well as of administrative, quasi-judicial and judicial mechanisms to provide remedies in the event of violations.
8 - “Access to resources and assets”	Respect individuals’ rights to access natural resources, through measures including those pertaining land reform, labor, water, genetic resources for agriculture, sustainability and services.
9 - “Food safety and consumer protection”	Institutional and legal instruments that ensure food safety and consumer protection.
10 - “Nutrition”	Need to ensure and promote a diversified diet and healthy eating habits, as well as to take into consideration cultural values and habits when designing programmes and policies.
11 - “Education and awareness raising”	Promote awareness of human rights and the right to food, including by its integration in school curricula. Empower civil society to participate in the implementation of the guidelines.

12 - “National financial resources”	Encourages the allocation of resources to anti-hunger and food security measures, which should be protected from budgetary reductions.
13 - “Support for vulnerable groups”	Recommends creation of Mapping Systems in order to identify those suffering from food insecurity, the underlying causes for this situation, and to design programmes to immediately and progressively allow them to access adequate food.
14 - “Safety nets”	Recommends establishment of safety nets to protect vulnerable social segments, and the provision of food assistance and the implementation of other measures that ensure long-term food security.
15 - “International food aid”	Food aid should be characterized by safety, consideration of cultural habits and dietary needs of recipients, and it should not disrupt the local market or create dependency on international assistance.
16 - “Natural and human-made disasters”	Stresses that food should never be a tool for political or economic pressure, and reaffirms obligations of international humanitarian law regarding the access to food.
17 - “Monitoring, indicators and benchmarks”	Highlights the importance of establishing monitoring and evaluation mechanisms, including policy impact assessments.
18 - “National human rights institutions”	Inclusion of the realization of the right to food within the mandate of national human rights institutions, and increase their cooperation with civil society.
19 - “International dimension”	States should fulfill commitments, measures and actions that have been endorsed at the international level.

**Source: Author, based on FAO (2004) *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security* and FAO, GTZ (2005). “Right to Food – Putting it into Practice”.**

These guidelines thus constitute the most comprehensive manual for the operationalization of the right to food into national strategies, policies and programs. For the purposes of this dissertation, they prove useful as they provide with a framework from which to select indicators in order to measure the effectiveness of right to food legislation. Another relevant development within the UN system regarding the

right to adequate food has been the work of the Special Rapporteur on the Right to Food.

#### *5.4 The Work of the Special Rapporteur on the Right to Food*

The Special Rapporteur on the Right to Food was established in the year 2000 by Resolution 2000/10 of the then existing Commission on Human Rights, in pursuance of “an integrated and coordinated approach in the promotion and protection of the right to food”. Appointed for a period of three years, his/her mandate includes:

- (a) To seek, receive and respond to information on all aspects of the realization of the right to food, including the urgent necessity of eradicating hunger;
- (b) To establish cooperation with Governments, intergovernmental organizations, in particular the Food and Agriculture Organization of the United Nations, and non-governmental organizations, on the promotion and effective implementation of the right to food, and to make appropriate recommendations on the realization thereof, taking into consideration the work already done in this field throughout the United Nations system;
- (c) To identify emerging issues related to the right to food worldwide<sup>129</sup>.

The Special Rapporteur is in charge of verifying that all governments are complying with their obligations to respect, protect and fulfil the right to food<sup>130</sup>. As part of the system of special procedures, he or she is an independent expert that in this case is charged with reporting on a specific issue (thematic mandate). The Special Rapporteur’s activities include the presentation of annual reports to the Human Rights Council and the General Assembly; the monitoring of the situation of the right to food around the world, identifying general trends and undertaking country visits; communicating with States or other parties regarding violations of this right; and promoting its full realization by participating in instances of dialogue with other relevant stakeholders (seminars, conferences, expert meetings)<sup>131</sup>.

So far, three Special Rapporteurs have been appointed: Jean Ziegler (2000-2008), Oliver De Schutter (2008-2014) and Hilal Elver (2014- ). Their extensive reports

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<sup>129</sup> UNGA Commission on Human Rights Res 2000/10 (17 April 2000).

<sup>130</sup> Ziegler and others (n 69).

<sup>131</sup> OHCHR, “Special Rapporteur on the Right to Food”, at <<http://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx>> Accessed: 22/04/2016

and documents constitute a valuable resource on the situation of the right to food worldwide.

## 6. Chapter Conclusions

This chapter introduced an overview of the most general aspects related to the right to food. Firstly, the issues of food production, distribution and consumption were presented from empirical and theoretical perspectives. The objective was to establish the current relevance of food and agriculture policies by providing a pertinent framework to explain the persistence of hunger and malnutrition. Secondly, the focus was placed on three interrelated but distinctively different concepts: the right to food, food security and food sovereignty. Clarifying each conceptualization's scope and characteristics becomes of the utmost importance for this dissertation. Lastly, the last two sections were dedicated fully to the right to food, the account of its normative content, elements and corresponding state obligations; and to a review of the international instruments that deal with this right.

The right to food is a distinctive and complex concept that has been progressively defined since its introduction in 1948, and that is well established in International Human Rights Law. It is not to be equated to the technical concept of food security nor to the political rights-based strategy of food sovereignty. The right to food is a legal entitlement and as such creates legal obligations for the state and allows individuals to demand for state respect, protection, and fulfillment of this right. Its realization is multi-dimensional, and requires that adequacy and sustainability are ensured.

## Chapter III – The Nepalese context

### 1. Introduction

This chapter presents a general overview of the Nepalese context, by exposing certain facts about this country's economy and its highly complex social and political background. Firstly, I present a number of basic facts about the Republic of Nepal and its economic situation. Secondly, I place the focus on this nation's complexity in terms of social, religious and ethnic diversity. Finally, I outline the intricacies of Nepalese political history, placing special emphasis on the most recent constitutional process. The objective is that through this brief review I will be able to clarify the reasons why the constitutional recognition of the right to food is of the utmost importance in Nepal.

### 2. Nepal: an overview

Nepal, situated between India and China with a population of over 28 million people<sup>132</sup>, is one of the world's poorest nations. The country can be broadly divided into three geographical regions: the mountain region (in the north), the hill region (in the central area of Nepal) and the Terai region (in the southern border).

This country's Global National Income (GNI) per capita for the year 2014 was measured at US\$ 730, and the prospect for Gross Domestic Product (GDP) growth for 2015 was 3.4%, well below the Southern Asian average<sup>133</sup>. Moreover, the national poverty headcount ratio (the percentage of people living below the poverty line) was established at 25.2% in 2010<sup>134</sup>. Regional differences are pronounced, and this percentage increases to 45% in the Mid-Western region and to 46% in the Far Western Region<sup>135</sup>. Additionally, the Multidimensional Poverty Index (MPI), which provides a measure of people's experiences of deprivation that goes beyond income as a sole indicator of poverty<sup>136</sup>, including the dimensions of education, health and living

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<sup>132</sup> World Bank (WB) 'Data. Nepal' <<http://data.worldbank.org/country/nepal>> Accessed 22 May 2016.

<sup>133</sup> Ibid. The GDP growth for South Asia in 2015 was 7,2%.

<sup>134</sup> Ibid. These indicators will be analyzed more thoroughly in Chapter V of this dissertation.

<sup>135</sup> International Fund for Agricultural Development (IFAD), 'Rural Poverty in Nepal', <<http://www.ruralpovertyportal.org/country/home/tags/nepal>> Accessed May 5 2016.

<sup>136</sup> Oxford Poverty and Human Development Initiative, 'Policy, a multidimensional approach', <<http://www.ophi.org.uk/policy/multidimensional-poverty-index/>> Accessed May 2, 2016.

standards, showed in 2011 that 41.4% of the Nepalese population was under multidimensional poverty, while 18.1% were near it<sup>137</sup>.

In terms of human development, according to the UNDP's Human Development Report from 2015, Nepal can be classified as a Low Human Development Country. With a Human Development Index (HDI) of 0.548, Nepal ranks at number 145 out of 188 countries, which places it above the average for Low Income Countries, but below the average for South East Asian countries<sup>138</sup>. Nevertheless, when Nepal's HDI is adjusted to inequality, its rank goes even further down to 0.401, manifesting a loss of 26.8%<sup>139</sup>. As for measures of inequality, the Gini Coefficient for Nepal is 32.8.

Over 80% of the Nepalese population lives in rural areas, and agriculture is the country's most important economic activity: it accounts for 33% of the GDP and employs 70% of the Nepalese workforce<sup>140</sup>. However, only 20% of Nepalese land is suitable for cultivation<sup>141</sup>. Moreover, agricultural activities lack in productivity and production is unable to keep up with population growth. The rural population largely depends on subsistence farming. For this population, land ownership is a constraint, access to it is severely limited, in great part due to the country's monarchical heritage and its land tenure regulations. Around 70% of Nepalese households own less than 1 hectare, and this conditions their ability to meet the minimum requirements for their subsistence<sup>142</sup>.

Remittances are another important source of income for Nepal, accounting for 29.2% of its GDP in 2014<sup>143</sup>. Migration of workers to other countries increased heavily in the last decade, and while outward migration flows were reduced after the 2015 earthquake<sup>144</sup>, it must also be indicated that very few people returned after this event<sup>145</sup>.

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<sup>137</sup> UNDP, *Work For Human Development. Briefing Note for countries on the 2015 Human Development Report. Nepal*.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> UNDP. *Annual Report 2014. UNDP in Nepal* (UNDP 2014)

<sup>141</sup> Government of Nepal (GoN), Ministry of Agricultural Development (MOAD), *Nepal Portfolio Performance Review 2015* (MOAD, 2015).

<sup>142</sup> IFAD (n 135).

<sup>143</sup> WB, 'Personal remittances received, % of GDP', <<http://data.worldbank.org>> Accessed May 5 2016.

<sup>144</sup> On the 25th of April, 2015 a 7.8 earthquake hit Nepal resulting in over 8,000 and 21,000 injured and significant material damages, including to cultural heritage sites. 'Nepal earthquakes: Devastation in maps and images' BBC News (London, 15 May 2015) <<http://www.bbc.com/news/world-asia-32479909>> Accessed 9 January 2016.

Remittances from abroad constitute a substantial source of income for a large part of the population, and it is largely spent on satisfying basic needs: 80% of income from remittances is used for daily consumption, 7% of it for repaying loans, and less than 3% is used for capital accumulation<sup>146</sup>.

Inequality between men and women is marked. While 50% of the agriculture labor force is composed by women workers<sup>147</sup>, there are significant differences in their access to health care, decision making positions, nutrition and education. As a matter of fact, the Gender Inequality Index for 2014<sup>148</sup> was 0.489, placing it in the 108<sup>th</sup> position out of 155 countries<sup>149</sup>: 29.5% of parliamentary seats are occupied by women and only 17.7% of adult women have reached a secondary level of education (in comparison to 38.2% of men).

Furthermore, the fact that the country is prone to natural disasters has further detrimental effects over livelihoods and food security. The FAO classifies this country as a Food Deficit Country, as its malnutrition rates are amongst the highest in the world. The Global Hunger Index (GHI) for the year 2015 was 22.2, indicating that food security is a serious problem<sup>150</sup>. As for nutrition security, 41% of children under 5 years old are stunted (their height is too low for their age), 29% are underweight and 11% are wasted (they are too thin for their height)<sup>151</sup>. Regional differences are also severe in this sense as the hills and mountains of the Mid and Far Western regions show much higher indicators. Moreover, the economic situation makes child labor a common trait of the Nepalese society, affecting about 1 in 4 Nepalese children. According to the WFP, malnutrition has a direct effect on economic growth and poverty perpetuation<sup>152</sup>.

Food price inflation is also a problem, heavily increasing since the 2007 and 2008 world food crisis. The average food inflation for the period 2007-2016 has been 11.81%. Moreover, between 2005/06 and 2010/11 food prices were increased in 80% in

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<sup>145</sup> United Nations, Nepal Earthquake Assessment Unit. 'Note on Migration and Remittances'. <[http://reliefweb.int/sites/reliefweb.int/files/resources/150724\\_assessment\\_unit\\_-\\_migrants\\_and\\_remittances.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/150724_assessment_unit_-_migrants_and_remittances.pdf)> Accessed May 5th 2016.

<sup>146</sup> IFAD (n 135).

<sup>147</sup> FAO, 'Faostat' <<http://faostat3.fao.org/home/E>> Accessed May 5th 2016.

<sup>148</sup> Developed by the UNDP in order to measure gender-based inequalities based on reproductive health, empowerment and economic activity.

<sup>149</sup> UNDP (n 140)

<sup>150</sup> IFRI, 'Nepal' <<http://ghi.ifpri.org/countries/NPL/>> Accessed March 23 2016.

<sup>151</sup> WFP, 'Nepal', <<https://www.wfp.org/countries/nepal>> Accessed May 16 2016.

<sup>152</sup> Ibid.

the hills and 77% in the Terai region<sup>153</sup>. Pulses and cereal prices are particularly vulnerable to inflation: in the 2003/04-2013/14 period, the price of coarse rice had increased by 77%, basmati rice 70%, lentils by 146%<sup>154</sup> (it is important to mention that rice is the staple food of the Nepalese diet). This constitutes a severe problem as a large proportion of income is dedicated to food consumption.

The 2015 earthquake further hindered the food security situation of this country, leaving over 1.4 million people in need of food assistance in the most affected areas<sup>155</sup>. Coping strategies in these areas were based on portion reductions and reducing meal frequencies. Moreover, the earthquake had a severe effect on agriculture and livestock production, as 22% of households lost more than half of their crops, and there were extensive damages to agricultural tools and losses of seed stocks. The most immediate concern was related to the loss of household food stock (in the most affected areas, 80% of households lost their entire food stocks)<sup>156</sup>. Finally, the earthquake raised the number of food deficit districts from 30 to 32 of the 75 Nepalese districts, indicating that these areas lack enough food production to feed their inhabitants, even though surplus production was at a record number in 2015<sup>157</sup>.

These figures indicate that the inclusion of the right to food and to food sovereignty in the 2015 national constitution is a relevant matter. It is important to highlight that these rights had also been included in the 2007 Interim Constitution of Nepal, thus the issue has been in the Nepalese political agenda for a few years. Food availability and accessibility greatly condition the enjoyment of the right to food by the Nepalese population, and this is exacerbated by a multifaceted and divided society and a highly unstable political system. The following sections will provide an overview of the complexity of the Nepalese socio-political context.

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<sup>153</sup> GoN, MOAD and FAO, 'Food and Nutrition Security in Nepal. A Status Report' (January 2016).

<sup>154</sup> FIAN Nepal, 'Parallel Information: The Right to Adequate Food in Nepal. Article 11 ICESCR' (FIAN NEPAL 2014).

<sup>155</sup> Nepal Food Security Monitoring System (NEKSAP), WFP and Food Security Cluster. 'Nepal. A report on the food security impact of the 2015 earthquake' (European Union and WFP, 2015).

<sup>156</sup> Ibid.

<sup>157</sup> '32 Districts Face Food Deficits', *Kathmandu Post* (Kathmandu, 18 June 2015), <<http://kathmandupost.ekantipur.com/news/2015-06-18/32-districts-face-food-deficit.html>> Accessed 24 May 2016.

### 3. A complex socio-political context

This section outlines certain traits of Nepal's social and ethnic structure and of its population's geographical distribution. Albeit its relatively small territorial extension, Nepal presents a high number of castes, ethnicities, languages and religions. The National Population and Housing Census reported in 2011 the existence of 126 caste/ethnic groups, 123 mother tongues, and ten religions. In a clearly simplifying effort, Nepal's population can be divided into three groups according to their geographical origin: *pahadis* in the Hills represent 43,01% of the total population; *Madhesis* or "plains people" living in the Terai region amount to 50,27%; and Mountain people to 6,73% <sup>158</sup>.

However, as it can be inferred from such a vast diversity, these in no way constitute a homogeneous grouping. As an example, within the hills' population, a difference can be made between *parbatiyas* (traditionally known as "hill people") and *Janjatis* or "hill minorities" (indigenous nationalities), and between both of these and the Dalits (untouchables)<sup>159</sup>. The term *Madhesi* on the other hand, is often used to designate caste Hindus, Muslims, and certain ethnic groups (although some of them claim an independent identity). A distinction should be made nonetheless, between *Madhesis* and *Tharus*, while the former term usually refers to people living in eastern and central Terai, the latter refers to indigenous inhabitants of the Western part of the Terai region<sup>160</sup>.

This highly complex social structure becomes even more entangled when the open border with India is added to the equation. The Terai region is inextricably linked to its neighboring country; *Madhesis* are in fact culturally similar to Indians, which leads to their allegiance to the country to be under constant questioning from the *pahadis*. The area is a source of constant political tensions, as *Madhesis* feel "they have been treated like a colony of the hills, despite the fact that the Terai is now home to 50 percent of Nepal's population, most of its industry, and the great bulk of its

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<sup>158</sup> GoN, Central Bureau of Statistics (CBS). *National Population and Housing Census* (2011)

<sup>159</sup> Krishna Hachhethu and David N. Gellner, 'Nepal. Trajectories Of Democracy and Restructuring of the State.' in Paul R Brass (ed), *Routledge handbook of South Asian politics: India, Pakistan, Bangladesh, Sri Lanka, and Nepal* (Routledge 2010)

<sup>160</sup> International Crisis Group, *Nepal's Troubled Tarai Region* (Asia Report N° 136, 9 July 2007)

agriculturally productive land, and despite the fact that the educational level and capabilities of many Madhesi is high”<sup>161</sup>.

