

GENDER IN THE NEPAL RIGHT TO FOOD AND FOOD SOVEREIGNTY ACT, 2075.

BY ARIANNA PORRONE



FIAN
INTERNATIONAL



FIAN
INTERNATIONAL
NEPAL

GENDER IN THE NEPAL RIGHT TO FOOD AND FOOD SOVEREIGNTY ACT, 2075.

A COMPARATIVE STUDY IN LIGHT OF THE INTERNATIONAL FRAMEWORK ON THE RIGHT TO FOOD AND WOMEN'S RIGHTS AGAINST FEMINIST LEGAL THEORIES

ARIANNA PORRONE¹

¹ PhD student in Global Studies. Justice, Rights, Politics at the University of Macerata, Italy.

INTRODUCTION

Data from FAOSTAT (2011) show that women comprise over 40% of the agricultural labour force in the developing world. Female farmers are responsible for cultivating, ploughing and harvesting more than 50% of the world's food, most of which is for family consumption (UNGA, 2015). Despite their key role in ensuring food security, 70% of the world's hungry are women and girls (Nuila and Claeys, 2016).

The right to adequate food, including women's right to adequate food, is institutionalised as a human right by Article 25 of the 1948 Universal Declaration of Human Rights. The same right is enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and further elaborated in the General Comment No. 12 on the Content of the Right to Food and the 2004 Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. A number of countries, among which Nepal, have also included the right to food in their national legal frameworks – Constitution, Policies², Act, Strategy (ADS) and Plan (Zero Hunger Challenges' Plan of Action (2016-25).

In general, the right to food embodies the idea that all people should have a decent standard of living, especially enough to eat and drink, both in peacetime and in war (Ziegler et al., 2011, p. 15). It is a right that frames a relationship between rights-holders and the State and that labels food as an entitlement which can be claimed (Claeys, in Lambek, et al., eds., 2014, p. 10).

The concept of the right to adequate food entails four normative elements: 1. availability, 2. adequacy, 3. accessibility, and 4. sustainability of food supply. The full realization of the right to adequate food depends on the achievement of all these four dimensions and on the parallel implementation of the other relevant economic social and cultural rights³ (i.e. the right to health, the right to water, the right to education, information, to work and social security). All human rights, indeed, are to be understood as universal, indivisible, interdependent and interrelated⁴.

In 2015 the Special Rapporteur on the Right to Food analysed the legal, cultural, economic and ecological barriers that hinder the equal implementation of the right to food (UNGA, 2015). He reported that women and girls still face persistent discrimination and experience gender-based and socially-constructed violence within their families and in the public realm of the workplace, the law, economics, politics and intellectual and cultural life.

² National Agriculture Policy 2061 (2004), Agri Business Promotion Policy 2063 (2006), Agriculture Biodiversity Policy 2063 (2006).

³ Office of the United Nations High Commissioner for Human Rights (2010), The Right to Adequate Food. Fact Sheet no. 34, available at: <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>, last accessed June 2019.

⁴ Article 5 of the Vienna Declaration and Program of Action.

The *Convention on the Elimination of Discrimination Against Women* (CEDAW), in particular in the *CEDAW Committee's General Recommendation No. 34 on the rights of rural women* (GR. 34, 2016), and the *Convention on the rights of peasants and other people living in rural areas* (2018) mark the milestone in challenging current models of international law-making and human rights.

The GR. 34, elaborating on Article 14 of the CEDAW, expands and articulates the discourse on peasant's women and small holder landless farmers. It recognises that rural women's activities typically range from producing agricultural crops, tending animals, processing and preparing food, to performing waged work and the load of unpaid care and domestic work (Quisumbing, 2014). It further highlights that, being highly engaged in both the productive and 'care' economies, rural women find themselves underrepresented in the public space, and among the most marginalised groups/class in society.

Considering the important role of women in agriculture and the nature of discrimination's practices a feminist analysis of international law and human rights instruments relevant to the right to food and nutrition is required.

Although significant advances have been made in developing legal protections for women⁵, specifically in the context of the right to food, there remains a number of gaps to the identification of effective narratives and practices able to acknowledge women as social agents and advance women's concerns. First, there is a divide between principle and practice in many contexts around the world (Ziegler et al., 2011, p. 24). Second, as Chinkin and Charlesworth observe, when women come into focus in international and human rights law they are viewed in a very limited way, mainly as victims, particularly as mothers or potential mothers, and accordingly in need of protection (2000, p. 46). They are rarely treated as individual rights-holders and are most often treated in human rights and international law as a homogeneous group. This trend, while giving relevance to women's experiences, risks to essentialise women's issues and marginalise their concerns. Third, instead of challenging current models of domination, the multileveled structured power relations and their influence on identity and discrimination, international law flattens women's differences and relegate their concerns to special, limited normative categories.

This article aims at: 1) introducing feminist legal critiques of international and human rights law; 2) understanding whether the current legal framework on women's rights is an efficient body adequate to answer to rural women's marginality; and 3) based on the outlined scenario, suggesting an analysis of the Nepal Right to Food and Food Sovereignty Act, 2075, approved on September the 26th, 2018 and of the Civil Society Version Draft Rule, 2076 of the Act Relating to the Right to Food and Food Sovereignty, 2075 for the effective implementation of the right to food in respect of the constitutional principles.

⁵ See the legal analysis above and: CEDAW Article 14, General Comment no. 20 on non-discrimination in economic, social and cultural rights and the interpretative texts issued by the Committee on the Elimination of all forms of discrimination against women and the ICESCR.

1. BASIC FAMILIARISATION WITH FEMINIST THEORIES ON INTERNATIONAL AND HUMAN RIGHTS LAW

1.1. A PRIMER

Feminism first formal interaction with international law is often traced to Hilary Charlesworth, Christine Chinkin and Shelley Wright's article "Feminist approaches to international law", published in 1991 in the American Journal of International Law.

