

**THE RIGHT TO FOOD AS A HUMAN RIGHT IN THE INTERNATIONAL
ORDER AND ADDRESSING FOOD INSECURITY: THE LESSONS FROM
JOSUÉ DE CASTRO FOR COMBATING HUNGER**

**EL DERECHO A LA ALIMENTACIÓN COMO DERECHO HUMANO EN EL
ORDEN INTERNACIONAL Y LA LUCHA CONTRA LA INSEGURIDAD
ALIMENTARIA: LAS LECCIONES DE JOSUÉ DE CASTRO PARA
COMBATIR EL HAMBRE**

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ABSTRACT: The present work aims to study the right to food in the face of hunger as a problem of worldwide and international concern. With specific objectives, we intend to conduct a study on the species and natures of the right to food - both the right to be free from hunger and the right to adequate food as a prerequisite for addressing food insecurity - drawing on the studies of Josué Castro and his pioneering discussion of hunger and lack of food as a political and social problem for all, from an analysis context of the Brazilian situation in the early twentieth century. Thus, we hope to demonstrate that the right to food should be recognized as a human right within the framework of international treaties and conventions, using the International Covenant on Economic, Social and Cultural

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Rights as a benchmark, in order to recognize food as a foundational right of the international order in its legal-nutritional categories for combating hunger and food insecurity.

Keywords: right to food; hunger; food insecurity; human rights; Josué de Castro.

RESUMEN: El presente trabajo tiene como objetivo el estudio del derecho a la alimentación frente al hambre como un problema de orden mundial e internacional. Como objetivos específicos, pretendemos realizar un estudio sobre las especies y naturalezas del derecho a la alimentación - tanto el derecho a estar libre del hambre como el derecho a una alimentación adecuada como presupuesto para hacer frente a la inseguridad alimentaria - utilizando como referencia y eje teórico-metodológico los estudios de Josué de Castro y su pionerismo en la discusión del hambre y la falta de alimentación como un problema político y social de todos, a partir de un contexto de análisis de la situación brasileña a principios del siglo XX. Así, esperamos demostrar que el derecho a la alimentación debe ser reconocido como un derecho humano en el conjunto de tratados y convenciones en el ámbito internacional, teniendo como parámetro el Pacto Internacional de Derechos Económicos, Sociales y Culturales, para luego reconocer la alimentación como un derecho presupuesto del orden internacional en sus categorías jurídico-nutricionales para combatir el hambre y la inseguridad alimentaria.

Palabras-clave: derecho a la alimentación; hambre; inseguridad alimentaria; derechos humanos; Josué de Castro.

INTRODUCTION TO THE THEME AND PROBLEM.

The Brazilian Network of Research on Food Sovereignty and Food and Nutritional Security (Rede PENSSAN) recently released to Brazilian and international society the results of the II National Survey on Food Insecurity in the Context of the Covid-19 Pandemic in Brazil (II VIGISAN).³ The numbers are both impressive and alarming! The same statement made by Josué de Castro in 1946 still applies today and is increasingly relevant: "Hunger - here is a problem as old as life itself. For humans, as old as humanity."⁴

It is important to note, first and foremost, that the theoretical, academic, and scientific discussion on the issue of hunger and its population was initially addressed by Josué de Castro (1908-1973). In the words of Jean Ziegler: "More than anyone else, one

³II Inquérito Nacional sobre Insegurança Alimentar no Contexto da Pandemia da COVID-19 no Brasil [livro eletrônico]: II VIGISAN: relatório final/Rede Brasileira de Pesquisa em Soberania e Segurança Alimentar – PENSSAN. -- São Paulo, SP: Fundação Friedrich Ebert: Rede PENSSAN, 2022. Disponível em: <https://olheparaafome.com.br/wp-content/uploads/2022/06/Relatorio-II-VIGISAN-2022.pdf>. Acesso em 15/02/2024.

⁴ CASTRO, Josué de. Geografia da fome. 5. ed. São Paulo: Editora Brasiliense, 1957.

man contributed to this awakening of the consciousness of Western peoples in the face of hunger: the Brazilian physician Josué Apolônio de Castro.⁵ Undoubtedly, the discovery of hunger was the initial step towards recognizing food as a right of a social nature. His studies made it possible to initiate the discussion of hunger as a social problem to be identified and addressed by everyone: society and governments alike.