After this very brief synthesis of Nepalese social complexity, it is possible to move forward and place the focus on its intricate constitutional history.

### *3.1 Overview of Nepalese political history*

Despite being one of the world’s oldest states, Nepal’s political system has been historically marked by instability. Its origins date back to 1769, when Kathmandu was conquered by Prithvi Narayan Shah, the Gurkha<sup>162</sup> ruler who laid the foundations for a unified kingdom. The end of the Anglo-Nepalese war and the signing of the Sugauli Treaty in 1816 defined the borders of a monarchical state whose very beginnings were marked by a close relationship with Hinduism: the King was considered to be a reincarnation of Lord Vishnu<sup>163</sup>.

Many monarchs emerged in the XIX<sup>th</sup> century, due to contention among noble families. The figure of the Prime Minister became of the utmost importance when Jan Bahadur came to power with the Kot Massacre of 1946<sup>164</sup>. This event would signal the beginning of Rana Rule, a regime of hereditary Prime Ministers that would prolong itself well into the XX<sup>th</sup> century- 1951 to be precise. Under their rule Nepal’s international position was mostly based on isolationism, with the clear exception of Great Britain, with whom the Rana rulers maintained amiable relations<sup>165</sup>.

Nepal’s constitutional history can be traced back to 1948, when the first constitutional text was adopted under the Rana regime in an effort to put a stop to increasing demands for democracy, while still denying the basic principles of constitutionalism<sup>166</sup>. Democratic pressures continued to grow and led to the Democratic Revolution of 1951, a rather atypical phenomenon for what could be described as a

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<sup>161</sup> Ibid 136.

<sup>162</sup> Gurkhas are Nepalese soldiers who came to be recruited by the East India Company after the Anglo-Nepalese War (1814-1816).

<sup>163</sup> Hachethu and Gellner (n 159).

<sup>164</sup> For a detailed account of events see: Andrea Matles Savada (ed), *Nepal and Bhutan: country studies* (Federal Research Division, Library of Congress 1993).

<sup>165</sup> Saubhagya Shah. *Civil Society in Uncivil Places: Soft State and Regime Change in Nepal* (East West Center 2008)

<sup>166</sup> Surendra Bhandari, *Self-Determination & Constitution Making in Nepal. Constituent Assembly, Inclusion & Ethnic Federalism* (Springer, 2014).

feudal country<sup>167</sup>. It was one of Nepal's most important political parties, the Nepalese Congress (NC), who led the movement that ended Rana rule and concluded in the second Interim Government of Nepal Act (1951), which restored the sovereignty of the crown and paved the way for democracy. This second constitutional text was the result of political compromise between the Ranas, the Monarchy and the NC, and was supposed to be replaced by a republican constitution to be drafted by a popularly elected Constituent Assembly.

In reality the provisional document was in use for eight years, during which neither the King nor the leader of the NC demonstrated much interest in calling for elections for a Constitutional Assembly<sup>168</sup>. Both these parties agreed on designating a Drafting Commission of experts to produce a document that was finally adopted in 1959. The new constitution instituted basic democratic principles, such as the rule of law, a multi-party system, competitive and periodic elections, and an independent judicial power, among others<sup>169</sup>. It provided, nonetheless, for complete control of the King over the National Assembly. The monarch was head of state and could therefore not only dismiss the assembly but also control the army, which meant command over an extremely important source of political power. While it can be said that the new document marked a step towards a constitutional democracy, Nepal's patriarchal social system was left untouched, and the newly successful NC was mostly of high caste membership.

During this period, one of the most important changes to the Nepalese state was the building of a bureaucratic apparatus, whose control became fundamental –in part due to high amounts of development aid<sup>170</sup> directed towards the country during the 1950's- and led to tensions between the monarch and the elected government<sup>171</sup>. The NC's increased power and control over the state's administration soon became a source of preoccupation to King Mahendra, who dissolved the government and banned political

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<sup>167</sup> Hachhethu and Gellner (n 159) 131-146.

<sup>168</sup> Bhandari (n 166).

<sup>169</sup> Hachhethu and Gellner (n 159).

<sup>170</sup> Nepal began receiving foreign aid when it joined the Colombo Plan for Cooperative, Economic and Social Development in Asia and the Pacific, which provided for scholarships and technical assistance. Grants towards agriculture, as well as transport and energetic infrastructure were provided mostly by the United States and India. Other donors included China, the Soviet Union, Switzerland and the United Nations. Matles Savada (n 164).

<sup>171</sup> Ali Riaz and Subho Basu, *Paradise Lost? State Failure in Nepal* (Lexington Books 2010).

activities in 1960. Another constitution was drafted on the King's demand, and in 1962 the country adopted what became known as the *Panchayat* regime, since it established a party-less system of locally elected councils<sup>172</sup>.

In practice, it configured a highly autocratic organization in which the monarch was placed above the constitution<sup>173</sup>. The system was founded upon the idea of uniting the country behind the King's figure, therefore banning all forms of political organizations under the pretext of their conflict-generating nature. It is highly important to mention that neither cultural nor ethnic diversity were recognized in the *Panchayat* constitution. Nonetheless, King Mahendra aimed to be perceived as a democratically legitimized and modernizing ruler, thus the adoption of the *Panchayat* system was followed by a series of legal reforms targeting equality before the law, and by serious investments in infrastructure that led to the formation of an urban middle class<sup>174</sup>. Nepal was officially declared a Hindu State, in a royal attempt to manufacture a fusion of tradition and modernization, keeping present the need for a democratic *façade*<sup>175</sup>.

Modernization policies resulted in improvements in education, transport and communications infrastructure, but job creation followed a slower path, resulting in protests from a newly educated middle class. Growing tensions led to Jan Andolan I, marking the end of the *Panchayat* system. This massively popular movement was possible due to cooperation between the NC and various communist organizations – joined together in the United Left Front- whose influence had grown during the *Panchayat* regime. The outcome was the 1990 Constitution of the Kingdom of Nepal, based on the principles of constitutional monarchy and parliamentarism, but maintaining the monarch as head of state and in control of the armed forces<sup>176</sup>.

Noticeably, while this new document recognized the ethnic and linguistic diversity of the country, it preserved its Hindu status. In a context of uneven regional development, aggravated by ethnic differences, the beginning of a period of political pluralism carried an intensification of ethnic activists' demands. Albeit their inability to organize into a nationally unified movement, due to the high complexity of Nepalese

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<sup>172</sup> Ibid.

<sup>173</sup> Bhandari (n 166).

<sup>174</sup> David N. Gellner, 'Democracy in Nepal: four models' [2007] India Seminar 576.

<sup>175</sup> Riaz and Basu (n 171)

<sup>176</sup> Ibid

ethnic groups and their internal differences, these demands became public enough to make the major political forces take them into consideration<sup>177</sup>.

The political context suffered another shock in 1996 with a Maoist insurgency movement that originated in the western rural area of the country and that led to a 10 year civil war which resulted in 17000 deaths and 100000 forced displacements. The immediate detonator for the conflict was the lack of recognition of the Maoist party to participate in elections, but the movement gained wide support, especially in rural areas, due to its ability to articulate the needs and issues of a population that was largely marginalized. The lack of stability and internal struggles of the political establishment in Kathmandu also contributed to the continuation of the conflict. While the two main political parties – the NC and the Communist Party of Nepal - Unified Marxist Leninist (CPN-UML) – each aimed at using this insurgency to weaken the competition, King Birendra grasped the opportunity and seized power.

His refusal to repress the Maoist forces made it difficult for the democratic government to control the situation, thus allowing the monarch to obtain political benefit from the insurgency<sup>178</sup>. Nevertheless, these decisions created a crack within the royal family itself over the slow pace of his strategy. Instability was exacerbated further after the royal massacre of 2001, when 10 members of the royal family were killed by Crown Prince Dipendra<sup>179</sup>. In 2002, the new King dismissed the government and appointed his own, despite the questionable legal nature of this measure. While the Maoist insurgency did not cease, the monarch went even further in 2005 with a fully-fledged coup that once again dismissed the government and this time also suspended the constitution. The subsequent suspension of international aid and the massive popular protests- that concluded in the Jan Andolan II movement- forced the King to re-establish the Parliament and to resign from power. A Comprehensive Peace Agreement was signed in 2006 between a Seven Party Alliance and the Maoists, aiming at putting a definite end to the armed conflict and establishing an interim government.

The new Parliament, with a Maoist Majority, abolished the Monarchy and adopted an Interim Constitution in 2007 that established a republican regime, and called

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<sup>177</sup> Ibid

<sup>178</sup> Ibid

<sup>179</sup> For a detailed account of events: Ishaan Tharoor, 'Revising Nepal's Palace Massacre' *Time* (New York, 8 April 2009)

for the election of a Constituent Assembly, which would exercise parliamentary functions until the drafting of a new constitution. What followed was a stalemate period of seven years in which the three major parties could not come to an agreement, primarily regarding the country's territorial organization and the possibility to adopt a federal structure. The deadlock was finally overcome in September 2015, when parties reached an agreement and decided to push forward a "fast-track constitution", arguing that the need for reconstruction after April's earthquake<sup>180</sup> called for this special procedure.

Nevertheless, the aftermath was marked by the emergence of intense and violent protests, particularly in the Terai Region, as the *Madhesis* rapidly reacted to the new constitution's provisions on federalism and political representation.

### *3.2 The 2015 Constitutional Process*

The latest constitution was adopted the 20<sup>th</sup> of September, 2015 after a fast-track process promoted by representatives of the four most important Nepalese parties: the NC, the CPN-UML, the United Communist Party of Nepal-Maoist (UCPN-Maoist) and the Terai based Madhesi People's Rights Forum – Democratic (MPRF-D). The latter, however, left the alliance before the approval of the final text. Despite being the first constitution to be drafted by a democratically elected assembly, the document became highly contested in the weeks previous to its formal adoption, and the political process was accompanied by a series of protests that took their most violent form in the Terai region.

The protests revolved around two main issues: citizenship rights and the federal division contained in the new constitutional text. Firstly, the constitution establishes a difference between citizenship by descent and citizenship by naturalization. Citizens by descent are those who are born to a Nepalese mother and father, while children born to a Nepalese mother and foreign father can only access to Nepalese citizenship by naturalization<sup>181</sup>. The constitution thus establishes different lineage rules for men and for women. While it is clearly stated that the child of a Nepalese woman and a foreign

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<sup>181</sup> Nepal, Constitution of Nepal 2015, Art. 11.

citizen shall be only eligible for naturalized citizenship, the same is not stipulated for the child of a Nepalese man and a foreign woman (as the latter is eligible for naturalized citizenship after marriage). The difference between naturalized citizens and citizens by descent becomes of the utmost relevance when a key issue is brought into consideration: only the latter can access a large number of public offices. As article 289 of the new constitutional text clearly expresses:

A person shall have acquired a citizenship by descent to be elected, nominated and appointed as the President, Vice-President, Prime Minister, Chief Justice, Speaker of the parliament, Chairperson of National Assembly, Head of the province, chief minister, speaker of Provincial Assembly and chief of security bodies.

Moreover, the new federal division of the republic remains unquestionably the most disputed aspect of this constitution. Article 56 establishes the new structure of the Nepalese state by differentiating the federal, provincial and local levels of government. It is the middle level that deserves our attention, as the division of the country's territory into provincial districts became heavily contested during the protests. The main issue is linked to the ethnic and caste diversity within the demarcated districts, with some voices raising claims in favor of ethnic-based divisions. This is intricately linked to the matter of federal representation in the Legislative power: ethnic groups have claimed that the new constitution reduces proportionality in comparison to the previous Interim Constitution of 2007<sup>182</sup>.

The adoption of the constitution was followed by explicit criticisms and warnings from organizations such as Human Rights Watch and Amnesty International with regards to both the content of the constitutional text and the violent character of the protests that followed, particularly in the Terai region, where at least 45 people have died. Citizenship rights are one of the highest concerns regarding the constitution's new provisions. Amnesty International, in particular, has vehemently spoken against certain aspects of the articles regarding citizenship acquisition that are deemed both exclusive

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<sup>182</sup> Charles Haviland, 'Why is Nepal's new constitution controversial?' *BBC News* (London, 19 September 2015). < <http://www.bbc.com/news/world-asia-34280015>> Accessed 5 January 2016.

and discriminatory<sup>183</sup>. Specifically, the fact that -as it is inferred from article 11 (3) - citizenship by descent would only be acquired after reaching age majority is emphatically criticized. The organization highlights the consequences this provision could have on statelessness, which happens to be a serious issue in Nepal, affecting over 4 million people. Statelessness in this country is a direct consequence of a legal system that has historically granted women different citizenship rights than those of men, limiting their ability to pass on Nepali citizenship to their children.

Nevertheless, the 2015 Constitution also marks progress in terms of rights' recognition, strengthening a process that had begun with the 2007 Interim document. Aside to the right to food and food sovereignty (Article 36), the constitution provides a new status of recognition for rights such as the right to a clean environment (Article 30); to language and culture (Article 32); and to health care (Article 35).

#### 4. Chapter conclusions

The review of the Nepalese socio-economic background and political history becomes relevant in order to grasp the importance of this country's recognition of Economic, Social and Cultural Rights in the new constitution, the right to food in particular. The reason is that the lack of enjoyment of these rights by a large part of the population was a major part of the causes behind the 10 year long civil war<sup>184</sup>. The 40 Point Demands submitted by the UCPN-Maoist before the beginning of the armed conflict included a number of issues related to Economic, Social and Cultural Rights; according to the FAO, 17 of 40 demands were directly related to the right to food<sup>185</sup>. Moreover, the Comprehensive Peace Agreement signed in 2006 between the Government of Nepal and the UCPN-Maoist emphasizes that state restructuring should be based on inclusive, democratic and progressive principles, and specifically makes reference to the need for policies that ensure the enjoyment of the rights to education, housing, employment, health and food security<sup>186</sup>. In the 2007 Three-Year Interim Plan,

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<sup>183</sup> Amnesty International, *Amnesty International concerns regarding key human rights provisions in the 2015 Nepal Constitution* (November 2015)

<sup>184</sup> Chapagai (n 2)

<sup>185</sup> Ibid.

<sup>186</sup> Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist), < <http://peacemaker.un.org/nepal-comprehensiveagreement2006>> Accessed 9 May 2016.

the Government of Nepal expressly recognized that women, *Madhesis*, Dalits, indigenous groups, people living in the Karnali zone<sup>187</sup> and in remote areas, and poor citizens had been excluded from the enjoyment of Economic, Social and Cultural Rights<sup>188</sup>.

Addressing these inequalities is a key issue in order to prevent future instabilities, as the protests in the Terai region demonstrate. The adoption of legislation and policies targeting these issues is thus worthy of analysis. Chapter IV focuses on the legal, policy and institutional framework for the right to food in Nepal.

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<sup>187</sup> The Karnali area in Western Nepal is a particularly vulnerable zone, where one third of the population is severely affected by food insecurity, and half is moderately food insecure. IRIN News, 'Rethinking food insecurity in Nepal's Karnali region', Kathmandu 21 March 2013, <<http://www.irinnews.org/report/97693/analysis-rethinking-food-insecurity-nepal%E2%80%99s-karnali-region> Accessed May 9 2016>.

<sup>188</sup> GoN, National Planning Commission (NPC) *Three Year Interim Plan 2007/08-2009/10* (September 2007).

## Chapter IV. Structural Indicators for the right to food in Nepal

### 1. Introduction

This chapter presents an overview of the legal, policy and institutional framework for the right to food in Nepal, in order to pinpoint structural indicators for the implementation of this right. As it has been exposed in Chapter I, structural indicators provide an overview of the adoption and ratification of legal and institutional instruments and mechanisms that are necessary to promote and protect human rights<sup>189</sup>. Their identification is indicative of the state's commitments towards the realization of human rights.

Firstly, I present the legal framework for the right to food in Nepal, from the adoption of international treaties, to constitutional provisions and jurisprudence. Secondly, the focus is shifted to policies and strategies that have been proposed in order to advance this right. Thirdly, brief reference is made to the role of the National Human Rights Commission. Finally, the chosen structural indicators are identified.

### 2. The Right to Food in Nepalese Legislation

#### *2.1 Recognition of international law on the right to food*

Nepal is a party to several of the binding international instruments that provide for the human right to adequate food. In particular, this country has ratified the ICESCR, the CEDAW and the CRC, all of which provide for the right to adequate food. Nevertheless, Nepal has not ratified the Optional Protocol to the ICESCR, and has ignored recommendations made through the Universal Periodic Review (UPR) –both in the first and second cycle of reviews- by other Member States towards ratification of this instrument<sup>190</sup>. As the Optional Protocol establishes a complaints mechanism and an inquiry procedure, its ratification implies a stronger commitment towards the realization of Economic, Social and Cultural Rights, including the right to food<sup>191</sup>.