The three scholars are pioneers of the postcolonial feminist critique. By arguing that international law is a gendered system because its normative and institutional structures and practices privilege men and male power, while subordinating women's voices and position, they suggest new possibilities for achieving transformative change.

As a matter of fact, feminism was already dealing with international law when, in the 90s, the feminist global campaign was demanding the recognition of women's rights as human rights and the criminalisation of violence against women.

Born as a theory of and struggle for equality of women and their political economic and social inclusion (Fraser, A.S. in Otto, D., in Orford, A., et al., eds., 2016), feminist legal theory evolved in many different feminist voices seeking to challenge, each in its own terms, the masculinist ways of thinking embedded in the "underlying templates that determine what equality and inclusion look like" (Otto, D., in Orford, A. et al., eds, 2016, p. 491). Feminist scholars claim that the term signifies an interest, a focus of attention, a political agenda, a critical stance, a means of reinterpreting and reformulating substantive law so that it more adequately reflects the experiences of all peoples; and an alternative method of practising, talking about and learning the law (Charlesworth, Chinkin and Wright, 1991)

The law reform, indeed, has always been an important feminist goal. With reform, Dianne Otto intends the "efforts to engage with international law [...] to make it more responsive to the concerns of women and/or neglected feminized issues, and to increase its capacity to support social change" (Orford, et al., eds., 2016, p. 497).

The paradox of feminist law reform is that, while its goal is to eliminate "sexual difference" as a marker of women's exclusion or inferiority, it also necessarily has to base its claims on behalf of the fact that "women" are discursively produced by sexual difference (Otto, in Orford, et al., eds., 2016, p. 497-498). This strategy and the excessive focus on gender-based violence have eventually distracted from the need to develop 'rights-based challenges to the global structures that perpetuate women's [...] disadvantage' (Otto, in Orford, et al., eds., 2016, p. 501).

Trusting Hilary Charlesworth’s work and other feminisms’ outputs, feminist methods aim at exposing and questioning the limited bases of international law’s claim to objectivity and impartiality and insist on the importance of gender relations as a category of analysis (Charlesworth, 1999). Focusing on gender as distinct from biological sex is vital because it conceptualises women’s subordination and male dominance as socially constructed, historically variable, and politically and economically enforced.

The quest for a universal feminist approach to deconstruct and rebuild the concepts of international and human rights law must not neglect local concerns. Across the world, women suffer multiple forms of discriminations that impact their life in the most diverse ways. “Womanhood” is an intimate, fluid concept which feminist methods must interpret in perspective. Context is key in avoiding essentialism and the inception of new categories of privilege that might undermine some women’s experiences.

1.2. WHAT ARE FEMINIST CONCERNS IN INTERNATIONAL AND HUMAN RIGHTS LAW?

A large part of feminist scholarship has been concerned with the identification of an individual women’s voice. As noted above, this project is not only ambitious, but also unachievable (Otto, in Orford, et al., eds., 2016; Charlesworth, 1999; Charlesworth, Chinkin and Wright, 1991).

Despite the historical and cultural differences, feminists share a central concern: male domination in all fields.

The following paragraphs address the nuances feminists’ common concern might assume in international and human rights law. As a map, this short catalogue will facilitate orientation in the understanding of the right to food against feminist critique.

1) WOMEN’S DISCREPANCY IN INTERNATIONAL INSTITUTIONS AND INTERNATIONAL LAW MAKING

An evident sign of power’s differential between men and women is the discrepancy of provisions on women in international legal institutions. Hilary Charlesworth, Christin Chinkin and Shelley Wright (1991) observe that the structure of the international legal order reflects a male perspective and it is reinforced as to ensure its continuous dominance. Part of this problem is due to the fact that many women still work in the so called “female” occupations, ‘resulting in the segregation and the under-evaluation of female work’ (Charlesworth and Chinkin, 2000, p. 5). Women are either unrepresented or underrepresented in the national and global decision-making processes.

Notwithstanding article 8 of the 1945 United Nations Charter, calling for the equal eligibility of men and women as permanent staff members of international organisations, very little

results have been obtained in this sense. As a matter of fact, the first woman⁶ sitting as Judge at the International Court of Justice was elected in 2006 and only seven women have been addressed as members of the International Law Commission since its establishment in 1947. Even the Committee on the Elimination of Discrimination against Women is under continuous threat. Being the only committee that has all women members, it has repeatedly been object to critics by the United Nations Economic and Social Council (ECOSOC) for the disproportionate representation of both sexes.

II) THE MARGINALITY OF WOMEN ISSUES

There are, in human rights law specialised areas dedicated to women's rights, as well as specific acknowledgement and mention of women in other areas of international law. However, when women come into focus, they are portrayed in a very limited way. "Women's concerns" are, in fact, relegated to a limited, special category, one that emphasises their cultural and social status as exclusively linked to their roles as child bearers and carers, rather than in terms of their individual capacities (Charlesworth & Chinkin, 2000). They are rarely treated as individual rights-holders and are most often treated as a homogeneous group.

On the one side, the creation of a specialised "women's branch" of human rights law, of which the Convention on the Elimination of All Forms of Discrimination Against Women is the flagship, has allowed to shed light on women's issues and to regard them as "global issues" (Charlesworth & Chinkin, 2000). On the other side 'the price of the creation of a separate institutional mechanism and special measures dealing with women within the UN system has typically been the creation of a "women's ghetto", given less power, fewer resources and a lower priority than "mainstream" human rights bodies' (Charlesworth & Chinkin, 2000, p. 219).

Many of the issues that concern women suffer of a double marginalisation in terms of traditional international law-making: 1) they are seen as the 'soft' law issues of human rights that States use for matters that are not regarded as essential to their interests; 2) they are developed through 'soft' law modalities that have the effects of minimising the States' legal commitments.