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<sup>189</sup> FAO (n 8)

<sup>190</sup> Chapagai (n 2)

<sup>191</sup> Ibid.

What this indicates is that Nepal has internationally binding obligations regarding the respect, protection and fulfilment of the human right to adequate food. The status of international law within the Nepalese legal system is not clearly established in the latest constitutional document, which states in its Article 1 that the constitution is the fundamental law and that all incompatible laws will be deemed void. Nevertheless, Article 51 reads that the state shall implement the international treaties and agreements to which Nepal is a party. Likewise, Article 248 entrusts a National Human Rights Commission with the task “to monitor the implementation of the international treaties and agreements on human rights to which Nepal is a party and if found not to be implemented, forward recommendations to the Government of Nepal for effective implementation of such agreements”.

In order to resolve the issue of legal supremacy, the 1990 Nepal Treaty Act must be brought into consideration. This law spells out the procedures for treaty ratification and the effects of treaties in the Nepalese territory, as well as the issue of legal incompatibilities. In this regard, Article 9 specifies that:

In case of the provisions of a treaty to which the Kingdom of Nepal or HMG has become a party following its ratification accession, acceptance or approval by the Parliament conflict with the provisions of current laws, the latter shall be held invalid to the extent of such conflict for the purpose of that treaty, and the provisions of the treaty shall be applicable in that connection as Nepal laws<sup>192</sup>.

In other words, in case of a conflict between an internationally binding instrument to which Nepal is a party and Nepalese law, international law will prevail and shall be applied as if it were national legislation. The importance of this provision is related to the fact that the Nepalese judiciary is thus able to invoke international legislation in order to ensure the respect of the right to food<sup>193</sup>.

Moreover, Nepal was a participant to the 1992 International Conference on Nutrition (that resulted in the World Declaration on Nutrition); to the International Conference on Population and Development in 1994; to the 1995 World Summit on Social Development; as well as to the 1996 World Food Summit and the 2002 World

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<sup>192</sup> Nepal, *Nepal Treaty Act, 1990*, (Adopted 9 November 1990), <<http://www.refworld.org/docid/3ae6b51724.html>> Accessed 9 May 2016.

<sup>193</sup> Chapagai (n 2)

Food Summit: Five years later. As it was established in the first chapter, the declarations emerging from these international encounters were very important in putting forward the right to food and in creating consensus on the content of this right. The fact that Nepal was a signatory to these documents can be considered as indicative that the issue has been in this country’s agenda for a while.

**Table 4: International treaties linked to the right to food ratified by Nepal**

<b>Instrument</b>	<b>Date of Ratification/Accession</b>
ICESCR	14 <sup>th</sup> May 1991 (accession)
Optional Protocol to the ICESCR	Has not been ratified
CEDAW	22 <sup>nd</sup> April 1991
CRC	14 <sup>th</sup> September 1990

Source: Author 1, based on <https://treaties.un.org>

## *2.2 The Right to Food in Constitutional Law*

The Interim Constitution of 2007 in its Article 18(3) established that “every citizen shall have the right to food sovereignty as provided for in the law”, and framed this right within the broader setting of rights regarding employment and social security. According to the definition of this notion proposed in Chapter II, food sovereignty is an umbrella concept that includes among its principles the notion of food as a fundamental human right. Asserting the right of individual citizens to food sovereignty was, however, rather innovative, especially since the most well-known definition of this concept speaks collectively of the “rights of peoples”. Nevertheless, both the FAO and the Supreme Court of Nepal have interpreted this Article as an explicit recognition of the right to food, understanding it is comprised within the meaning of food sovereignty<sup>194</sup>.

Moreover, the Interim Constitution recognized other human rights that are strictly related to the realization of the right to food. For instance, within the framework of the right to freedom, Article 12 (1) sustained that “every person shall have the right to live with dignity”. Likewise, Article 13 established the right to equality, while Article 14 provided for the right against untouchability and racial and caste-based

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<sup>194</sup> Lidija Knuth and Margret Vidar, *Constitutional Recognition of the Right to Food Around the World* (FAO 2011).

discrimination; the content of both articles was extremely important in relation to the right to food in a country marked by social and ethnic divisions. Furthermore, constitutional provisions on the rights of children included the right to be nurtured, to basic health and to social security<sup>195</sup>.

The Interim Constitution also included: the right to live in a clean environment and to basic health service (Article 16); the right against exploitation (Article 19); specific provisions on women's rights, including the prohibition of discrimination and violence on the basis of gender (Article 20); the right to social justice of women, Dalits, *Madhesis*, indigenous tribes, poor peasants and laborers (Article 21). Most importantly, this constitution incorporated the right to constitutional remedy (Article 32), and Article 107 clarified that in cases of rights violations or legal conflicts with the fundamental rights set forward in the constitution, citizens would have direct access to the jurisdiction of the Supreme Court for remedy of the situation<sup>196</sup>.

Additionally, some of the directive principles that were set up in the Interim Constitution would have effects on the realization of the right to food. Specifically, Article 33 stated that it would be the state's responsibility to: "pursue a policy of establishing the rights of all citizens to education, health, housing, employment and food sovereignty"; to restructure the state in order to "address the problems related to women, Dalits, indigenous tribes, Madhesis, oppressed and minority community and other disadvantaged groups, by eliminating class, caste, language, sex, culture, religion and regional discriminations"; to eliminate all forms of feudalism; to pursue policies that protect national industries and resources; to provide economic and social security, including land, to economically and socially backward classes; to eliminate discriminatory laws; and to "to use existing natural resources including water resources of the country for the interest of the nation"<sup>197</sup>.

Article 34, on the other hand, established the promotion of welfare as the chief objective of the state; and stated that the fundamental economic objective shall be to:

transform the national economy into an independent and self-reliant system by preventing the available resources and means of the country from being

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<sup>195</sup> Nepal, Interim Constitution Art. 22(2).

<sup>196</sup> Chapagai (n 2).

<sup>197</sup> Nepal, Interim Constitution Art. 33.

concentrated within a limited section of society, by making arrangements for equitable distribution of economic gains based in social justice, by making such provisions as will prevent economic exploitation as well as economic disparity of any caste, sex, tribe, origin or individuals, and by giving preferential treatment and encouragement to national enterprises, both private and public<sup>198</sup>.

The Interim Constitution did not only explicitly recognize the right to food under the umbrella of food sovereignty, but also involved a number of related rights and directives that could have an impact on the effective realization of this right. Nevertheless, as the FAO has rightfully pointed out, the fact that the right to food sovereignty was recognized “as provided for by law” conditioned the implementation of this right to the existence of a framework law that regulated it. In practice, this could be seen as a potential limitation of the enjoyment of this right<sup>199</sup>.

As it has been already mentioned in this work, the 2015 Constitution of the Republic of Nepal includes the right to food and food sovereignty in a separate article, which reads as follows:

- (1) Each citizen shall have the right to food.
- (2) Every citizen shall have the right to be protected from a state of starvation, resulting from lack of food stuffs.
- (3) Every citizen shall have the right to food sovereignty as provided for in law<sup>200</sup>.

Unlike the Interim Constitution, the new document clearly refers to the right to food and the right to food sovereignty as two different concepts. Moreover, this new text partially clarifies the content of the right to food by stating that each citizen possesses the right to be free from starvation. Likewise, Article 42 deals with the right to social justice, and within its provisions institutes that

- (2) Citizens who are economically very poor and communities on the verge of extinction shall have the right to special opportunity and facilities in the areas of education, health, housing, employment, food and social security, for their protection, progress, empowerment and development.

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<sup>198</sup> Nepal, Interim Constituion, Art. 34

<sup>199</sup> Chapagai (n 2)

<sup>200</sup> Nepal, Constitution of Nepal 2015 Art 36

[...](4) Each peasant shall have the right to access to land as provided for in law for agricultural purposes, along with the right to choose and preserve traditionally adopted and used endemic seeds and agricultural species.

The new constitution further elaborates upon rights linked to the right to food that had been introduced by the Interim Constitution. For instance, the right to live with dignity is now defined in a separate article; likewise, the rights against untouchability and discrimination, and the right to be freed from exploitation are now supplemented by a specific article dedicated to the rights of Dalits (which includes the provision of land and housing arrangements to Dalits according to law). Article 44, on the other hand, establishes the right of consumers to access quality foodstuffs and services. Finally, Article 47 asserts that the state is to make provisions in order to enforce these rights within three years of the adoption of the constitution.

Part 4 of the Constitution, entitled “Directive Principles, Policies and Responsibilities of the State”, contains other provisions that affect the right to food. In particular, there are specific mentions to agricultural and land reform policies to increase productivity, protect the rights of peasants, and provide for agricultural tools and access to the market with fair price. This section also makes a fair distribution of the fruits of development a priority of the development policy; it singles out the need for national investment in water resources and to

increasing investment in the agricultural sector by making necessary provisions for sustainable productivity, supply, storage and security, while making it easily available with effective distribution of food grains by encouraging food productivity that suits the soil and climate conditions of the country in accordance with the norms of food sovereignty<sup>201</sup>.

Finally, Article 54 affirms the state’s obligation to monitor the progressive implementation of these directives, principles, policies and responsibilities.

The new constitution thus offers a more comprehensive framework of constitutional recognition of human rights, many of which are strictly related to the right to food. Nevertheless, the fact that some of these rights are still subjected to provisions made by law should be considered as a potential restriction on their effective realization.

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<sup>201</sup> Nepal, Constitution of Nepal 2015, Art. 51 (h).

### 2.3 Jurisprudence on the Right to Food

The Nepalese Judiciary has become an important stakeholder in ensuring the enforcement of the right to food<sup>202</sup>. In one of the most well-known cases, a non-governmental organization, Pro Public, presented a case to hold the Nepalese government accountable for hunger, taking the provisions of the Interim Constitution as the legal basis<sup>203</sup>. The context for the filing of this case was the reporting of large scale starvation and diarrhea and cholera epidemics in 2008, particularly affecting a very poor section of the population<sup>204</sup>. The petition filed by Pro Public claimed that food was one of the basic human needs necessary to live with dignity, and presented various reports that claimed that 12 districts in the mid and far western regions of Nepal were facing mass-starvation<sup>205</sup>. The decision of the Supreme Court was to issue an interim order that compelled the government to ensure an adequate food supply in the affected areas<sup>206</sup>. Moreover, in 2010 the Court upheld this interim order and emitted a landmark decision that clarified some aspects of the content of the right to food; in particular, the Court stated that food availability did not suffice, and held the authorities responsible for ensuring accessibility and affordability of food<sup>207</sup>. Moreover, the Court expressed the links between the right to food and other human rights such as employment and social security, holding the government responsible for its progressive realization<sup>208</sup>.

Another Supreme Court decision linked to the right to food dealt with victims' compensation, particularly regarding farmers whose crops were destroyed by wild animals in national reserves and parks<sup>209</sup>. In this case, the Supreme Court expressed that the right to food sovereignty was to be interpreted as the right of every citizen to food security and as the right to be free from hunger, and outlined the corresponding state

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<sup>202</sup> FIAN Nepal, 'Parallel Information: The Right to Adequate Food in Nepal. Article 11 ICESCR' (FIAN NEPAL 2014).

<sup>203</sup> Friends of the Earth International, 'The right to food. Nepal', <<http://www.foei.org/no-category/right-food-nepal>> Accessed May 10 2016.

<sup>204</sup> Chapagai (n 2).

<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

<sup>207</sup> FIAN, 'Parallel Report. The Right to Adequate Food of Women in Nepal. Combined fourth and fifth periodic report of States Parties. Submitted to CEDAW's 49<sup>th</sup> Session' (FIAN 2011).

<sup>208</sup> Ibid.

<sup>209</sup> *Bajuddin Minhya and Others v GoN, Prime Minister and the Council of Ministers*, (destruction of crops by wild animals from Koshi Tappu Wildlife Reserve) Writ no. WO-0338 of the year 2008 AD (2064 BS) decision, dated 18 March 2009.

responsibilities<sup>210</sup>. Interestingly, the Court also made reference to international instruments guaranteeing the right to food, such as the ICESCR<sup>211</sup>.

Moreover, in *Prakash Mani Sharma v. Nepal Water Supply Corporation and Others*, the Court upheld the duty of the state to provide access to safe drinking water and to protect water resources from pollution<sup>212</sup>. In *Raju Prashad Chapagai and Others representing Pro Public v. HGM, Ministry of Health et al* the Court worked towards ensuring infant nutrition and the health of lactating mothers in the work place. Likewise, the issue of gender-based legal discrimination affecting land tenure of women was addressed several Supreme Court decisions. Finally, the Court has also expressed itself towards improving the coverage and the effectiveness of social security, particularly when targeting people with disabilities and women, among other issues related to the effective implementation of the right to adequate food<sup>213</sup>.

In sum, this brief review of jurisprudence seems to show that the Nepalese judiciary, particularly through the Supreme Court, has become a relevant actor in terms of the enforcement of the human right to adequate food. Nevertheless, effective implementation of judicial decisions is not to be taken for granted, as it remains a challenging aspect in the Nepalese system<sup>214</sup>.

#### *2.4 Framework legislation on the right to food*

The FAO has repeatedly underscored the importance of framework legislation towards the effective enjoyment of the right to food, as constitutions tend to be broadly phrased and specific laws regulating this right can make it operational in practice<sup>215</sup>. As a matter of fact,

the term ‘framework law’ refers to a legislative technique used to address cross-sectoral issues. Framework legislation lays down general principles and obligations, and leaves it to implementing legislation and the competent

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<sup>210</sup> Chapagai (n 2)

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

<sup>215</sup> Knuth and Vidar (n 194).

authorities to determine specific measures to be taken so as to realize such obligations, possibly within a given time limit<sup>216</sup>.

The framework legislation thus acts as a sort of guiding document that specifies the core content of the right, the corresponding state obligations, spells out the necessary institutional arrangements and coordination mechanisms in order to implement and monitor the right in question. It plays a significant role in ensuring accountability and providing access to recourse mechanisms<sup>217</sup>.

At the moment there is no framework law on the right to food in Nepal. Nevertheless, since the passing of the new constitution the Nepalese Law Commission has begun working on a Right to Food Bill<sup>218</sup>. The FAO is currently contributing to this process, primarily through technical assistance. Consultants from this organization are working with the Law Commission for the drafting of a concept paper expected to be finished by the end of May 2016. This document will focus on the definition of the human right to adequate food in terms of quantity, quality and cultural acceptability; and on access to hunger in times of crisis, from a freedom from hunger perspective<sup>219</sup>. The concept paper is important as it will define and limit the focus of the framework law, whose drafting is expected to be finished by September 2016.

While the eight-year delay in adopting framework legislation regulating the content of the right to food is a serious weak point in the Nepalese legal system, it is necessary to mention that a number of existing laws, some of them going back to the 1960's, are connected to the effective implementation of this right. Despite the fact that their analysis exceeds the selected time frame for this research, a brief overview of these legislative tools is relevant for understanding the broad picture of Nepal's legal framework regarding the right to food. Table 5 lists these pieces of legislation.

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<sup>216</sup> Ibid 30.

<sup>217</sup> Ibid.

<sup>218</sup> Interview with Indra Maya Shankar, National Consultant on the Right to Food for FAO Nepal (12 May 2016).

<sup>219</sup> Ibid.

**Table 5: Nepalese legislation linked to the right to food**

<b>Law</b>	<b>Date</b>	<b>Provisions linked to the right to food</b>
<b>General Code of Nepal</b> <i>(Muluki Ain)</i>	1964	Chapter 5 of Part 3, entitled “Pauper” includes provisions on social security for people living in extreme poverty. Chapter 8 of the same part focuses on “Land Cultivation” sets out certain rules for accessing the irrigation system and for cultivating land.  In Part 4, Chapter 8, on “Illegal Detention” obliges the state to provide food and water to detainees. Chapter 12 of the same part, on “Husband and Wife” establishes women’s entitlements in case of divorce. Likewise, Chapter 14 on “Women’s Share and Property” aims at protecting women from patriarchal domination.
<b>Land Act</b>	1964	Improving the living conditions of farmers and optimizing agricultural growth are among its objectives. Provides the framework for regulation of the landholding system in Nepal, including a limit to land possession. Defines cooperative farming, land zoning and plotting, agricultural-saving credit, cooperative institutions for farmers.
<b>Food Act</b>	1966	Provides a definition for “foodstuffs” and bans the production, commercialization and distribution of substandard and non-hygienic food. Misleading advertising is also prohibited.
<b>Natural Calamity Relief Act</b>	1982	Provisions to protect the population in case of natural disasters.
<b>Protection and Welfare of Disabled Act</b>	1984	Includes a number of provisions linked to the enjoyment of the right to food by people with disabilities, including the right to equality and non-discrimination. It requires the government to take all necessary measures to ensure the economic independence of people with disabilities.

<b>Seed Act</b>	1988	Aims at ensuring the supplies of high-quality seeds to farmers.
<b>Breast-Milk Substitutes Act</b>	1992	Aims at protecting the nutritional rights of newborns.
<b>Water Resources Act</b>	1992	Regulates the access and management of water resources, making arrangements for their rational utilization, conservation, development and management.
<b>Social Welfare Act</b>	1992	Encourages the Nepalese government to enact welfare programs, services and activities.
<b>Labor Act</b>	1992	Provides for national labor rights standards, but excludes enterprises with less than 10 workers from its protection
<b>Children's Act</b>	1992	Specifies legal protection of children under 16, including care for orphan and destitute children.
<b>Consumer Protection Act</b>	1997	Comprehensive framework for consumer protection, including protection from harmful goods and services, the right to compensation and to consumer education.
<b>Iodized Salt Act</b>	1998	Aims at minimizing health problems derived from lack of ionized salt.
<b>Child Labor Act</b>	1999	Prohibits children under 16 years of age from engaging in certain categories of work, and of children below 14 in any kind of employment.
<b>Local Self Governance Act</b>	1999	Obliges all levels of government to implement social protection and welfare activities.
<b>National Foundation for Development of Indigenous Nationalities Act</b>	2002	Its aim is to improve the situation of indigenous nationalities by designing programs aiming at their economic, social, cultural and educational development.
<b>Kamaiya Act</b>	2006	Frees all Kamaiya workers (bonded labourers) and includes provisions on their lands' restitution.
<b>Poverty Alleviation Fund Act</b>	2006	Defines the "poor" and establishes a fund to improve their socio-economic status, ensure their

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		access to state services, build on their capacity to exercise their rights, and to identify the root causes of poverty.
<b>Senior Citizens Act</b>	2006	Provides for special social protection for senior citizens, including the endowment of allowances and facilities.
<b>Good Governance Act</b>	2008	Requires government agencies to ensure good governance and transparency.
<b>Domestic Violence Act</b>	2009	In its definition of domestic violence the act includes physical, mental, sexual and economic harm and is de facto targeted at women and children. Economic harm includes deprivation from the use of property, and of access to employment, opportunities, economic resources or means.
<b>Untouchability Act</b>	2011	Criminalizes caste-based discrimination and untouchability.

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**Source:** Author, based on Raju Prasad Chapagai, *Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal* (FAO 2014).

While many provisions contained in these bills could have a significant impact on the realization of the right to food, their implementation remains a challenge, as it has been repeatedly signaled by the FAO. Moreover, the content of some of these bills contain certain restrictions to the effective enjoyment of the right to food, as it is the case of the Land Act (which sets a ceiling on land tenure that's particularly restrictive for tenants, and thus fails to address landlessness). In addition, coordination among different state organisms and management of resources have been signaled as the main challenges towards the implementation of the legal framework concerning the right to food<sup>220</sup>.

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<sup>220</sup> Interview with Indra Maya Shankar, National Consultant on the Right to Food for FAO Nepal (12 May 2016).

### 3. Policy Framework for the Right to Food in Nepal

An assessment of the Nepalese policies and strategies which can contribute to advance the human right to adequate food is a fundamental part of the analysis of structural indicators aimed at monitoring the implementation of this right. While as to date there isn't a policy or program targeting specifically and exclusively the effective realization of the right to food, this right has been a part of a number of national strategies and programs.

Firstly, the Ministry of Agricultural Development's 2013-2023 Agricultural Development Strategy (ADS) highlighted in its Paragraph 289 the need for right to food and food sovereignty framework legislation, and charged itself with monitoring its implementation. Moreover, the Strategy also included the goals of designing and implementing a targeted nutrition and food security program (Paragraphs 282 and 283); of implementing the National Food Security Project (Paragraph 284) and the Food and Nutrition Security Plan (Paragraph 285); and of coordinating the work of the Ministry with ongoing international food security programs, such as those ran by USAID (Paragraph 286)<sup>221</sup>. It is relevant to point out that the FAO is currently offering technical consultancy activities to this Ministry in order to develop a food security policy within the framework of the ADS.

The abovementioned Food and Nutrition Security Plan (FNSP) began its development in 2012, in consultancy with NGOs and international stakeholders such as the United States Agency for International Development (USAID), the FAO, the World Food Program (WFP), the IFAD and the United Nations International Children's Emergency Fund (UNICEF)<sup>222</sup>. This program's objective is to reduce hunger and malnutrition among poor households by improving the competitiveness and sustainability of agricultural activities. Component N° 8 of this plan underscores the importance of legislation in order to mainstream the right to food and minimize all forms of discrimination. This component stresses the need for a comprehensive legislation and policy on the right to food; for the incorporation of a human rights based approach in existing legislation and policies; to improve the application of the existing

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<sup>221</sup> GoN, MOAD, *Agricultural Development Strategy 2014*.

<sup>222</sup> GoN, MOAD, *Food and Nutrition Security Plan of Action. A National Programme for Food and Nutrition Security*. April 2013.

legal framework; to strengthen the institutional framework; to regulate the situation of vulnerable groups, including in emergency contexts; and to revise ineffective food safety regulations<sup>223</sup>.

The 2013 Agriculture and Food Security Project (NAFSP) financed by the World Bank aimed at increasing food and nutrition security of selected vulnerable communities in the mid and far-western regions of Nepal. Increasing food availability by improving agricultural productivity and promoting diversified diets and improved feeding and caring practices for pregnant women and children up to two years of age were part of the project's core.<sup>224</sup>

Moreover, the Multi-sectoral Nutrition Plan 2013-2017 targets maternal and child malnutrition. From the right to food perspective, the plan is relevant as it specifically targets vulnerable groups (children and women), and because it refers to international human rights treaties (ICESCR and the CRC) as the legal framework for its implementation. Furthermore, this document refers to the Plan's beneficiaries as "rights holders"<sup>225</sup>, thus reinforcing the idea of access to adequate food as a fundamental right.

The National Planning Commission (NPC) is in charge of overseeing all policy programs and budgets. Its Interim Plan for the year 2007-2013 refers to food security as "the basic element of human rights", and sets the goal to improve national self-reliance of basic food products and the country's nutritional situation, in order to ultimately "ensure food sovereignty rights of every individual by strengthening in a coordinated way all aspects of food and nutritional security"<sup>226</sup>. Likewise, the 2013-2016 Plan, aims at improving the quantity and nutritional value of food consumption, and to identify areas and communities that are vulnerable to food insecurity, in order to improve their situation<sup>227</sup>. It also highlights the need for framework laws and operationalization of policies targeting food sovereignty.

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<sup>223</sup> Ibid.

<sup>224</sup> WB, 'Improving Food Security and Livelihood Opportunities; Building Climate Resilience for Nepal's Vulnerable Populations' (April 30<sup>th</sup> 2013) <<http://www.worldbank.org/en/news/press-release/2013/04/30/building-climate-resilience-for-nepals-vulnerable-populations>> Accessed May 22 2016.

<sup>225</sup> GoN, NPC, *Multi-Sector Nutrition Plan For Accelerating the Reduction of Maternal and Child Under-Nutrition in Nepal, 2013-2017*. 27

<sup>226</sup> GoN, NPC, *Three Year Interim Plan 2007/08-2009/10* (September 2007) 87.

<sup>227</sup> GoN, NPC, *An Approach Paper to the Thirteenth Plan (FY 2013/14-2015/16)* (July 2013).

The Human Rights Action Plan 2014-2019 includes a clause on the right to food, and while recognizing that the regulatory framework is yet to be adopted, it references some of the previous legal provisions whose implementation affects the realization of this right<sup>228</sup>. Moreover, the Plan partially clarifies the interpretation of the content of the right to food by specifying that this concept also includes food security and food sovereignty.

Finally, it is important to mention that in 2016 Nepal became a part of the “Zero Hunger Challenge 2025”, launched by the Secretary General of the UN in 2012. The program aims at the implementation of a comprehensive strategy to target hunger and malnutrition. It comprises five elements:

1. Food systems’ sustainability from production to consumption
2. Ending rural poverty, increasing small-scale producers’ incomes and productivity.
3. Eliminating food loss and food waste
4. Ensuring access to adequate food and healthy diets all-year-round
5. Ending malnutrition in all its forms<sup>229</sup>

These initiatives demonstrate that the right to food is increasingly present in Nepalese national strategies and programs. Nevertheless, the documents reviewed in this section are programmatic, and as with the legal framework’s case, their effective implementation remains a challenge.

#### 4. The National Human Rights Commission

The FAO’s Voluntary Guidelines highlight the importance of including the right to food within the mandate of National Human Rights Institutions (NHRI), and encourages states lacking these organisms to implement them. The 1997 Human Rights Commission Act created this institution in Nepal, which began its functioning in 2000<sup>230</sup>. This Act establishes that the Commission shall be an independent and

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<sup>228</sup> GoN, Office of the Prime Minister and Council of Ministers, Fourth National Plan of Actions for Human Rights, Fiscal Year 2014/15-2018/19 (July 2014).

<sup>229</sup> UN, ‘Zero Hunger Challenge: Pathways to Zero Hunger’, < <http://www.un.org/en/zerohunger>> Accessed May 16 2016.

<sup>230</sup> Gyan Basnet, ‘Nepal Human Rights Commission. Defender or Pretender?’ *Foreign Policy Journal*, December 12 2015.

autonomous institution, thus complying with some of the requirements of the Paris Principles. Moreover, both the Interim Constitution and the 2015 one included the National Human Rights Commission (NHRC) as a constitutional body and defined its members, their appointment procedures and nomination requirements, as well as the functions to be carried out by this body.

The latter include inquiries into human rights violations; recommendations to authorities to prevent human rights violations; raising awareness of civil society; reviewing the legal frameworks and making recommendations on necessary reforms; recommend adoption of international treaties and monitoring their implementation; expose the names of authorities and organisms carrying out human rights violations; ordering compensations for victims of violations<sup>231</sup>. There is also a complaint procedure in order, allowing victims of violations (or any person on their behalf) to lodge complaints before the Commission.

It becomes clear that as a constitutionally recognized fundamental right, the right to food falls within the scope of the NHRC. Nevertheless, as to date this institution has not dealt with any complaints in relation to this right or to those suffering from hunger<sup>232</sup>. Furthermore, there have been recent reports of governmental interferences that have breached the independence of this body<sup>233</sup>, thus raising critiques towards the Prime Minister's commitment towards the protection and promotion of human rights.

In sum, while the existence of the Human Rights Commission and its regulatory framework in compliance with the Paris Principles should be evaluated positively in terms of structural indicators, the role of this institution towards securing the implementation of the right to food has not yet commenced. Moreover, impediments towards the independent and autonomous functioning of this institution pose questions regarding its potential ability to fulfil the role for which it was created.

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<sup>231</sup> Nepal, Constitution of Nepal 2015.

<sup>232</sup> Interview with Indra Maya Shankar, National Consultant on the Right to Food for FAO Nepal (12 May 2016).

<sup>233</sup> Human Rights Watch, 'Nepal: End intimidation of Human Rights Commission'. <<https://www.hrw.org/news/2016/04/14/nepal-end-intimidation-human-rights-commission>> Accessed May 16 2016.

## 5. Summary: Structural Indicators of the Right to Food in Nepal

Table 6 summarizes the chosen structural indicators for the right to food in Nepal

**Table 6: Structural Indicators for the Right to Food in Nepal**

<b>Indicator</b>	
<i>Legal recognition of the right to adequate food and related rights.</i>	<p>Yes. Ratification of main international treaties including the right to food. Lack of ratification of the Optional Protocol to the ICESCR. Primacy of international law over national legislation in case of conflict, according to the Treaty Act (1990).</p> <hr/> <p>Inclusion of the right to food in Art 18(3) of the Interim Constitution and Art 36 and 42 of the 2015 Constitution. However, this right is limited to provisions made by law.</p> <hr/> <p>Work in progress towards development of framework bill on the right to food.</p> <hr/> <p>Right to food related provisions included in national legislation, but implementation its remains a challenge.</p>
<i>Existence of a national independent human rights institution.</i>	<p>Yes. The NHRC began functioning in 2000. Nevertheless, its autonomy and independence has been challenged.</p>
<i>National strategy on implementing the right to food</i>	<p>Yes, early stages While there is no official policy document, implementation is on the political agenda and increasingly important for the NPC. Food security strategy is currently being developed. The right to food has been included in several government strategies, thus we can conclude that there is an incipient strategy on implementing the right to food.</p>

Source: Author

## 6. Chapter conclusions

This chapter has presented the legal, policy and institutional framework for the right to food in Nepal in order to identify certain structural indicators representing the level of state commitment to the issue. These indicators show that the Nepalese state has set the legal and institutional basis for realization of the right to food. The inclusion of the right to food as a fundamental right in both the Interim Constitution of 2007 and the 2015 Constitution is a landmark as it implies the recognition of every Nepalese citizen's entitlement to access adequate food. Nevertheless, they also highlight some weak points in both legislation and policy strategies. The lack of a framework law can be signaled as the most relevant setback for the right to food implementation, as this legislation is meant to clearly describe state responsibilities and citizen's entitlements. The fact that the Law Commission is currently working on a draft bill should be regarded as positive progress on the matter. Moreover, while the right to food is a component of several government strategies, the lack of a specific program dealing with the implementation of this right is an impediment to its ultimate realization.

Furthermore, the main issue regarding both legislation and policy seems to be the lack of effective implementation. This challenge alludes to the concept of state capacities. If these are to be understood as the "administrative efficiency of the state apparatus to implement its official objectives"<sup>234</sup> or "the state capacities to reach their official objectives, especially above the real or potential opposition of powerful social groups or in recalcitrant socioeconomic conditions"<sup>235</sup>, then it becomes evident that the implementation of the right to food is dependent on the effective development of state capacities. Once again, the review of this country's tumultuous political history and complicated socio-economic background can serve as an explanation of the reasons why law and policy implementation remains a serious obstacle for the effective realization of the right to adequate food.

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<sup>234</sup>Theda Skocpol 'El Estado regresa al primer plano. Estrategia de análisis en la investigación actual' (1994) 64 *Zona Abierta* 64.

<sup>235</sup> Kathryn Sikkink 'Las capacidades y la autonomía del Estado en Brasil y la Argentina. Un enfoque neoinstitucionalista' (1993) 32 *Desarrollo Económico* 3

## Chapter V – The Right to Food in Practice

### 1. Introduction

This chapter focuses on the condition of the right to food in Nepal. For this, I have decided to center on the identification of process and outcome indicators that reflect, on the one hand, the actions taken by the Nepalese state towards realization of this right; and the changes in the right to food situation on the other. The second section of this chapter thus presents five process indicators that allow us to assess the efforts towards improving the availability and accessibility dimensions of the right to food. The third section displays changes in the availability, accessibility and adequacy outcomes of the right to food through the analysis of 8 indicators and indexes. Finally, the fourth section balances the strengths and weaknesses of the situation of the right to adequate food in Nepal.

### 2. Process Indicators on the Right to Food.

Process indicators provide a measure of state efforts towards realizing human rights obligations. They allow for the assessment of accountability, as they can be considered to be the intermediate step between legal and policy commitments (identified through structural indicators) and outcomes. In other words, process indicators can contribute to monitor which actions have been actually taken in order to realize the right to food and which areas need to be targeted.

The selected process indicators were the following:

1. Coverage of feeding programs for the most marginalized and disadvantaged groups
2. Agricultural and arable land
3. Percentage of households with land and average size of agricultural land
4. Percentage of irrigated land
5. State's capital expenditure in agriculture

The reasons for this selection are linked to the fact that this set of data can provide a first overview on both the availability and accessibility dimensions of the right to food, as well as the government's commitment and efforts to its realization. The first and fifth indicators (coverage of feeding programs for the most disadvantaged groups and state's capital expenditure in agriculture) were selected from the IBSA

Project proposed indicators for the right to food<sup>236</sup>; the latter was however modified from expenditure in research to capital expenditure. The reason is that it was not possible to find data on public expenditure on agricultural research, and that government capital expenditure also provides a measure of public efforts towards the development of this sector. The remaining indicators were selected from the Nepal Living Standards Survey, as they provided information on the use of land and land tenure. It was thought that these would be suitable process indicators for this research as they can portray changes in Nepal's agricultural production that have consequences on the realization of the right to food, bearing in mind that agriculture is the most important economic activity in this country, both as an income generating activity and for the purpose of self-consumption.

Nevertheless, it is necessary to mention certain constraints to the research. Firstly, due to limited time series data the analysis will focus on trends, presenting changes that have taken place over time. Hence, it is not possible at this stage of research to try to identify causality relations between structural indicators (the constitutional recognition of the right to food in particular), the evolution of process indicators, and the changes in outcome indicators that will be discussed in the following sections. Secondly, serious difficulties were encountered when trying to individualize the actual coverage of feeding programs, as information on districts in which they are executed is rather vague or unavailable in English. Lastly, it was not possible to find information that would allow for identifying process indicators related to the adequacy dimension of the right to food (such as the percentage of food consumed that is checked by standards of food security).