While rights discourses simplify complex power relations, it must be recognised that gender differences are inscribed in and through practices within and outside the household, states' policies and responses associated with shifting environments and natural resource management and 'whilst inherently unstable, through repeated acts, come to appear as natural and fixed' (Elmhirst, 2001, p. 62). Feminist critique questions the possibility of objectivity in a system that effectively excludes women's voices and demand an investigation of all the dimensions of women's marginality, while effectively offering a cutting-edge

⁶ Dame Rosalyn Higgins.

definition of discrimination against the problems women face worldwide (focus on the lack of recognition of women's economic, social and cultural rights).

III) DICHOTOMIES AND GENDERED CODING OF THE OPPOSITIONS OF INTERNATIONAL LAW

This current international legal system inadequately addresses the marginality of women, because it does not acknowledge the ways in which other factors such as the market economy, environmental degradation and gender and social relations within the private and public spheres interfere with women's livelihood options and capacities.

The public realm of the workplace, the law, economics, politics and intellectual and cultural life, where power and authority are exercised, is traditionally regarded as the natural province of men; while the private world of the home, the family, the heart and children is seen as the appropriate domain of women (Charlesworth & Chinkin, 2000).

This results, as Christin Chinkin and Hilary Charlesworth reason, in the accordance of asymmetrical value to the two spheres: "greater significance is attached to the public, male world, than to the private, female one" (Charlesworth & Chinkin, 2000, p. 626). Furthermore, being at the basis of the modern state's function of separating and concentrating juridical forms of power, the distinction has the direct effect of leaving the private world uncontrolled (Charlesworth & Chinkin, 2000), beyond the reach and the responsibility of the state.

IV) GENDERED VOCABULARY AND SEXED CONCEPTS OF INTERNATIONAL LAW

Gendered vocabulary and sexed concepts of international law are very common and rarely condemned, because 'maleness' is universally accepted as the category of comparison. In the process of generation of the scientific truth, the feminine has been considered subordinate, where feminine corresponds to the emotion and social value v. reason, body v. mind, culture v. nature, subjectivity v. objectivity, being v. knowing (Harding, 1986 in Charlesworth, Chinkin and Wright, 1991).

Suffices to recall Article 1 of the Universal Declaration of Human Rights which encourages to "act towards one another in a spirit of *brotherhood*". Article 23 that encourages to pay to "everyone who works", and continues by saying that this ensures a life of human dignity for "*himself and his family*" (MacKinnon, 2006).

If not explicitly addressed by the most powerful tool to fight oppression and promote human dignity, how can the following international and human rights legal framework thoroughly portray women's rights and entitlements?

2. READING WOMEN'S RIGHTS AGAINST FEMINIST THEORIES: THE RIGHT TO FOOD AND THE MYTH OF THE RURAL WOMAN

In the right to food framework, the instrument more comprehensively portraying women's constraints and addressing women's rights is the CEDAW. The Convention creates binding legal obligations to pursue "by all appropriate means and without delay, a policy of eliminating discrimination against women" (article 2) (Rae, 2009).

The CEDAW does not make specific reference to the right to food as such and the concept of gender, with all it entails. Yet it protects a number of women's rights such as equal access to land, credit, education, income and social security or safety nets, the right to participate, to represent their Governments in the political and public life, the right to be equal to men in marriage, all necessary to the full realisation of the right to food. Furthermore, it appoints State Parties accountable in the context of the modern notion of human rights, as well as programmes and institutions under the UN umbrella, to act towards the modification of social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (article 5).

Article 5 is farsighted in envisaging a series of practices capable of observing human relationships within social contexts, and in challenging the traditional roles of men and women in society and the household. Nonetheless, it does not find a consistent response in practice and in other legal instruments directly or indirectly dealing with women's right to food (UNGA, 2015).

Article 12⁷ and article 14⁸, the two CEDAW provisions most related to the right to food, divert from the intersectional project of article 5. The two legal provisions limit women's right to food by evincing the sole concern of the intersection of gender with 1) pregnancy (Rae, 2009) and 2) rurality (Journal & Pruitt, 2011). This is so since the right to food, quite apart from being a self-standing right, is also a means for achieving food security for all. Given that women play a pivotal role in ensuring food security for their family members and communities, their health and right to food is crucial for that of their societies. Despite that, conceiving women as mothers or providers of food contributes in crystallising the concept of "womanhood" as a category of subordination, a static concept which is not

⁷ 'States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation'.

⁸ Article 14§2: 'States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: [...] to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications'.

influenced by other factors nor interacts with the other facets defining women's identity, such as class, gender, sexuality, disability, caste, religion, age that might as well have an impact on women's right to food.

More radically, article 14⁹ makes a number of assumptions. First of all, it assumes that all rural women, everywhere, have and depend upon their families¹⁰. Second, it assumes that women work in non-monetized sectors¹¹. Third, it establishes a correlation between rurality and development¹².

These inferences justify, without questioning, the marginalisation of both women and rurality because they depict rural women's general features and draw special attention to their spatial inequality and rural disadvantage. They diminish for rural women the robustness or detail of rights recognized elsewhere in CEDAW (Pruitt, 2011).

Rural women experiences and concerns are indeed not easily translatable into the narrow, individualistic language of rights (Charlesworth & Chinkin, 2000). This trend further raises the idea of the feminine/private/rural association (Pruitt, 2011). It cements the idea that all rural people, and women specifically, should engage and strive for development, one that reflects the aim of reaching standards comparable with those of urban societies and the western style progress. Development means in effect industrialisation and a market economy. It aligns with the westernisation of economic categories, of needs, productivity and growth (Shiva, 1988). Until now, the principle of development in these terms has delivered little to women because economic visibility depends on working in the public sphere, while women's unpaid work in the home or subsistence economy is categorised as "unproductive", unoccupied and economically inactive (Charlesworth & Chinkin, 2000). The idea of development, that women should be acted upon on a basis of equality¹³ with men as enshrined in article 3 of CEDAW (Pruitt, 2011) – "to ensure the full development and advancement of women [...] on a basis of equality with men" – fails thus far to value women's private role in society, eventually misreading their actual needs. Measuring the stage of development of a nation should be otherwise conveyed as the "degree of access of women [to economic and social activities]" (Jain, in Bunch, in Weiss & Daws, 2018).

⁹ Complemented by art. 11(2) which regulates the field of employment especially focusing on preventing discrimination against women on the grounds of marriage or maternity, instead of looking at the broader spectrum of gender disparities.

¹⁰ Article 14§1: 'States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families [...]'.

¹¹ Article 14§1: 'States Parties shall take into account the particular problems faced by rural women [...] including their work in the non-monetized sectors of the economy [...]'.

¹² Article 14§2: 'States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development [...]'.

¹³ Equality is ultimately "defined as being like a man" (Charlesworth, 1999, p. 632).

In recommendation no. 34 again the protection of rural women's right to food is seemingly conditioned upon that right being responsibly exercised for the benefit of their families and for that of the environment (Martignoni, 2019).

Limited recognition is given to the fact that rural women are not a homogenous group and might experience intersecting discrimination¹⁴. The letter of the recommendation is silent with regard to the actions that states should adopt for overcoming such condition and even fails to suggest the establishment of gender-neutral policies, where no definition of gender-responsive procedures is scrutinised.

Yet, GR.34 has gone a long way towards expanding on the content of women's right to food by including the food sovereignty framework and by taking into account the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (RTF Guidelines, part G.3). The food sovereignty concept, as elaborated by La Vía Campesina, maintains the idea that the nature and structure of food systems shall be determined by the producers and consumers themselves rather than corporations or "the market", including a strong commitment to gender equity (Portman, 2018). The food sovereignty mechanism functions only when all the constituents of a society or community are able to construct 'their own relational structures [and] [...] when everyone is able to substantively engage with them' (Portman, 2018, p. 464). The commitment of gender justice, which means dismantling acts of sexism, patriarchy and racism that would otherwise marginalise some, is thus the prerequisite to sovereignty and to the achievement of a rightful, more inclusive food system.

Women's participation is key for achieving processes where women themselves, in their diversity, identify and claim their needs, preferences and priorities in food policies and programs (Ghale, 2018), according to their positioning in society and capabilities.

2.1. A NEW APPROACH AND A WAY FORWARD

The year 2015¹⁵ was expected to lead to important changes, in rural contexts, towards the elimination of gender disparity and the guarantee for rural women to the full exercise of their rights. Instead, in 2015 the new Sustainable Development Goals (SDGs) were discussed as the new destination for promoting change. SDG2 aiming at eliminating hunger, guaranteeing food security, improving nutrition and promoting sustainable agriculture and SDG5 aiming at achieving gender equality and the empowerment of women and girls, both

¹⁴ 'States parties should ensure eliminate all forms of discrimination against disadvantaged and marginalized groups of rural women. For example, State parties should ensure that disadvantaged and marginalized groups of rural women, including indigenous; afro-descendent; ethnic and religious minorities; female heads of household; peasant; pastoralists; fisher folk; landless; migrant; and conflict-affected rural women are protected from intersecting forms of discrimination [...]'.
¹⁵ 2015 was indicated as the year in which the Millennium Development Goals (MDGs) were to be met and the World Food Summit's (WFS) target of significantly reducing the number of undernourished people was to be reached.

ambitious in their content and final objective, ultimately fail even before their approval because they do not address the topics adopting a human rights approach, excluding *de facto* accountability mechanisms (Galdames Castro and Núñez Burbano de Lara, 2015 in Bellows et al. eds., 2015).

The system risks to ignore the structural causes of inequality within the context of the right to food.

Many notions of civil society discourses such as “empowerment” and “paradigm shift” entered common usage, with the effect of softening and greenwashing the implicit critique of power and property relations in production, trade and distribution at the core of such concepts (Whicherich, 2019 in Harcourt et al., 2019).

Not only markets, transnational companies, other stakeholders and states should be appointed as agents for promoting change, due to the fact that most of the time they are driven by the desire of economic growth and profit, but also communities and people (both men and women) should be conceived and given the chance to act as active subjects in the process of emancipation.

It is a matter of fact that rural women still face discrimination, notwithstanding the number of international and national legal instruments¹⁶ created to protect their interests in all aspects of their life: access to natural and productive resources, such as seeds, land, water, education, healthcare, stable employment and adequate wages, and social security, as well as in respect to sexual and reproductive rights, protection against violence, decision-making and social, cultural and political participation. Such list of fundamental rights need to be further analysed with the use of intersectional theories and feminist political ecology, which allow for the cross-examination of issues from differing theoretical backgrounds to create a more compelling and thorough analysis of women’s alienation.

A. E. Kings portrays intersectionality as a way to interrogate current assumptions and epistemological positioning, while taking into account the mutually shaping nature of social categories, the multileveled structures of power and their influence on the construction of plural identities and discrimination practices (Kings, 2017, p. 84). Since discrimination against women is conceived from the structural system of patriarchal domination (Galdames Castro and Núñez Burbano de Lara, 2015 in Bellows et al. eds., 2015, p. 30), emphasis on multi-level analysis offers the opportunity to entrench in the right to food and sovereignty framework effective measures to 1) respond to women’s need on a case-to-case, community-to-community or country-to-country basis and 2) dismantle the existing structural relations of power and domination in rural areas.

¹⁶ See Introduction.

3. A REVIEW OF THE NEPAL RIGHT TO FOOD AND FOOD SOVEREIGNTY ACT, 2075 AGAINST FEMINIST CRITIQUE

3.1. THE RIGHT TO FOOD LEGAL FRAMEWORK

Peoples of Nepal mainly depend on agriculture. IFAD¹⁷ reports that nearly 80 per cent of the households (3.4 million) and 70 per cent of the national labor force principally rely on the sector for their livelihoods. During the past two decades, indeed, Nepal's agricultural sector's production has increased by 3.2 percent¹⁸. Nevertheless, agriculture generates only around one third of the country's GDP.