### *2.1 Coverage of feeding programs for the most marginalized and disadvantaged groups*

This indicator is linked to the need to establish safety nets in order to advance the right to adequate food, as established in the FAO's Voluntary Guideline No. 14. The aim of these social and food safety nets is to "protect those who are unable to provide for themselves"<sup>237</sup>. The Guidelines specify that when needed, food assistance should be

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<sup>236</sup> Reference to the IBSA project is to be found in the first chapter of this dissertation.

<sup>237</sup> FAO (n 123)

implemented to close the breach between the affected community's nutritional needs and their abilities to satisfy these needs by themselves<sup>238</sup>.

There are few food assistance initiatives in Nepal at the moment, most of them targeting food deficit districts. These programs are the work of both the Government and non-governmental stakeholders, such as UN agencies, and national and international NGOs. The following sections will briefly describe each of them.

#### 2.1.1 The Nepal Food Corporation Subsidized Rice Program

This particular program deserves special attention as the Nepal Food Corporation (NFC) is the only public entity offering food assistance. The entity is dependent upon the Ministry of Supplies, and its activities consist in the sale and distribution of subsidized food commodities in food insecure districts, rice in particular.

The NFC either procures rice from traders and mill owners through tendering procedures or purchases paddy<sup>239</sup> from farmers. Rice and paddy are stored along food aid received from international donors in storage houses owned by the Corporation. From there, the grains are transported throughout the country; transport to remote areas is subsidized by the NFC. As a matter of fact, transport subsidies are the basis of this particular food assistance program, as it allows the Corporation to sell rice in remote areas below market price but including administration charges within the purchase price. In layman's terms, transportation costs are not added when rice is sold through the NFC in remote areas<sup>240</sup>.

The distribution mechanism follows two different paths. Rice distribution in remote areas formally depends on demand from these districts, but in practice the amount is determined according to the transport subsidies assigned to each district by the National Planning Commission and the Ministry of Finance. Once the grains arrive in remote areas, they are distributed to each household by a Food Management Committee, including the Chief District Officer, NFC officials and members of political parties. In non-remote areas, food grains are sold for profit at commercial rates (still lower than the open market price).

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<sup>238</sup> Ibid.

<sup>239</sup> Rice grain with the husk, prior to the threshing process.

<sup>240</sup> Interview with Ansu Tambahangfe, Independent Consultant on Rural Development and Livelihoods (24 July 2016).

The activity of the NFC has been severely criticized recently, particularly regarding its activities in the aftermath of the 2015 earthquake. There have been reports of the Corporation selling rotten rice<sup>241</sup> due to excessive stocking of this grain.

### 2.1.2 The Nepal Food Crisis Response Program

The Nepal Food Crisis Response Program is implemented by the Ministry of Local Development and the WFP. It includes Food Assistance for Assets (FFA), which aims at providing food assistance to the most vulnerable groups. They consist in Food-for-Work and Cash-for-Work programs implemented in the mid- and high-western hills of the country<sup>242</sup>. The programs involve the creation of employment opportunities in exchange for food, cash, or a combination of both. The WFP states that besides benefiting participants with food and cash transfers, the programs contribute to asset creation that will enhance agricultural production, create rural infrastructure, and improve resilience to climate shocks<sup>243</sup>. The estimated number of beneficiaries is 410.000<sup>244</sup> people.

### 2.1.3 Food for Education Program

This is another WFP project, in this case implemented in coordination with the Ministry of Education. It entails the provision of daily school meals for children attending grade 1 to 8 of selected districts. According to the WFP, the program has both short-term benefits, which consist of ensuring school attendance and enhancing attention during classes (thanks to the nutritious content of the meal provided); and long-term ones that are linked to breaking the cycle of hunger by promoting education. The program targets female education in particular, as it includes the distribution of take-home rations of oil for girls. The program is implemented in food deficit districts and it reached 330.000 children in 2013<sup>245</sup>.

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<sup>241</sup>‘In Nepal the remote Manang has stopped buying subsidized rice of Nepal Food Corporation due to substandard quality’< <http://www.riceoutlook.com/in-nepal-the-remote-manang-has-stopped-buying-subsidized-rice-of-nepal-food-corporation-due-to-substandard-quality>> accessed August 22<sup>nd</sup> 2016

<sup>242</sup> WFP (n 151)

<sup>243</sup> Ibid

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

#### 2.1.4 Mother and Child Health Care and Nutrition

This program is implemented by the WFP and the Ministry of Health and aims at improving the health of pregnant and lactating women, young mothers, and children under 5 years of age. It involves the provision of Supercereal (a formulated supplementary food made of maize, soya, sugar, vegetable oil, and premix of vitamins and minerals<sup>246</sup>) in selected health facilities to pregnant and lactating women and children of 6-23 months old; as well as the training of caregivers in the areas of nutrition and hygiene in order to promote optimal feeding habits<sup>247</sup>. There is no information regarding the actual coverage of the program.

#### *2.2 Agricultural and arable land*

Indicators on the proportion of land that is available and used for agriculture provide an important overview of the availability dimension of the right to food. Firstly, “agricultural land” is defined by the World Bank as «the share of land area that is arable, under permanent crops, and under permanent pastures»<sup>248</sup>. “Arable land” on the other hand, refers to «land under temporary crops (double-cropped areas are counted once), temporary meadows for mowing or for pasture, land under market or kitchen gardens, and land temporarily fallow. Land abandoned as a result of shifting cultivation is excluded»<sup>249</sup>.

Figures 1 portrays the evolution of these two indicators in recent decades, from 2000 until 2013 to be precise:

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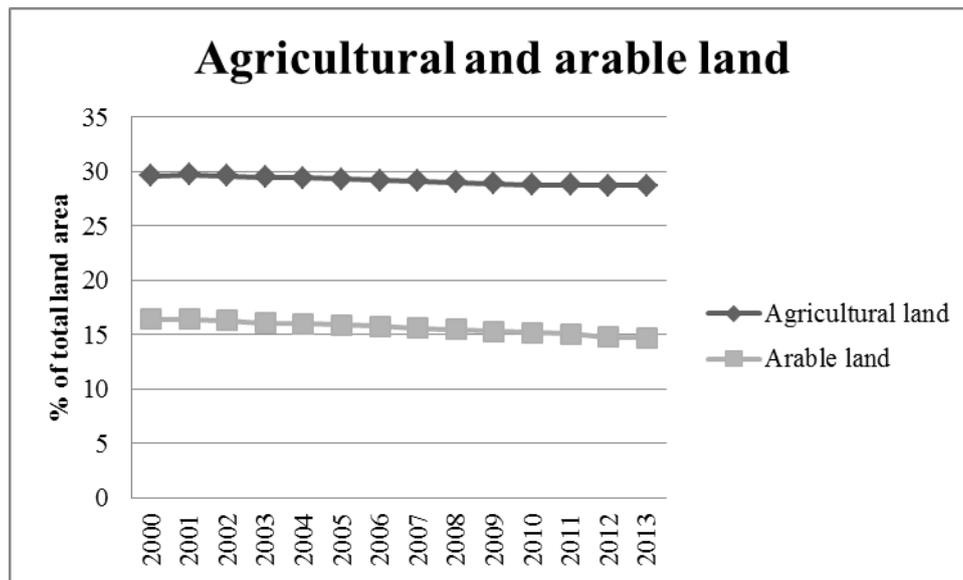
<sup>246</sup> Unicef, ‘Supercereal Products’ <[http://www.unicef.org/supply/files/Supercereal\\_Products\\_\(CSB\).pdf](http://www.unicef.org/supply/files/Supercereal_Products_(CSB).pdf)> accessed August 22<sup>nd</sup> 2016.

<sup>247</sup> WFP ‘Country Programme Nepal 200319 (2013–2017)’ (Executive Board Second Regular Session, Rome, 12-16 November 2012).

<sup>248</sup> WB , ‘Agricultural land (% of land area)’ <http://data.worldbank.org/indicator/AG.LND.AGRI.ZS> Accessed August 15<sup>th</sup> 2016.

<sup>249</sup> Ibid.

Figure 1



Source: Author based on World Bank, 'World Data Bank' <<http://databank.worldbank.org/data/home.aspx>> Accessed 22<sup>nd</sup> August 2016.

Data shows that both agricultural and arable land had been slowly but continuously declining in the period analyzed above. The proportion of agricultural land in total land area went from 29.6% in 2000 to 28.7% in 2013; while the percentage of arable land in total land area suffered a similar drop from 16.4% in 2000 to 14.7% in 2013.

The issue is of the utmost relevance since agriculture is the foundation of the Nepalese economy and the sector that employs most of the country's population. Moreover, Nepal's food deficit problems need to be borne in mind when analyzing this declining trend. The latest Ministry of Agricultural Development information reported 36 out of 75 districts as in food deficit, that is, they do not produce enough food to feed their own population<sup>250</sup>. As the rural population depends fundamentally on agriculture for their subsistence, food deficit in Nepal is extremely linked to poverty and to nutrition. In sum, agriculture is fundamental for achieving food security in Nepal, thus these indicators are extremely linked to the availability dimension of the right to food.

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<sup>250</sup> Sangam Prasain, 'Nepal slides back into food deficit' (*The Kathmandu Post*, 20<sup>th</sup> July 2016) <<http://kathmandupost.ekantipur.com/news/2016-07-20/nepal-slides-back-into-food-deficit.html>> accessed August 22<sup>nd</sup> 2016.

The reasons for the detraction in the percentage of agricultural and arable land call for an analysis that clearly surpasses the scope of this thesis. What can be mentioned, however, is that the land tenure system in Nepal is a rather complex matter that greatly influences the realization of the right to food in this country. Monarchical heritage led to a system that favored the concentration of land tenure in the hands of the richest part of the population. Moreover, the influence of Hinduism and customary practices on land inheritance (land is equally divided among all successors, and is thus passed on in smaller and smaller fractions) combined with population growth, has contributed to an increasing fragmentation of landholdings that, according to the IFAD, severely constraints the possibility to increase agricultural productivity<sup>251</sup>. Furthermore, absentee landlordism results in 20-25% of cultivable land remaining fallow<sup>252</sup>.

Another very relevant phenomenon worth considering is the conversion of agricultural land for non-agricultural uses, such as urban or suburban residential settlements<sup>253</sup>. Better household incomes from remittances have contributed to an increased demand for new houses, which in turn has influenced the appreciation of land prices, discouraging households from the agricultural use of land<sup>254</sup>.

### *2.3 Percentage of households with land and average size of agricultural land*

The following data has been obtained from the most recent Nepal Living Standards Survey (NLSS), corresponding to the year 2010/2011. The survey was conducted to households on a nation-wide scale and reports on the living standards of Nepal's inhabitants. In this sub-section the focus is on the evolution of the percentage of agricultural households with land, and of the average size of agricultural land. As it has been mentioned, these are relevant process indicators as they provide an image on the situation of agriculture at the household level, and consequently, on the availability dimension of the right to food.

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<sup>251</sup> IFAD (n 135)

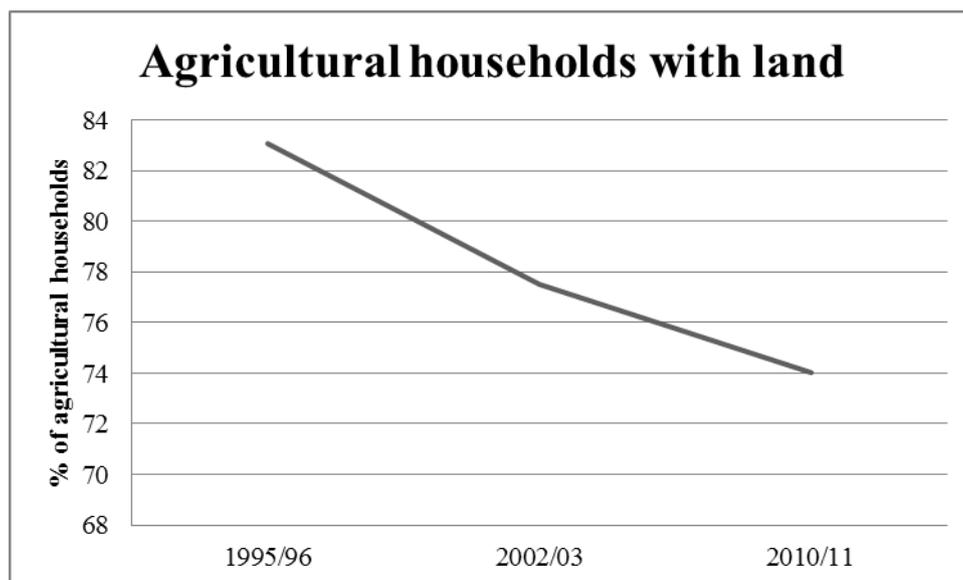
<sup>252</sup> Purushotam Subedi 'Land Administration System in Nepal' (World Bank Annual World Bank Conference on Land and Poverty, Washington DC, March 14-18 2016). Absentee landlords are those landowners who do not occupy their properties nor lease them for rent. The 2015 Constitution sets the discouragement of absentee landlordism as a policy goal for agriculture and land reform.

<sup>253</sup> Bikash Paudel, Januka Pandit and Brinton Reed, 'Fragmentation and conversion of agriculture land in Nepal and Land Use Policy 2012' [2013] MPRA.

<sup>254</sup> Ibid

Firstly, agricultural households with land are those who have cultivated at least 0.013 hectares<sup>255</sup>. It is relevant to point out that 76% of all Nepalese households are agricultural households<sup>256</sup>. The following figure portrays changes in land ownership of agricultural households between 1995 and 2011. While in 2010/11 74% of all agricultural households owned land, this represented a notable fall from the 1995/96 data (when 83.1% of agricultural households owned land).

Figure 2



Source: Author based on GoN, CBS *Nepal Living Standards Survey 2010/11* (Statistical Report Vol.2, 2011)

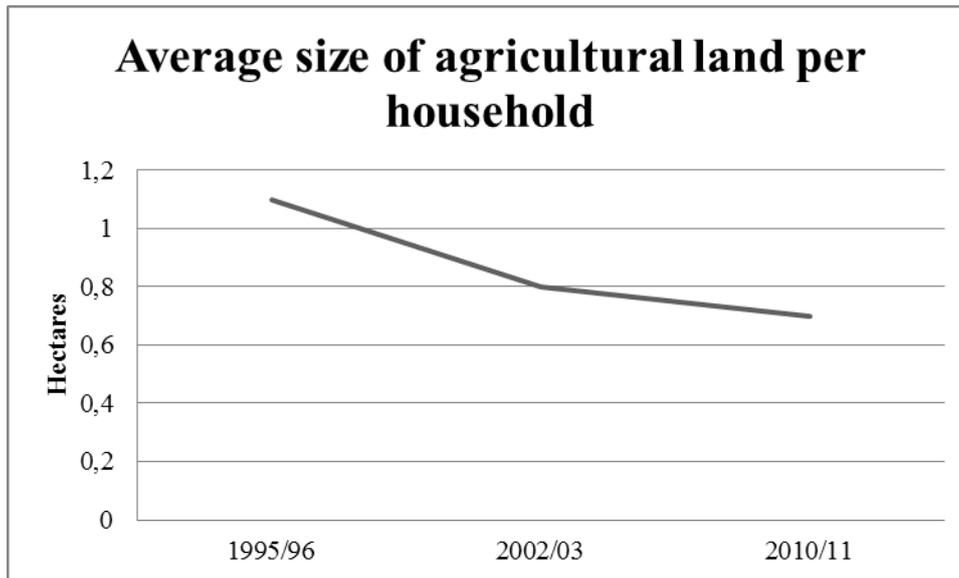
Not only are there fewer land-owning agricultural households, but also the average size of agricultural land in each agricultural household has dropped. Figure 3 depicts that while in average a piece of agricultural land was 1,1 hectares in 1995/96, it fell to 0,7 hectares in 2010/11. The size of the land-area is relevant as it can potentially constitute a limit to reaching a level of production that satisfies minimum subsistence requirements, as well as to the introduction of productivity-raising technologies<sup>257</sup>.

<sup>255</sup> GoN, CBS, *Nepal Living Standards Survey 2010/11. Highlights* (2011).

<sup>256</sup> GoN, CBS, *Nepal Living Standards Survey 2010/11*. (Statistical Report Vol.2, 2011).

<sup>257</sup> IFAD (n 135)

Figure 3



Source: Author based on GoN, CBS *Nepal Living Standards Survey 2010/11* (Statistical Report Vol.2, 2011)

Moreover, data from the NLSS shows that 53% of agricultural households operate less than 0.5 hectares, and only 2% operate over 2 hectares of land<sup>258</sup>. Therefore, agricultural households are largely composed of small farmers. These small farmers operate only 18% of total agricultural land and the Gini concentration index is 0.51<sup>259</sup>. Moreover, land fragmentation remains a problem, as the latest data showed that in average there were about 3 parcels per land area<sup>260</sup>.

In short, this set of data shows that land ownership is receding in Nepal and that agricultural households are operating increasingly smaller pieces of land.

#### 2.4 Percentage of irrigated land

Irrigation is fundamental for the development of agriculture as it is key for increasing productivity; data obtained from the NLSS in Figure 4 shows that between 1996 and 2011 there has been an increase in the proportion of irrigated land in the total agricultural land area.

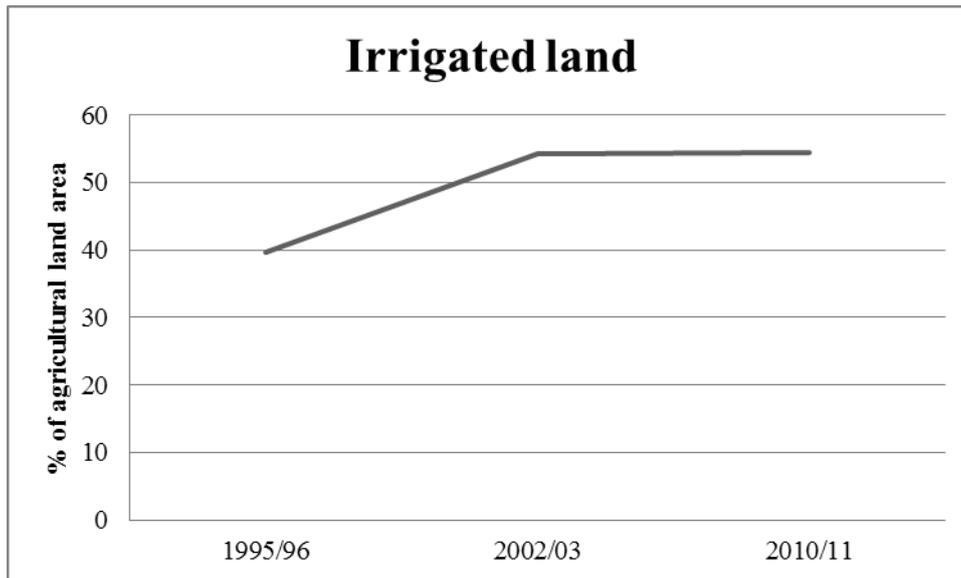
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<sup>258</sup> GoN, CBS (n 255)

<sup>259</sup> GoN, CBS (n 256)

<sup>260</sup> Ibid.

Figure 4



Source: Author based on GoN, CBS *Nepal Living Standards Survey 2010/11* (Statistical Report Vol.2, 2011)

Government expenditure on irrigation during this period has somewhat fluctuated, but there has been a steady increase in the period comprised between 2004/2005 (2332,4 million Rupees) and 2010/2011 (8064,3 million Rupees)<sup>261</sup>. Regardless, data from the Ministry of Finance's Economic Survey for the year 2014/2015 points out that only 40% of all irrigable land was actually being irrigated all year round<sup>262</sup>.

Access to irrigation facilities varies not only according to geographical regions, but also to the caste group of belonging. For example, inhabitants of the low hills area are most likely to have irrigation facilities (43%), while those who live in the upper hills are the least likely to have access to irrigation (24%). Likewise, upper caste households such as Brahmins are the most likely to own irrigation systems (46%) while Dalits are the least likely (19.5%)<sup>263</sup>.

Finally, it is fundamental to point out that the 2015 earthquake had a severely negative impact on irrigation facilities, resulting in 53.8% of irrigation infrastructure being damaged<sup>264</sup>, which most likely affected the crops for the following season.

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<sup>261</sup> GoN, CBS *Statistical Information on Nepalese Agriculture 2012/2013* (2013).

<sup>262</sup> GoN, Ministry of Finance (MoF) *Economic Survey. Fiscal Year 2014/2015* (2015)

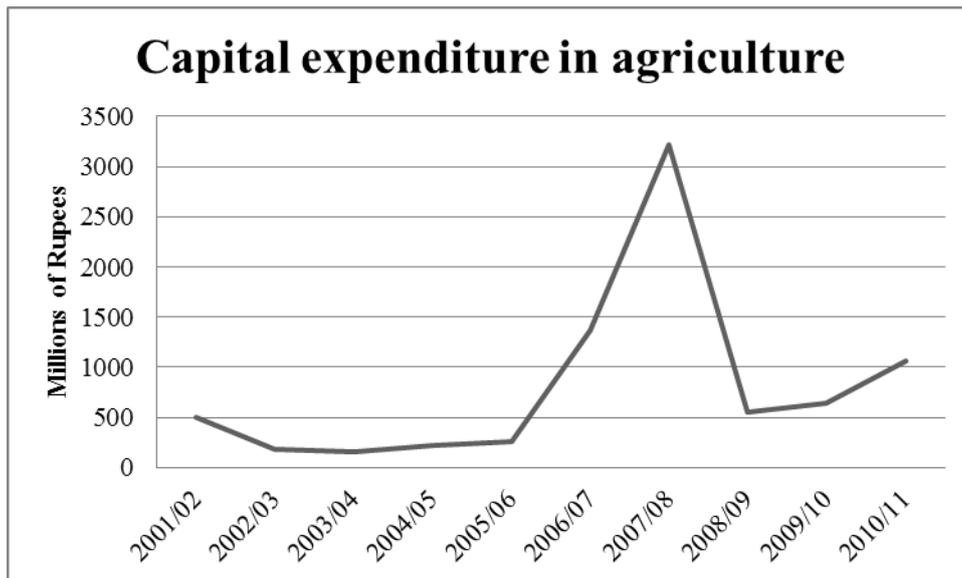
<sup>263</sup> Nepal Earthquake Response, *Joint Assessment of Food Security, Livelihoods and Early Recovery* (2015).

<sup>264</sup> Ibid.

#### 2.4 State's capital expenditure in agriculture

The government's capital expenditure in agriculture is relevant for this analysis as it provides with an image of state efforts towards the development of this sector, and consequently, on realizing the right to food. Data was collected from the Ministry of Agricultural Development's Report for the year 2012/2013, as it is the most recent official data on the matter.

Figure 5



Source: Author, based on GoN, MOAD *Statistical Information on Nepalese Agriculture 2012/2013* (2013).

Figure 5 reveals that public capital investment in agriculture has fluctuated during the 2001-2011 period. After a peak in 2007/2008 of 3211,8 million Rupees (coinciding with the period immediately after dissolution of the monarchy and the election of the Constituent Assembly), capital expenditure dropped significantly to 556,9 million Rupees, to somewhat increase in the following years. Moreover, the proportion of capital investments within all agricultural expenditure has also varied during this period. During the peak period, half of public expenditure in agriculture was of the capital kind:

**Table 2*****Government expenditure in agriculture (millions of Rs)***

	<b>Capital</b>	<b>Total</b>
2000/01	552	2433,6
2001/02	505,4	2696,3
2002/03	187	1971
2003/04	160,2	2016,2
2004/05	217,5	2334,7
2005/06	265,4	2702,9
2006/07	1374,2	4140,4
2007/08	3211,8	6269,7
2008/09	556,9	4957,9
2009/10	638,6	6588,9
2010/11	1069,6	9136,5

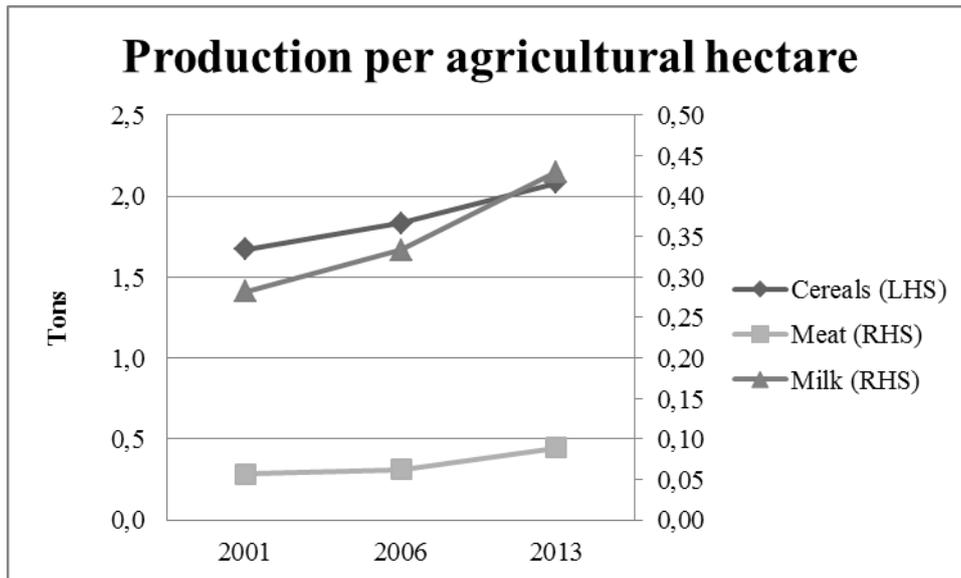
Source: GoN, MOAD Statistical Information on Nepalese Agriculture 2012/2013 (2013).

This indicator portrays variations in the relevance of capital investments within government spending priorities in agriculture. In order to get a clearer picture, it would be fundamental to be able to access data from the last 5 years to see the latest evolution. From the data available to this research, it could be stated that after the peak of 2007/08, there was a serious drop in public capital investments in agriculture, and it could be inferred that the trend thereon was a gradual increase. Nevertheless, without the most recent data this cannot be asserted.

### *2.5 A note on productivity*

The interpretation of the indicators presented above cannot be carried out without reference to changes in productivity, as this could facilitate the drawing of certain conclusions regarding the availability dimension of the right to food. The FAO database provides information of production of major crops and livestock food products (in tons). This will allow for tracking changes in production quantities for each agricultural hectare, thus allowing the identification of productivity increases or decreases. The data is presented in Figure 5:

Figure 5



Source: Author, based on FAOSTAT <<http://faostat3.fao.org/>> Accessed 9<sup>th</sup> September 2016.

As the figure shows, even though agricultural land has been reduced, production per hectare of major food products has increased. What this shows is that there have been general productivity increases at the aggregate level. Nevertheless, bearing in mind information presented above on food deficit districts, it cannot be directly concluded that the availability dimension of the right to food has been improved throughout the country in the analyzed period. It would be necessary to analyze how this production is distributed and if it effectively reaches population in food deficit districts. The analysis of the NFC food subsidy program shed some light on the high cost of food transport in this country. Moreover, the right to food categorically requires food to be available in sufficient quantities, but also to be free from adverse substances and of sufficient quality to satisfy individual dietary needs<sup>265</sup>; it would be important to analyze how this productivity increases have been reached. In other words, the fact that food production has augmented cannot be automatically associated with a general right to food improvement.

Moreover, these increases in production need to be contrasted to population growth. Data shows that the Nepalese population has been in constant growth, going

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<sup>265</sup> CESCR (n 1)

from 24 million people in 2001 to 27 million in 2013. Thus the increase in production does not necessarily translate in increased production *per capita* and, subsequently, in higher food availability.

### *2.6 Process indicators: summary*

The 5 process indicators reviewed in this section have portrayed a preliminary image of both state actions and critical areas concerning the realization of the right to food, particularly with regards to the accessibility and availability dimensions.

Food assistance programs are applied in food deficit districts, but it was not possible to access information regarding their actual coverage. What can be stated is that the majority of them are implemented through partnerships between state organs and international stakeholders. The remaining indicators, linked to land, agricultural production and state investments in this area, have shed some light on certain issues that affect the right to food.

Firstly, the use and distribution of land seem to pose certain challenges. Both agricultural and arable land show declining trends and, at the household level, land ownership is receding and the average size of land is increasingly reduced. While irrigation showed a positive growth in the last decades, recent reports have highlighted that the 2015 earthquake severely damaged these facilities. Finally, public capital investments in agriculture have somewhat fluctuated in the last 15 years. After a peak in 2007/2008, capital expenditure severely dropped and in the last 3 years for which data is available, it roughly represented around 10% of all expenditure in agriculture. Nevertheless, productivity has increased (even though agricultural and arable land have decreased, the amount of food produced for each agricultural hectare has augmented); it could be inferred that this is linked to the extension of irrigation services and possibly of higher public investments in agriculture. Nevertheless, as it was mentioned in the previous section, national improvements in food availability need to be qualified in light of population growth, its distribution throughout the country and in the quality and safety of food produced. Information on food deficit districts can shed some light on the former but the latter requires research that exceeds the possibilities of this dissertation.

The following sections will revise a series of outcome indicators linked to the right to food.

### 3. Outcome indicators on the right to food

Outcome indicators reflect the attainment of results, that is, the state of realization of human rights. It must be borne in mind that changes in outcome are often very slow and depend upon various underlying processes, thus outcome indicators are not as sensitive to change as process indicators might be. These indicators portray «the culmination of a process of formal acceptance of a legal obligation, through the processes required for the realization of rights, to the end enjoyment of the right»<sup>266</sup>.

The following outcome indicators were selected for this research:

1. Prevalence of undernourishment
2. Prevalence of underweight, stunting and wasting in children under 5 years of age
3. Proportion of population with access to improved sanitation and to an improved water source
4. Percentage of population living in poverty and extreme poverty
5. Food Supply indicators:
  - a. Dietary energy supply (kcal/pc/day) and average dietary energy supply adequacy
  - b. Food production indexes
  - c. Food imports (Millions of USD)

All of these were selected from the IBSA Project proposed indicators and sub-indicators for the right to food. They can paint a picture of the level of realization of the right to adequate food in all of its dimensions: availability (food supply indicators), adequacy (prevalence of undernourishment, underweight, stunting and wasting; access to improved sanitation and improved water sources) and accessibility (population living under poverty). As with process indicators, the evolution of these indicators in recent years is presented here, so as to display recent trends.

#### *3.1 Prevalence of undernourishment*

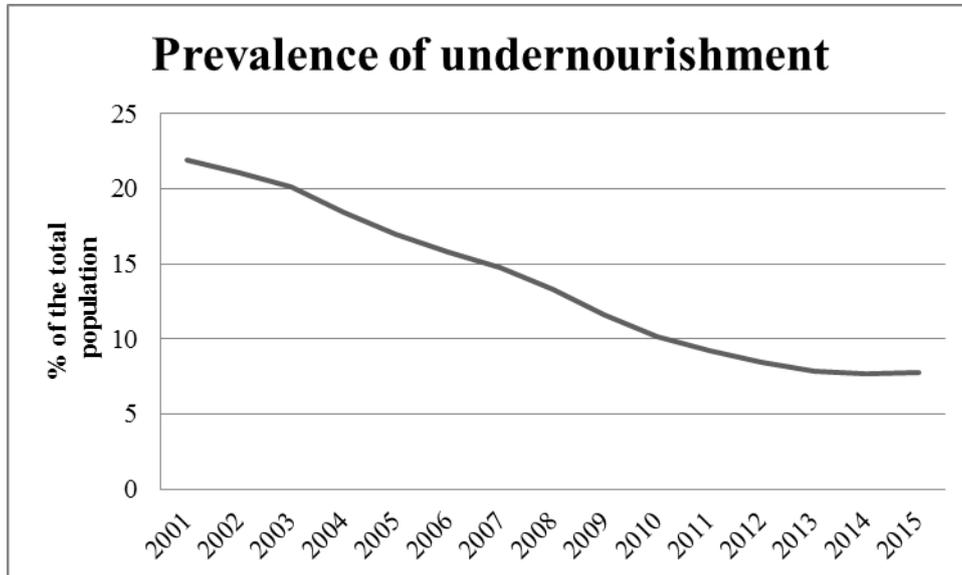
This indicator portrays the percentage of the total population who are below the minimum level of daily dietary energy consumption, that is, whose food intake is not

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<sup>266</sup> Siobhan McInerney-Landford and Hans-Otto Sano, *Human Rights Indicators in Development. An Introduction* (World Bank 2010).

sufficient. Undernourishment is considered to be indicative of the adequacy dimension of the right to food, as it is not a consequence of food availability, but of inadequate food intake<sup>267</sup>. Figure 7 displays the evolution of this indicator in the last 15 years:

Figure 7



Source: Author based on World Bank, 'World Data Bank' <<http://databank.worldbank.org/data/home.aspx>> Accessed 22nd August 2016.

The data shows that there has been a general decline in undernourishment during the last 15 years, with a slight increase in 2015 (that could be linked to the consequences of last year's earthquake).