Nepal has all the potential for producing a wide range of crops, due to its highly varied topography and ecology. Instead, geographical factors, sharp rural-urban disparities and structural discriminations adversely influence internal wellbeing. These are among the root causes of persistent hunger in the country and of the exacerbation of internal economic and social differences among people (IFAD).

The 2016 Nepal Demographic and Health Survey (DHS)¹⁹ shows that 52 per cent of the households in Nepal are food insecure, especially those living in the Far- and Mid-Western Regions. It is a matter of fact that households in rural areas of the country where food prices tend to be higher are more likely to be food-insecure than people living in urban areas. Rural households are more likely (54%) to be food secure than urban households (39%)²⁰.

Estimates may vary, given that the questionnaires were administered by the household heads, who are usually male individuals. The DHS survey, for instance, does not take into account other variables of discrimination that could interfere with food security, such as the intersection of the category "household's member" with the categories "female", "caste", "disable", "aged", "LGBTQI+". Women and the Dalits²¹ for instance, still face gender- and caste-based discrimination, socio-cultural and socio-economic marginalization²² (Pandey & Fusaro, 2020). This means a higher difficulty for them in entering the workspace, having access to basic rights (education, health, private property) and to productive/traditional resources (such as land, forests, river and fishing areas).

¹⁷ <https://www.ifad.org/en/web/operations/country/id/nepal#anchor-0>, last accessed May 2020.

¹⁸ Government of Nepal, Ministry of Finance, Economic Survey 2018/019.

¹⁹ <https://www.dhsprogram.com/pubs/pdf/fr336/fr336.pdf>, last accessed July 2020.

²⁰ USAID, Food Assistant Fact Sheet – Nepal, 30 September, 2019.

²¹ One of the lowest and suppressed groups in the Hindu-caste hierarchy system in Nepal, Dalits have long been victims of untouchability and caste-based discrimination.

²² Although caste-based discrimination of the Dalits was legally abolished in 1963 and the Maoist Movement between 1996 and 2006 helped dissipate some of the highly discriminatory practices towards them.

The need to move from a food security-based discourse to a right to food one is crucial. This allows to go beyond needs-based assessments, towards the recognition of equitable social benefits in the context of the right to food. As a matter of fact, there's the urgent need to cross-fertilize this new narrative with feminist critique.

As it has been thoroughly explored in the previous paragraphs, feminist critique serves “not as an identity marker, or as an essentialism that separates women and men. It is a standpoint of denunciation and relations” (Walsh, 2019 in Harcourt et al. 2019, p. 123). While at international level, some progress has been made in understanding the root causes of violations of the right to food of women, on account of the *RTF Guidelines* and the 2030 Agenda for Sustainable Development, steps must be taken by states to both address the underlying structural causes of these violations in a systemic manner and to remedy them (Lambek, et al., 2018).

Nepal recognizes the right to food in the context of food sovereignty in Article 36 of the 2015 Constitution, implicitly seeking to address the social and political configurations around power over food that particularly affect women (Lambek, et al., 2018, p. 24). The right is enshrined in alignment with a number of other associated fundamental rights²³ for improved livelihoods, which demonstrate the effort of bringing women and gender relations into the discourse.

The Constitutional text is further complemented by the Right to Food and Food Sovereignty Act (2075), approved on the 18th September 2018. It was about time for the Nepali Government to recognise that a framework legislation to give effect to the Constitutional guarantees was required, especially in relation to women. Improvements for women's condition in the context of the right to food, indeed, “must be coupled with expectations that the state will ensure that they achieve a minimum income; that they have access to affordable and high-quality education; health and transport services; and that their environment is healthy and their lives are not blighted by community and domestic violence” (Pearson in Cornwall et al. 2007, p. 210).

The Act is a comprehensive piece of legislation providing for the right to food and food sovereignty, with the aim “to ensure proper mechanisms to hold the State accountable to its people for the progressive realization of the right to food without gender differentiations” (Ghale et al., 2017, p. 21). In 2019, the Act was further integrated by the CSO version Draft Rule 2076 of the Right to Food and Food Sovereignty Act, 2075, with the aim of formulating concrete rules and mechanisms to avoid potential violations of the fundamental rights

²³ the right to live with dignity (Article 16); the right to equality (Article 18); the right against untouchability and discrimination (Article 24); the right against exploitation (Article 29); the right to education (Article 31); the right to employment (Article 33); the right to health care (Article 35); the rights of women (Article 38) which are here treated as a vulnerable category, specifically in relation to the prevention of all forms of violence within and outside the family, sexual exploitation and abuse on the base of sex, in conjunction with the right of the child and the right to property and the right to social justice (Article 42).

related to the right to food, including responses to a series of open questions concerning women's rights and gender equality.

3.2. THINKING THROUGH THE RIGHT TO FOOD AND FOOD SOVEREIGNTY ACT, 2075: WOMEN IN CONTEXT²⁴

Contrary to expectations based on the outlined scenario, The Nepal Right to Food and Food Sovereignty Act only briefly turn attention to issues of structural inequality that could affect women's rights' advancement.

This is so because throughout the legal text, the gender category is not mentioned as a key agent for determining a situation of vulnerability or food insecurity.

In Chapter 2 Section 3(3)(d) on the "Respect, protection and fulfilment of the right to food" and in Section 5 on the "Identification of targeted household" we respectively read that especially the persons or families vulnerable to famine or food insecurity shall obtain sustainable access to food and nutrition support and that the local level shall maintain records, within its territory, *of the households targeted as vulnerable to food insecurity due to poverty, geographical inaccessibility, disaster or similar other reasons* (on the dimension of availability of food and stability of supply). These last ones seem to be sufficient elements in determining situations of vulnerability and inequality, while excluding that other widespread practices of the dominant patriarchal ideology may legitimise male power and authority over women, leaving them even more affected by malnutrition.