### *3.2 Prevalence of underweight, stunting and wasting in children under 5 years of age*

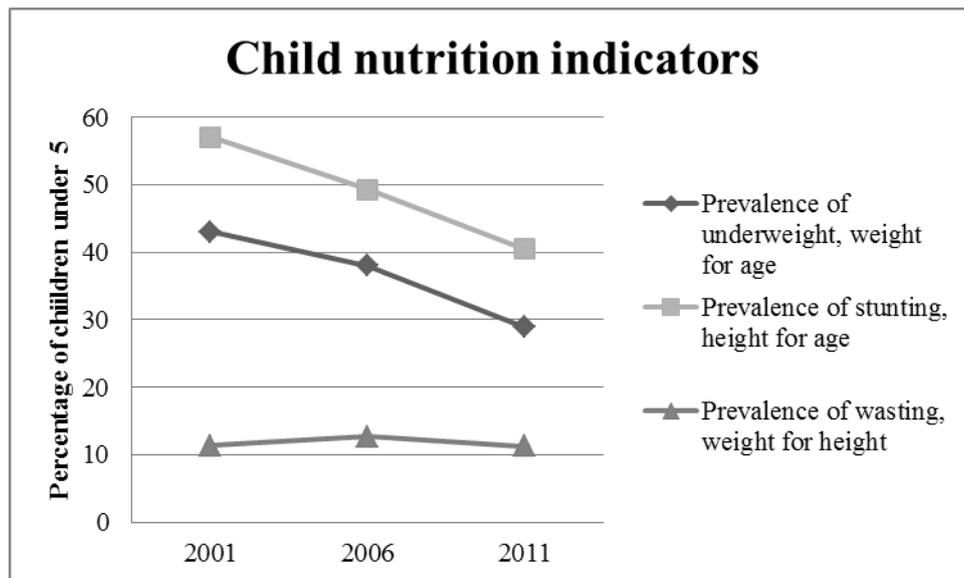
Anthropometric measures of child nutrition are common indicators for the adequacy dimension of the right to food. Children are particularly vulnerable to food insecurity and as it has been mentioned in the beginning of this research, access to nutritious food is an important element of the CRC. Moreover, these indicators most evidently display the interwoven character of the right to food with regards to other fundamental rights, as being even slightly underweight hampers cognitive development and increases the risk of death in children.

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<sup>267</sup> Sven Söllner, 'Right to Food Indicator Description', University of Manheim, Indicators Benchmarks Scoping Assessment.

Figure 7 shows the evolution of the prevalence of underweight, stunted and wasted children under 5 years of age between 2001 and 2011. Underweight children are those whose weight is too low for their age, according to the median of the international reference population for that age group<sup>268</sup>. Stunted children are those who are too short for their age, while wasted children are those whose weight is too low for their height.

Figure 8



Source: Author based on World Bank, 'World Data Bank' <<http://databank.worldbank.org/data/home.aspx>> Accessed 22nd August 2016.

These indicators show a general improvement in the nutrition of Nepalese children. While wasting has been generally low, underweight and stunting have experienced a constant and relevant decline from their 2001 levels. While remaining high (around 30% of children are underweight and 40% of them are stunted), the trend seems to be towards improvement.

### *3.3 Proportion of population with access to improved sanitation and to an improved water source*

Improved sanitation facilities refer to public sewers, septic systems, pour-flush latrines, simple pit latrines, and ventilated improved pit latrines. Disposal systems are considered to be adequate if they are not public (they can be private or even shared) and

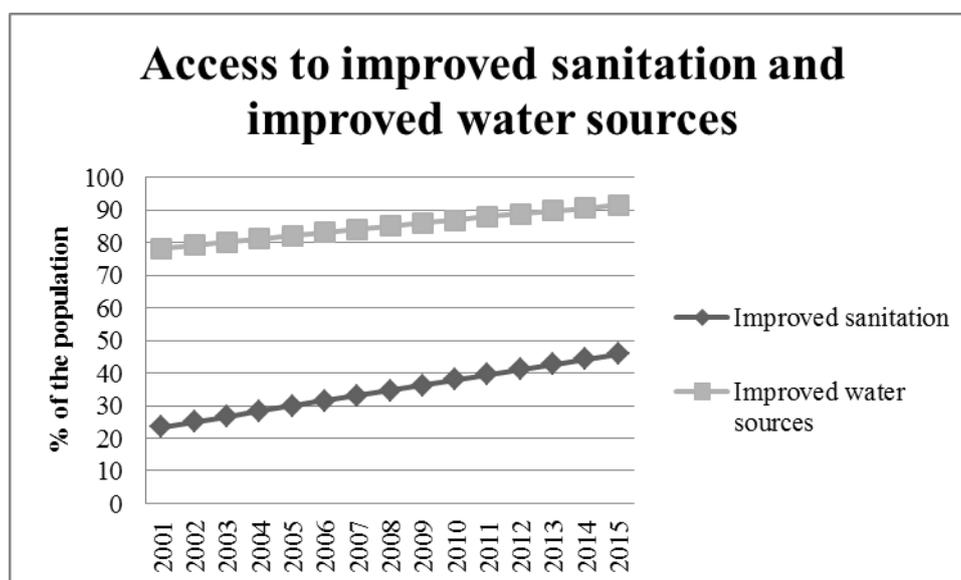
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<sup>268</sup> WB, 'Prevalence of underweight, weight for age (% of children under 5)' <<http://data.worldbank.org/indicator/SH.STA.MALN.ZS>> accessed August 22<sup>nd</sup> 2016.

if they hygienically separate waste from human contact<sup>269</sup>. Access to improved sanitation is considered to be a relevant indicator for the adequacy dimension of the right to food; inadequate sanitation systems can hamper people’s capacity to absorb nutrients and can cause malnutrition regardless of food adequacy<sup>270</sup>. Access to improved water sources, on the other hand, is thought to be constitutive of all three dimensions of the right to food. This is because safe water is fundamental for cooking, hygiene and irrigation. Improved water sources include household connections, public standpipes, bore holds, protected wells and springs and rainwater collection. Access implies obtaining at least 20 liters per capita from a distance no further than 1000 meters<sup>271</sup>.

Figure 9 presents the evolution of access to improved sanitation facilities and to improved water sources in the last 15 years:

Figure 9



Source: Author based on World Bank, ‘World Data Bank’ <<http://databank.worldbank.org/data/home.aspx>> Accessed 22nd August 2016

The indicators portray a general improvement in access to both improved water sources and improved sanitation systems, with 91% of the Nepalese population having access to improved water sources. Access to improved sanitation facilities has almost doubled over the last 15 years; however, only 45% of the population can enjoy these fundamental facilities.

<sup>269</sup> Söllner (n 267)

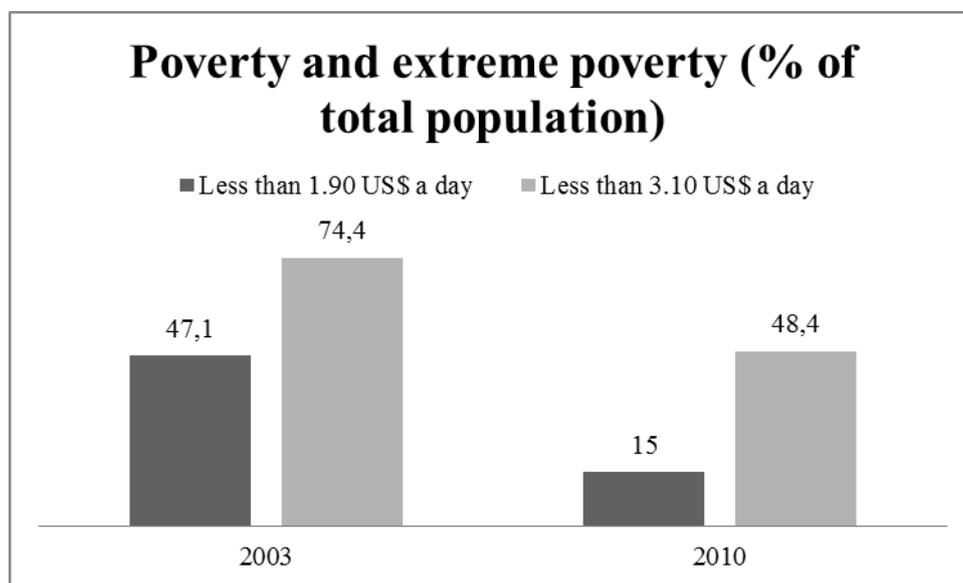
<sup>270</sup> Ibid.

<sup>271</sup> Ibid.

### 3.4 Percentage of population living in poverty and extreme poverty

Living in poverty (i.e. less than 3.10 US dollars a day) or extreme poverty (less than 1.90 US dollar a day) directly affects the realization of the right to food in its economic accessibility dimension<sup>272</sup>. Poverty indicators are generally used as a measure of the fulfillment of the right to food precisely because they condition the purchasing power of individuals, and thus their ability to acquire food for their own consumption. Figure 10 presents the most recent data on the poverty and extreme poverty headcount ratio, as featured on the World Bank's Databank:

Figure 10



Source: Author based on World Bank, 'World Data Bank' <<http://databank.worldbank.org/data/home.aspx>> Accessed 22nd August 2016

The most recent data on the poverty headcount ratio at national poverty lines<sup>273</sup> is from 2011. On that year, 25,2% of the population was living below the national minimum of NRs 19,261 per capita<sup>274</sup>. This percentage was slightly higher when considering the proportion of *rural* population living under the national poverty line (27.4% in 2011)<sup>275</sup>.

Once again, these numbers portray an improvement in poverty indicators in the last decades, while still highlighting the significant incidence of poverty in this country,

<sup>272</sup> Söllner (n 267)

<sup>273</sup> The percentage of the population that lives below the national poverty line.

<sup>274</sup> Asian Development Bank, *Country Poverty Analysis (detailed). Nepal* (Country Partnership Strategy 2013-2017, October 2013)

<sup>275</sup> Ibid.

as the data from 2010 shows that almost half of the Nepalese population were poor according to international standards (living on less than 3,10 US\$ a day). Even when the national measure of poverty is considered, the proportion remains high, affecting a quarter of this country's population.

### 3.5 Indicators of food supply

The following food supply indicators provide a measure of the adequacy, availability and accessibility dimensions of the right to food. Firstly, a measure of dietary energy supply (DES) exhibits the average amount of energy, expressed in kcal, which is derived from food that is available for human consumption. It is important to bear in mind that this indicator merely represents the average supply that is available per capita for the population as a whole, and it does not portray the amount of food that is actually being consumed. Table 7 shows the latest data:

Table 7

Year	2000	2014
<b>Dietary Energy Supply (Kcal/pc/day)</b>	2280	2653

Source: FAO Statistical Pocketbook 2015. World Food and Agriculture (FAO Statistical Yearbooks, 2015)

In order to comprehend these numbers, we need a measure that contrasts this indicator with the average energy needs of Nepal's inhabitants. The average energy supply adequacy (ADSA) indicator, developed by the FAO, can contribute to this goal. Expressed as a percentage, it compares the average dietary energy supply against the average dietary energy requirements estimated for a particular population<sup>276</sup>. An ADSA value of over 100% indicates that the DES is more than sufficient to cover the energetic needs of the population<sup>277</sup>. The 2000 and 2014 ADSA values for Nepal are displayed here below:

<sup>276</sup> FAO, 'Food Security Indicators' <<http://www.fao.org/economic/ess/ess-fs/ess-fadata/en/#.V7sRHph97IU>> accessed August 22nd 2016.

<sup>277</sup> GoN, MOAD, CBS, and FAO (n 153).

Table 8

Year	2000	2014
Dietary Energy Supply Adequacy (%)	108	121

Source: FAO Statistical Pocketbook 2015. World Food and Agriculture (FAO Statistical Yearbooks, 2015)

The data shows that both the DES and the ADSA have increased in the last 15 years. This is consistent with the trend towards improvement in nutrition indicators that has been analyzed above. Moreover, the latest value of ADSA indicates that food available is enough to satisfy the population's energy requirements. Nevertheless, when contrasted with the persistence of malnourishment (although in much lower levels than at the beginning of the century) and with worryingly high infant malnutrition data, it can be inferred that distribution of food is a problem that needs urgent addressing in Nepal.

Furthermore, in order to carry out a more precise assessment of food availability in Nepal it also important to take into consideration certain indicators linked to food production and food imports. This can illustrate the country's level of dependency on international trade for food. Firstly, the FAO's food production index depicts the relative aggregate level of agricultural production (in comparison to the base period 2004-2006). This index includes all foods that are considered to be edible and that contain nutrients (tea and coffee, for example, are excluded)<sup>278</sup>. Table 9 shows the food production indexes of major food groups for 2000 and 2014:

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<sup>278</sup> WB, 'Food Production Index' <<http://data.worldbank.org/indicator/AG.PRD.FOOD.XD?view=chart>> Accessed 22<sup>nd</sup> August 2016.

Table 9

<b>Production indices (2004-06=100)</b>	<b>2000</b>	<b>2014</b>
Net food	87	130
Net crops	85	130
Cereals	94	109
Vegetable oils	88	115
Roots and tubers	67	146
Fruit and vegetables	77	168
Sugar	88	124
Livestock	89	136
Milk	86	131
Meat	92	138
Fish	74	135

Source: FAO Statistical Pocketbook 2015. World Food and Agriculture (FAO Statistical Yearbooks, 2015)

The data shows a general increase in food production in the last decade; a 30% growth since the 2004-2006 period, to be precise. This is consistent with the increase in food production per hectare that was noted in the second section of this chapter. It is relevant to notice that cereals are the food group that has shown the slightest rise in domestic production. This is important because this category includes rice, which as it has been mentioned above, is Nepal's staple food. Moreover, it is necessary to contrast this data with food import indicators:

Table 10

<b>Year</b>	<b>2000</b>	<b>2014</b>
<b>Food imports (millions of USD)</b>	168	829

Source: FAO Statistical Pocketbook 2015. World Food and Agriculture (FAO Statistical Yearbooks, 2015)

The table shows that between 2000 and 2014, the value of food imports almost quadrupled. Furthermore, dependency on cereal imports has also been greatly increased, going from a negative balance of 49 million USD in 2000 to minus 200 million USD in 2014. A preliminary conclusion that could be drawn regarding food supply indicators

is that while per *capita* food energy availability has increased, and this growth is adequate to satisfy the Nepalese's energetic requirements, this increase in availability has been mostly covered by food that is produced outside Nepal, since the growth in food imports is much larger than the growth in food production.

#### 4. The right to food in practice: strengths and weaknesses.

The analysis carried out in the previous sections can allow for an assessment of the evolution of the condition of the right to food in Nepal in the last decades.

Firstly, when it comes to state efforts towards its realization, the presence of a few food assistance programs and the fact that some of these do target groups that are particularly vulnerable (such as women and small children) can be assessed positively. Moreover, even though most of these are projects designed by international stakeholders, they are implemented in coordination with public entities. This could also be evaluated positively as it allows for state involvement in their execution, and could potentially be translated into the reinforcement of state capacities in these areas. Nevertheless, it is highly relevant that to present day there is only one entirely Nepalese food assistance program (the one managed by the NFC). The management of this subsidy program has come under severe criticism, particularly in emergency situations when food distribution is most needed. Additionally, it seems that rice distribution can serve as a tool for political clientelism, as the formal criteria is not always respected. A common flaw across all food assistance programs is the lack of public information regarding their current state and effective number of beneficiaries.

Furthermore, there is another issue regarding the fact that rice is the prioritized food being subsidized by the Nepalese state. While in a way this respects Nepalese cultural preferences, a large part of this country's territory is not suited for rice crops. The result is that rice is being imported in increasingly larger quantities, especially from India (where rice production is subsidized). On the other hand, there are other nutritiously rich cereals, such as barley and millet, which are produced even in the mountain areas of Nepal. Two of the key informants interviewed for this research highlighted the need to promote changes in food habits in order to reduce dependency

on rice<sup>279</sup>. This could provide an interesting alternative to transport subsidies that is yet to be explored.

Secondly, the analyzed indicators on the use of land have shown that the proportion of the territory used for agricultural purposes is receding. Since agriculture employs the majority of the Nepalese population, this directly affects the right to food, as it can compromise people's ability to feed themselves through their own production, and to procure food in the markets. Productivity has increased, but it would be necessary to contrast this with the methods that have been used to increase it (particularly to see if they had effects on food quality and on employment) and with the actual availability of this larger production throughout the country. When all of this is combined with the fact that fewer agricultural households are land-owners, and that the land they own is getting smaller and smaller, it becomes evident that land tenancy is an urgent issue to be targeted by a right to food implementation strategy. While outcome indicators on food supply portrayed an increase in food production, food imports grew in a much larger proportion. This does not paint an optimistic picture, as it indicates lower food sovereignty and higher dependency on cash generation for food trade purposes. There is a need for a truly democratic land reform that results in larger land parcels for farmers, which will allow for productivity increases and will potentially reduce dependency of food imports.

The considerable extension of irrigated land has been found to be an advancement in the last decades, but there is still a lot of progress to be made, particularly taking into account the grave consequences of the 2015 earthquake on irrigation systems. Moreover, data on the unequal access to irrigation facilities according to both geographical regions and caste group of belonging highlights the need for irrigation policies that benefit low caste individuals and those living in the higher and most remote areas. Public investments should be oriented in this sense, as inequality in access seems to be the norm in Nepal. While there is a formal constitutional recognition that certain groups are in need of special measures for their advancement,

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<sup>279</sup> Interviews with Shrawan Adhikary (Programme Officer for FAO Nepal) and Yogita Rai (Program Manager for the NGO Rural Reconstruction Nepal and board member of FIAN Nepal), conducted on September 2015 and June 2016, respectively.

this should be translated into concrete actions in every policy that aims to advance the right to food.