Section 6 of the Act introduces a useful measure in this sense: the mandatory issuance of a "food support identity card" to the adult female member of the household (on the dimension of availability of food). This provision though doesn't really contextualise the reasons for such choice. And while there's an effort to mainstream women's needs, no strategies are put in practice to move towards substantive equality for women. Physical and emotional intra-household abuses, discriminatory inheritance practices, lower salaries, weak sexual and reproductive health services and the unequal division of care work in the household afflict women in realising their right to food and must consequently be addressed.

Further on, in Chapter 3, "Protection and Promotion of Right to Food Sovereignty" (on the dimension of accessibility of food), the act enumerates a significant number of actions to respect and protect farmers' right to food sovereignty, occupation and livelihood to grant: a. access to the resources necessary to conduct agricultural business, b. access and custody of local food and livestock products c. the sustainable use of agricultural lands, d. a fix minimum support price of prescribed crops, e. access to agro markets and the modernization

²⁴ In the paragraph, the author seeks to understand the logic behind certain affirmations or certain linguistic uses (of pronouns and words) in the Right to Food and Food Sovereignty Act, 2075 relying on the English translation of the text available at: <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/the-right-to-food-and-food-sovereignty-act-2075-2018>, last accessed in March 2020.

of the agricultural sector, f. protection from the adverse effect of genetically modified organism (GMO); g. the sustainable management of agricultural lands and the practice of organic farming, h. development programs and safety nets in case of climate change disasters. Furthermore, section 13(l) specifies: “to expand access of women farmers and landless families dependent on agriculture to agricultural land and agricultural materials, on the basis of priority”.

Again, no special measures nor indicators are used to evaluate women’s constraints, whether they are single mothers or daughters or wives working in a small enterprise with the husbands or simply producing what’s enough for a living. Women are treated as a homogenous group, defined by rurality. The few actions that have been taken to ensure that they participate in and benefit from rural development lack clarity, as well as those that suggest an effort in challenging local tenure arrangements.

Even section 15, establishing measures for the protection and sustainable use of agricultural land, through mutual coordination and Section 23, which is intended to set a number of monitoring indicators for the implementation of the right to food and the right to food sovereignty, fail to include a gender-sensitive analysis (on the dimension of sustainability of supply). Specifically, point h of Section 15, aiming at promoting cooperative farming, bond farming, contract farming or group farming might do more harm than anything to women farmers or female components in the household/community. Women, indeed, may lack the voice to report forms of violations or to affirm their basic needs.

When engaging in the development of programs related to the realization of the sustainability of food supply, the Act does not deeply plunge in concepts relating gender differences. Section 9, for instance, prescribes the issuance of economic aids or food distribution in emergency situations – and in full compliance of the right to food’s dimension concerning adequacy – without really identifying situations of discrimination in critical times or layered burdens for women. While such mitigation/emergency strategy might save many, it fails to recognise the multiple and intersecting factors that have an impact on women’s opportunity to enjoy the allocation of State’s resources and opportunities (Lambek, et al., 2018). Section 30, which expands on the issue, demands the Government of Nepal, the Provincial Government and the Local Level to make arrangements for food distribution through fair price shops or public food distribution centres in time of crisis by giving priority to women group or agricultural cooperatives. However, the provision lacks a rationale. It simply assumes that female representatives in the right to food mechanism are more fragile than others, but it does not motivate the difficulties women and rural women face on a daily basis in their struggle for their right to adequate food and nutrition.

These trends, are further supported by an improper language use, throughout the Act. The Preliminary Chapter²⁵ makes an effort in the employment of a wording as much plural and

²⁵ “‘Farmer’ means a citizen who makes agriculture the main occupation or business and earns his or her livelihood from agriculture, and this term also includes the family member dependent on

inclusive as possible. Expressions such as ‘his/her’, ‘person’, ‘citizen’, ‘family member’ and, elsewhere, also ‘human being’ are preferred to gendered pronouns. Yet, this effort is to a certain extent discriminatory of non-binary individuals and collide with the paradigm²⁶ that simultaneously claims to value and protect human and cultural diversity.

It is clear that gender-based violence and inequality is not Nepal’s primary concern. It follows, first, that in Chapter 6, on the management and protection of the right to food and right to food sovereignty, there’s no Committee in charge of conducting gender directed analysis. Second, that female quota to increase women’s participation is not required. Third, that in Chapter 7 on the accountability mechanisms concerning offences, punishments and compensations, there is no reference nor meaningful discussion concerning violations of the right to food in name of gender.

3.3. CIVIL SOCIETY ORGANIZATIONS’ (CSOS) CONTRIBUTION

On November 26th 2019 the Civil Society Working Group on the Right to Food submitted to the Nepal Ministry of Agriculture and Livestock Development the *CSO version Draft Rule 2076 of the Right to Food and Food Sovereignty Act, 2075*.

The Civil Society Mechanism’s (CSM) general mandate²⁷ is to facilitate civil society participation and articulation into the policy processes in the context of the right to food and with regard to the Committee on World Food Security (CFS) decisions. More radically it aims to i. give voice and priority to the organizations and movements of the people most affected by food insecurity and malnutrition, recognising their creative capacities; ii. Respect pluralism, autonomy, diversity and self-organisation, while ensuring a balance of constituencies, gender, and regions.

Despite being assigned this role, Civil Society Organizations (CSOs) in Nepal did not go so far in expanding the Act’s content. Concerning the collection of data and information for conducting survey for the identification of those individuals/groups more prone to hunger (Section 4), they did not include gender and gendered power relations as a key cause for exacerbated malnutrition. The sample formats for collecting statistics indeed – Schedule 2 and 4 – should be adapted with more responsive standards for reliable results.