Likewise, government investments in agriculture need to be consistent with the relevance of this activity for the country: as exposed in Chapter III of this dissertation, agriculture represents 33% of its GDP and employs 70% of its workforce. The earthquake further increased the need for prioritizing this issue. There was no clear trend on public capital investments in this sector during the period analyzed here, which could possibly indicate a lack of a clear and organized political strategy. While key informants and policy documents accounted for the fact that, on a rhetorical level, there is an increasing recognition of the importance of agricultural development for the Nepalese economy, some civil society reports claim that this has not been translated into practice<sup>280</sup>. Reportedly, only 3-4% of the national budget is spent on agriculture<sup>281</sup>. This is clearly not enough to promote actual agricultural growth, and it can further increase import dependency and the violation of the right to food.

Outcome indicators proved that general advancements have been made in terms of poverty reduction and nutrition. Positive trends could be linked to Nepal's commitment to the Millennium Development Goals, particularly MDG1. The recent compromise with the Zero Hunger Challenge could potentially aid in the continuation of these trends. There is clearly still a long way to go, as poverty indicators remain rather high, and the nutritional situation of a large section of the population (especially children under 5) is in clear need of improvement. But the positive evolution of the past two decades is not to be underestimated in a country like Nepal. The new constitution has also signified an advancement of rights' recognition in the formal sense. It is of the utmost importance that these two processes (legal and material advances) continue to go hand in hand. The full realization of the right to food largely depends on this.

## 5. Chapter conclusions

The analysis carried out in this chapter provided a general picture of the conditions of realization of the right to food in Nepal. While a more thorough and

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<sup>280</sup> Rural Reconstruction Nepal (RRN) *Food Security and Vulnerability in Nepal. A Case Study of Selected VDCs of Surkhet and Dailekh Districts* (April 2009) and *A Review Report on Policies and Practices on the Right to Food in Nepal* (February 2016).

<sup>281</sup> Ibid.

disaggregated study would be certainly needed, the data here presented allowed for a deeper understanding of the complexity of this right and the need for a comprehensive strategy in order to ensure its advancement.

The most important conclusions that can be drawn at this moment are linked to the essential importance of the land distribution in safeguarding the right to food and advancing agricultural development, as well as the need for steady state efforts towards these goals. Geographical and social differences result not only in unequal enjoyment of rights, the right to food in particular, but also in uneven access to land and irrigation facilities, both fundamental for augmenting productivity. Public efforts should be oriented in this sense and should be proportional to the importance that agriculture has in this economy. Moreover, in an agricultural country that has constitutionally recognized not only the right to food, but to food sovereignty at the constitutional level, the growing dependency on food imports is worrying. Autonomous food production should be encouraged if the gains in nutrition and poverty indicators are to continue on their positive track.

## **Chapter VI – Conclusions**

### **1. Introduction**

The starting point for this dissertation was the well-recognized fact that hunger results from a bad distribution of food, rather than from a lack of it. The idea of food as a legal entitlement, as the fundamental right of every human being, is meant to oblige the state to engage itself in order to ensure that the distribution system in place does not deprive any individual from its enjoyment. Nepal's most recent constitution further reaffirmed a process of institutionalization of the right to food in this country's legal system.

The general aim of this dissertation has been to describe and assess both the relevance and the limits of this institutionalization process in Nepal. The rationale behind this research objective was to identify if this fundamentally legal process was accompanied by effective changes in the right to food situation in this country. In order to do this, I set out to describe the legal and institutional framework for the right to food in Nepal; to identify the actions taken by the Nepalese State aiming at implementing this right; and finally, to analyze whether or not the circumstances of realization of the right to food had changed in this period. In practice, this was translated into the identification of structural, process and outcome indicators, which proved extremely useful in order to have a clear and organized analysis.

In this chapter, I present the conclusions that can be drawn from the analysis of the right to adequate food in Nepal. Firstly, I discuss the main findings regarding each of the specific research objectives, in order to then move on to the more general lessons that can be gathered from the case-study presented in this research.

### **2. The legal and institutional framework for the right to food in Nepal**

There is a broad legal framework for the right to food in Nepal, one that ranges from the ratification of international binding agreements to the explicit recognition of this right in constitutional law. The latter is not a trivial matter, as very few countries around the world have explicitly recognized food as a fundamental right. It is however also important to mention that a significant flaw that was present in the Interim Constitution of 2007 was partially exported to the newest constitutional text: while Article 36 declares that each citizen has the right to food, it also specifies that the right

to food sovereignty depends upon provisions made by law, in line with Article 18 (3) of the Interim Constitution. A human right, i.e. an individual and inherent entitlement of every human being cannot be subjected to the existence of a particular law. Moreover, “food sovereignty” as an individual right is an ambiguous concept. The term refers to a broadly political development model that while departing from the notion of food as a human right, is difficult to be conceived as an individually justiciable right.

It is also relevant to note that the framework bill on the right to food was a work in process during the writing of this dissertation. Framework legislation is fundamental for effective implementation of the right to food, as it is meant to spell out specific principles and obligations necessary for the realization of this right, as well as the authorities that are to be deemed responsible for this task. The fact that work on the draft framework legislation is ongoing can be evaluated positively.

Moreover, conceiving food as a legal right that carries corresponding legal obligations from the Nepalese State means ensuring that any violations of this right are held accountable. While the Nepalese judiciary has taken upon itself to ensure the respect and protection of this right in some occasions, it would be extremely important that the National Human Rights Commission also became a relevant stakeholder in this area. It is also fundamental that its independence is maintained in order for it to be able to fulfill its mandate entirely.

Furthermore, the analysis carried out in Chapter IV proved that there is extensive national legislation linked to the enjoyment of the right to food, some of it dating back to the 1960’s. On the one hand, it becomes necessary for the state to revise provisions in this legislation that hamper the realization of the right to food. On the other, it is fundamental that bills that could have a positive impact on the implementation of this right are effectively put into practice. Implementation appears to be the biggest challenge for the Nepalese State, and overcoming it depends on drafting clear and precise framework legislation, on assigning responsibilities, and on designing adequate and comprehensive public policies.

The right to food is in fact present in several recent policy strategies, most of these are related to agriculture and food and nutrition security. This might be interpreted positively as a sign of incipient mainstreaming of this right throughout various government agencies. Nevertheless, the issue of ineffective implementation is also

present when analyzing the policy framework and it becomes an obstacle that must absolutely be overcome if the commitment towards the right to food is to be more than merely rhetorical.

### 3. The steps taken towards the implementation of this right

It was decided to analyze a series of indicators in order to obtain an image of the process of realization of the right to adequate food. These showed that food assistance programs are currently being implemented, some of them targeting vulnerable groups in the Nepalese population; however, the only entirely public one manifests serious implementation flaws linked to its use as tool for political clientelism and its ineffectiveness in times of emergency. A potentially positive aspect is the fact that important programs designed by international stakeholders (at least those analyzed in this work) are implemented in coordination with Nepalese authorities. International organizations and NGOs have as a matter of fact proven to be fundamental promoters for the right to food in this country, and the work of the FAO has supported both the constitutionalization of this right and many policy strategies.

Moreover, the country has recently displayed general improvements in productivity and in the diffusion of irrigation facilities. Yet it is not possible to draw immediate conclusions regarding the effects of these advancements on the actual enjoyment of the right to food, due to the fact that this research lacks information on the methods used to increase productivity (and their consequences on food quality), and on the actual distribution of food throughout the country (as it is known that almost half of the districts are in food deficit, making distribution is a fundamental issue). Additionally, it could be inferred that the government's capital expenditure in agriculture has maintained an increasing trend in the last few years in light of the latest data, but it would be vital to access statistical information from 2011 to 2016 in order to verify this. It is relevant to mention however, that all the stakeholders who were interviewed expressed that the right to food had become a relevant issue within the political agenda.

Lastly, agricultural land tenure and the average size of agricultural holdings reveal potential impediments to the realization of the right to food. As it has been repeatedly mentioned, fewer agricultural households are land owner, and land parcels

are getting smaller and smaller, and this could possibly constitute a limit for food accessibility. While productivity has generally increased it must also be considered that even before the destructive effects of the 2015 earthquake, the diffusion of irrigation facilities was unequal throughout geographical and caste groups of belonging. This is indicative of the need for policies that are targeted specifically to disadvantage groups. While women and children are usually signaled in this sense, in the case of Nepal it is also necessary to focus on people living in the upper hills and mountain areas as well as those belonging to the lower castes.

In sum, the analysis of process indicators allow me to conclude that certain developments in place in Nepal could contribute to an improvement of the situation of the right to food if necessary precautions are taken in order to protect vulnerable groups, to ensure that food quality is maintained, and that food distribution reaches food deficit districts. Furthermore, it is highly relevant that food assistance programs are implemented in a non-biased manner, and for this, there is a need for the improvement of accountability mechanisms and consequently on public information regarding the functioning and outcomes of all these programs.

#### 4. The changes in the right to food situation

The selected outcome indicators for the right to food analyzed in this research have generally painted an optimistic picture in terms of poverty reduction and the improvement of nutritional indicators, as well as food supply, which have effects on the right to food in all of its dimensions. With regards to availability, data showed that in average food supply has increased in Nepal. The data also showed that food imports grew in a much larger scale than food production, which could possibly be considered an obstacle in view of the constitutional provisions on food sovereignty.

With respect to the adequacy dimension, evidence showed that the average energy supply was adequate to fulfill the Nepalese population's dietary needs. This of course is based on an average measure and does not mean that in practice supply is divided equally among the population. Nevertheless, undernourishment has been in constant decrease, and child nutrition indicators have also significantly improved during the last decade and a half. Moreover, access to improved sanitation facilities and improved water sources have also generally improved during the same period.

However, improved sanitation diffusion needs further impulse as it only benefits 45% of the population.

Finally, in relation to accessibility, both poverty and extreme poverty have decreased in recent times. Yet more than half of the population was still poor or extremely poor in 2010. Advancements are to be evaluated positively but there is still a long way to go in order to ensure that economic means to procure food are widely available throughout this country.

Briefly, while there is still a lot of work to be done in order to ensure that the entire Nepalese people effectively enjoy the right to food, significant positive advancements have been made in this direction.

## 5. Lessons from the Nepalese experience

The analysis of this particular study-case has shed some light on the complexity of the right to adequate food and on its multi-dimensional character. Ensuring the enjoyment of this right requires not only a sound legal framework, but also functioning institutional arrangements that oversee implementation and accountability for this right, as well as thorough policy programs designed specifically to target vulnerable groups. Moreover, it requires measures dealing with a wide range of policy issues: sanitation, health, land use and tenure, agricultural production, foreign trade, social assistance, water supply, among others.

The institutionalization of the right to food in Nepalese law and policies is of the utmost importance in this country. It can be considered as a testimony of its establishment as a relevant issue within the political class. And this is largely the result of advocacy from the part of national activists and international stakeholders who continue to work towards safeguarding the right to adequate food in a country that greatly needs it. Moreover, it represents a point of agreement in the context of a highly contested constitution making process.

It is clear that this research cannot attempt to establish a consequential link between this institutionalization process and the general improvements of nutritional and poverty indicators that have been analyzed above. Nevertheless, what can be stated is that formal and practical changes have taken place in the framework of a process of

recognition of the relevant role that ensuring ESCR has in this country, not only as means towards development, but as instruments of peace.

Nepal is cut across by regional, ethnic, socio-economic and cultural differences. Moreover, the territory's physical characteristics present further challenges to the implementation of policies. Broad and vague plans of action will hardly work in Nepal; there is an essential need for tailoring specific measures for specific areas and groups. This requires a process of careful planning and consultation in order to ensure that strategies fit local necessities. The social tensions sparked by the latest constitution are proof that a participatory and dialogue based approach to governance is of the utmost importance in this country.

Where the right to food is concerned, Nepal seems to be on the right track, not only where legal aspects are concerned, but also in material improvements. It is essential that these processes continue to go hand in hand, i.e. that further developments are made in the institutional field in order to ensure that sound and clear policy programs are set in motion, thus ensuring the respect, protection and fulfillment of the right to adequate food.

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## **Annex 1: Right to Food Indicators Developed by the IBSA Project**

Source: Söllner S, 'Right to Food Indicator Description', University of Manheim, Indicators Benchmarks Scoping Assessment.

### **Outcome Indicators**

- Number of starvation / malnutrition deaths recorded
- Proportion of population without sustainable access to an improved water source
- Percentage of malnourished population with a (deficiency in micronutrients)
- Percentage of malnourished population (overnutrition)
- Proportion of population without access to improved sanitation
- Percentage of malnourished population (undernutrition)
- Per capita availability sourced through domestic production, import and food-aid
- Percentage of population lacking access to productive resources
- Percentage of population living in poverty and extreme poverty

### **Structural Indicators**

- Recognition of the Right to adequate food and related rights
- Independent national Human rights institutions
- Administrative, quasi-judicial and judicial mechanisms to provide adequate, effective and prompt remedies
- National strategy on implementing the right to food
- Food safety and consumer protection legislation
- Instruments to ensure cultural or traditional food use and nutrition
- Nutrition and nutrition adequacy norms and programs
- Mechanisms to ensure a functioning market system
- Program for disaster management
- National policy statement on agricultural production
- Protection and enhancement of access to productive resources and assets
- Protection of labour conditions and enhancement of access to labour
- Social transfer scheme

### **Process Indicators**

- Number of right to food related complaints filed, investigated and adjudicated in courts and other relevant institutions
- Percentage of claimants in right to food related claims benefiting from legal aid
- Percentage of population covered by programs for awareness raising on the right to food and other esc-rights
- Percentage of judges, lawyers, prosecutors, and administrators benefiting from education in the esc-rights (in particular the right to food)
- Coverage of public programs on nutrition education and awareness
- Percentage of food consumed that is checked by standards of food adequacy
- Percentage of population covered by a public nutrition program
- Expenditure for rural development
- Expenditure for agricultural research (including research, training and technology)
- Percentage of food (aid) produced from domestic sources
- Coverage of feeding programs for the most marginalized and disadvantaged groups
- Coverage of a social transfer scheme or food safety net
- Percentage of population covered by a public direct food provision program
- Estimate of access of women and girls child to adequate food within household
- Coverage of programs to secure or create access to productive resources

## **Annex 2: Right to Food Indicators Developed by the FAO Nepal**

Source: United Nations Office of the High Commissioner for Human Rights, Human Rights Commission of Nepal, Government of Nepal, *Indicators for Monitoring Economic, Social and Cultural Rights in Nepal. A User's Guide* (September 2011).

### **Structural indicators:**

- Number and date of entry into force in Nepal of international human rights treaties, relevant to the right to adequate food.
- Date of entry into force and coverage of the right to adequate food in the Constitution and other national laws.
- Time frame and coverage of national policies and plans<sup>43</sup> aimed at implementing the right to adequate food.
- Number of registered and/or active governmental, semi-governmental and nongovernmental organisations, including cooperatives working for the protection and promotion of the right to adequate food.

### **Process indicators**

- Proportion of received complaints on the right to adequate food investigated and adjudicated by the courts, NHRC or other competent mechanisms and the proportion of these responded to effectively by the government.
- Number of monitoring missions undertaken to the affected regions by the NHRC and other competent bodies in the reporting period and subsequent actions taken.
- Proportion of food industries (involved in production and distribution of food) inspected by the Department of Commerce and Department Food Technology and Quality Control and actions taken against those not maintaining minimum standards both in terms of quantity and quality.
- Proportion of food inspectors (per 10000 population).
- Proportion of the targeted population brought above the poverty line in the reporting period.
- Number and coverage of awareness raising programmes on the right to adequate food, including consumer rights and healthy food habits in the reporting period.

- Proportion of targeted population having access to clean drinking water in the reporting period.
- Percentage or proportion of households of targeted population benefiting from public support programmes<sup>45</sup> and other targeted schemes.
- Proportion of population receiving food subsidy.
- Proportion of targeted population covered with public nutrition supplement programmes.
- Share of public social sector budget spent on food safety, security and consumer protection.
- Share of public budget spent on strengthening domestic agricultural production (e.g. agriculture extension, irrigation, credit, marketing etc.).
- Proportion of female-headed households with legal titles on land and property.
- Arable irrigated land per person/household.
- Ratio of increase of agricultural production to population growth.
- Proportion of farmers availing agricultural support services.
- Proportion of per capita availability of major food items sourced through domestic production, import and food aid.
- Ratio of food export and import in the reporting period.
- Proportion of population living below 1 USD per day-
- Estimated percentage of women and girls having access to adequate food within the household.
- Proportion of population covered by the annual food distribution programme of the Nepal Food Corporation in food deficit districts.
- Average household expenditure on food.

### **Outcome indicators**

- Proportion of undernourished of the total population.
- Prevalence of underweight and stunting children under five years of age.
- Number of recorded deaths and incidents of food poisoning related to adulterated food.
- Proportion of population below minimum level of dietary energy consumption.

- Death rates, including infant and under-5 mortality rates, caused by malnutrition.