Again, gender mainstreaming seems not to be of primary concern. Section 6 on the protection of agriculture occupation and the promotion of living standard of farmers, does not mention specific gendered-sensitive measures among the tasks for enhancing livelihoods, participation and a safe conduction of work. It does not include, as suggested by the RTF Guidelines and GR.34²⁸, strategies to address women’s working conditions such as paid

such a citizen, or the citizen who labors in agricultural work for six months or more, or a citizen who makes traditional agricultural tools or the family member dependent on such a citizen”.

²⁶ That of international human rights law and the 2030 Agenda for Sustainable Development.

²⁷ <http://www.csm4cfs.org/the-csm/>, last accessed March 2020.

²⁸ Section E points 51 and 52

maternity leave, access to child care, prevention of violence, sexual harassment and exploitation in the workspace.

Likewise, Section 7, does not link to the classifications of farmers, based on land ownerships, the fact that women might suffer gender-based discriminations. Precautionary measures that take into account the specific constraints that female farmers encounter in having private property recognised are not listed. Section 7.2(a) merely recognises the existence of a broad category of “landless and marginalised farmer(s)”, without gender mainstreaming.

Section 8.3(k) further specifies that the State has a duty to provide agro-land with ownership or possession right, based on priority to the “poor women”. This last provision should be enhanced and critically questioned for two reasons. First, because it may play a crucial role in a) dismantling legal barriers to women’s land ownership and b) eradicating customary laws that still privilege households’ male family heads, resulting in an unequal distribution of land and incomes between men and women (Lambek, et al., 2018). Second, because a case-to-case analysis may allow to portray the woman beyond her sexually constrained feminine gender and her being part of a “third world”, “underdeveloped” category, featured as ignorant, poor, uneducated, traditionally-bounded, domestic, family-oriented, victimized (Mohanty, 1991 in Escobar, 1994).

Concerning representation and the implementation of the right to food (Chapter 4), the *CSO version Draft Rule 2076 reports* that the National Food Council should take into account feedbacks from, among others²⁹, a women Commission, before issuing any recommendation. The women Commission jointly with women groups working in the sector of the right to food, food and nutrition security and food sovereignty, is in charge of conducting wider discussions and consultations on issues of common concerns. But how is women’s voice ensured when female household/community’s members might not have the chance to express their own personal experience or viewpoint?

With the scope of overcoming such barriers, both the National Food Council and the State Food Council, one in each State, must include two representatives, one of whom must be a woman, nominated by the Ministry from amongst the Civil Society working in the field of the right to food and food sovereignty, as well as two other persons from amongst farmers.

Furthermore, within the National Food Council³⁰, a Joint Secretary, Ministry of Women, Children and Senior citizen is formed (Section 14.1(f)). This formulation, which represents a significant step towards the protection and fulfilment of women’s rights within the right to food framework, again continues accepting women as pertaining to a monolithic category. Women are featured among the vulnerable and associated with the private sphere of home and the family. In this regard, how much is the Draft Rule challenging dichotomies, requiring

²⁹ National, provincial or local and international level government and non-government agencies and organizations, national human right commission, farmer commission, Dalit commission, indigenous commission, farmer, consumer.

³⁰ Section 14.

“situated judgment” (Charlesworth, 1999) and raising women’s voices? How much of women’s hunger and food insecurity is a matter of health alone and not one of life, survival and dignity? How much is the denial of food for women a matter of violation of ‘mothers’ rights’, or of ‘children’s rights’ rather than one of ‘women’s rights’?

CONCLUSION

Nepal’s legal framework on the right to food is cutting-edge. The country is in fact among the few³¹ having pioneered the advancement of legal recognition of the right to food at national level. It furthermore included, in its consultative processes, civil society and social movements, supported by FIAN Nepal, who pushed to take a rights-based approach.

Few recommendations based of feminist theories, though, may lead to develop a more thriving, thoughtful national plan.

In the first place, language use needs to be improved. Language not only reflects the way society thinks, but it also shapes the thinking of peoples and influences their behaviour. Word choices often carry unconscious assumptions about gender roles (Hayek, 2013). The challenge³² is to de-bias our minds and problematize accepted norms in language use that cement the superiority of one sex over the other one, as well as essentialise women’s distinctive traits.

Both in the Act and the CSO Draft Rule³³, stereotypes are frequent. Women are either poor, underdeveloped, vulnerable or associated with motherhood and rurality or remoteness. They are often represented as having “needs” and “problems” but few choices and no freedom to act (Mohanty, 1991 in Escobar, 1994).

Eventually, monitoring mechanisms have the scope of reviewing policy, legislation and programs to maintain their effectiveness and assess their contribution to the right to food realisation (Lambek, et al., 2018). In Nepal, monitoring groups are gender diverse but this does not translates into concrete efforts to address the intersected structural and procedural discriminations linked to class, race, gender, socio-economic status, access to nature and to traditional resources. Participatory monitoring should be improved to ensure the creation of spaces where women can be subjects with a say in what to monitor and how. The RTF Guidelines suggest that participation should be active, free, effective, meaningful and informed. This means that Nepal should take active steps to support communities address

³¹ With Argentina, Brazil, Ecuador, Cabo Verde, Dominican Republic, Guatemala, Honduras, México, Nicaragua, Venezuela, India, Malawi, Uganda, Costa Rica and El Salvador.

³² The UN have developed an instructive framework on the uses of gender-sensitive language: ST/IC/1992/67 and ST/CS/SER.A/41; the Feminist Judgements Projects in Canada (2006), England & Wales (2010), Australia (2014), Ireland (2017), New Zealand (2017), the US (2017), India (2017) and Africa (2017) also challenge traditional legal reasoning, including gender perspectives.

³³ But also in the international tools such as the CEDAW and GR.34.

unequal power and gender relations, particularly establishing quotas and targets for women's participation (Lambek, et al., 2018).

REFERENCES

Amnesty International (2019), Right to Food in Nepal. Analysis of the Right to Food and Food Sovereignty Act 2018, Amnesty International LTD: London.

Basant, A., Gurung, B., Rai, Y., Shankar, I., Singh, A., Subba, S. A., Ghale, Y. (2011). Parallel Report- the Right to Adequate Food of Women in Nepal Combined fourth and fifth periodic report of States Parties.

Bellows, A. C. (2015). RIGHT TO FOOD AND NUTRITION Peoples' Nutrition Is Not a Business, issue 07, available at: https://www.tni.org/files/article-downloads/right_to_food_and_nutrition_watch-english.pdf, last accessed October 2019.

CEDAW (2016) General Recommendation No. 34 on the rights of rural women, CEDAW/C/GC/34.

Chapagai, R.P. (2014), Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal, FAO, Rome.

Charlesworth, H., Chinkin, C., Wright, S. (1991) Feminist Approaches to International Law, The American Journal of International Law, Vol. 85, No. 4, pp. 613-645.

Charlesworth, H. (1999) Feminist Methods in International Law, The American Journal of International Law, Vol. 93, No. 2, pp. 379-394.

Chinkin, C., Charlesworth, H. (2000) the boundaries of international law: a feminist analysis, Manchester University Press, Manchester, UK.

Cornwall, A., Harrison, E., W. A. (Eds). (2007). Feminisms in Development. Contradictions, Contestations and Challenges. Zed Books: London and New York.

Elmhirst, R. (2001) Feminist Political Ecology, Ethics and the Environment, 22(1), 2017, 58-86.

Escobar, A. (1994) Encountering Development: The Making and Unmaking of the Third World, Princeton, N.J.: Princeton University Press.

FAOSTAT (2011) Female share of agricultural labor force in FAO, ESA Working Paper no. 11-02 available at: <http://www.fao.org/docrep/013/am307e00.pdf>.

FIAN NEPAL (2019) Civil Society Version Draft Rule, 2076 of the Act Relating to Right to Food and Food Sovereignty, 2075 (Unofficial Translation). Submitted to: Ministry of Agriculture Development and Livestock Singhdurbar, Kathmandu, available at: <http://fiannepal.org/wp-content/uploads/2020/02/CSO-version-Draft-Regulation-final-EN.pdf>, last accessed May 2020.

Ghale, Y., Pyakuryal, K.N., Devkota, D., Prasad Pant, K., Prasad Timsina, N. (2017), Gender Dimensions of Food Security, the Right to Food and Food Sovereignty in Nepal, Journal of International Women's Studies, 19(4), 15-31.

Harcourt, W. & Nelson, I. L. (eds.) (2019) Practising Feminist Political Ecologies, Moving Beyond the 'Green Economy', Zed Books: London.

Hayek, N. (2013) Gender - Sensitive Language Guidelines, available at: https://www.unescwa.org/sites/www.unescwa.org/files/page_attachments/gender-sensitive_language_e-a.pdf, last accessed May 2020.

Kings, A.E. (2017) Intersectionality and the Changing Face of Ecofeminism. *Ethics and the Environment*. 22. 63. 10.2979/ethicsenviro.22.1.04.

Lambek, N., Claeys, P., Wong, A., Brilmayer, L. (eds.) (2014), Rethinking Food Systems. Structural Challenges, New Strategies and the Law, Springer Netherlands.

Lambek, N., Mattheisen, E., Cordova, D. (2018), Civil Society Report on the use and implementation of the right to food guidelines, CSM, CFS, FAO Headquarters, Rome/Italy.

Martignoni, J. B. (2019). Engendering the right to food? International human rights law, food security and the rural woman Joanna Bourke Martignoni, 1–14.

McKinnon, C.A. (2006) *are women human? and other dialogues*, The Belknap Press of Harvard University Press, London.

Ministry of Health, Nepal; New ERA; and ICF (2017) Nepal Demographic and Health Survey 2016. Kathmandu, Nepal: Ministry of Health, Nepal, available at: <https://www.dhsprogram.com/pubs/pdf/fr336/fr336.pdf>, last accessed May 2020.

Nuila, A., Claeys, P. (2016) Rural Women's Rights in the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, FIAN International Briefing.

Orford, A., Hoffmann, F., Clark, M. (eds.) (2016) *The Oxford Handbook of the Theory of International Law*, Oxford University Press.

Pandey, S., Fusaro, V. (2020) Food insecurity among women of reproductive age in Nepal: prevalence and correlates, *BMC Public Health* 20, 175.

Portman, A. (2018). Food Sovereignty and Gender Justice, *Journal of Agricultural and Environmental Ethics*, 31(4), 455–466, available at: <https://doi.org/10.1007/s10806-018-9739-2>.

Pruitt, L. R (2011) Deconstructing CEDAW's Article 14: Naming and Explaining Rural Difference, 17 *Wm. & Mary J. Women & L.* 347, available at: <http://scholarship.law.wm.edu/wmjowl/vol17/iss2/4>.

Quisumbing, A-R., Meinzen-Dick, R., Raney, T.L., Croppenstedt, A., Behrman, J.A., Peterman, A. (eds.) (2014) *Gender in Agriculture. Closing the Knowledge Gap*, FAO and Springer Netherlands.

Rae, I. (2009) *Women and the Right to Food. International Law and State Practice*, FAO, Rome.

Shiva, V. (1988) *Staying Alive. Women, Ecology and Development*, Zed Books: London.

UNGA (2012) *the future we want*, 27 July 2012, A/RES/66/288.

UNGA (2015) *Right to food: note / by the Secretary-General*, 5 August 2015, A/70/287.

Weiss, T.G., Daws, S. (eds.) (2018) *The Oxford Handbook of the United Nations*, Oxford University Press.

Ziegler, J., Golay, C., Mahon, C., Way, S. (2011) *the Fight for the Right to Food. Lessons Learned*, The Graduate Institute Geneva Publications, Palgrave Macmillan UK.