Studies on the issues of food and nutrition in Brazil began with research and studies conducted to address the issue of hunger in the early 1930s. These studies stemmed from the initiative of Josué de Castro, resulting in the first work addressing this delicate issue in 1932; a topic that was so sensitive it was considered nonexistent by Brazilian society in the early 20th century. It was only with the publication of "The Problem of Food in Brazil" that the issue of food and its connection to hunger became references in the social and intellectual landscape of our country. When this first work was being developed, nothing had been written in Brazil about this social and political problem of hunger.

Josué de Castro reports that during this period (the 1930s), in the United States of America, interest in the subject of food was the subject of numerous studies, with various publications, essays, articles, and even scientific monographs addressing the issue of food. The only Brazilian work whose theme briefly approached the question of food was the result of a book published in 1908 by Eduardo de Magalhães, entitled "Alimentary Hygiene." After this singular publication - which nevertheless sought to address food only in terms of health and hygiene for maintaining health - for more than two decades, no further attention was given to this subject.

No researcher, no scientist, no one dared to delve into this problem.⁶ The enormity of the problem of hunger, a pressing reality for the Brazilian population at the beginning of the century, was no longer the subject of study. Seeing this at that time, one might imagine that the academic disinterest would be a reflection, scientifically speaking, of the nonexistence of food shortages and the unimaginable lack of food for national subjects. After all, scientific studies and research gravitated towards other issues considered more relevant and towards addressing other dilemmas unrelated to hunger.

⁵ ZIEGLER, Jean. **Destrução Massiva: Geopolítica da Fome**. São Paulo: Cortez, 2012, p. 84.

⁶VIEIRA, André Luiz Valim. (2014). SENSIBILIDADE INSENSÍVEL - JOSUÉ DE CASTRO E A QUESTÃO DA FOME COMO VIOLAÇÃO DE DIREITOS HUMANOS FUNDAMENTAIS. **Revista de Estudos Jurídicos da UNESP**, 17(26). <https://doi.org/10.22171/rej.v17i26.696>.

The same statement made in 1946 still applies today and is increasingly relevant: "Hunger - here is a problem as old as life itself. For humans, as old as humanity."

Following Josué de Castro's pioneering work on food in Brazil, numerous other scientific documents were published and made public, still in the 1930s, especially works resulting from research in the fields of biology and medicine, focusing on the study of the problem of hunger and in opposition to the lack of references and the intellectual denial of the issue before 1932. In the words of the great national pioneer on the subject: "The food factor, acting on man and Brazilian society, in connection with other factors, was for a long time entirely ignored."⁷

Born on September 5, 1908, in Recife, in the state of Pernambuco, Josué de Castro graduated in Medicine in 1929 from the Faculty of Medicine of the National University of Brazil. In 1932, he obtained the title of Free Professor in Medical Physiology from the Faculty of Medicine of Recife. In his teaching activities, he was a professor of Anthropology and Human Geography from 1940 to 1964 at the former University of Brazil. In addition, he was a Federal Deputy from 1954 to 1962 and, moreover, a Brazilian ambassador to the UN from 1962 to 1964.

His dedication to food-related causes and combating hunger earned him the appointment to preside over the Council of the United Nations Food and Agriculture Organization (FAO - United Nations Food and Agriculture Fund, created in 1945). With the military coup of 1964, his political rights were revoked, leading him to exile in France, where he became a professor at the University of Paris. After his exile, he passed away on September 24, 1973, in Paris, never returning to Brazil.

Contrary to what many may think, his first work on hunger - the result of his thesis as a free professor and published as a study on the problem of food in Brazil - aimed to systematize the current notions in medical physiology at the time regarding the food problem. This thesis was confined to the area of biological sciences (medicine and nutrition)⁸, prior to the publication of the first edition of "Geography of Hunger" in 1946.

⁷From the preface to the third edition, revised and expanded in content compared to the first publication of the work in 1932. (Ibidem, p. XVII.). The author reaffirms: "This ignorance among us [about the problem of food] is profoundly regrettable because in the economic and social development of our country, the food problem is basic and indispensable. From its social aspect, this problem imposes itself by the need to standardize: the minimum food intake of the dispossessed classes and the rational feeding of workers for the proportional use of their productive energy and to establish a truly scientific consumption of our natural products."(CASTRO, Josué de. **O problema da alimentação no Brasil: seu estudo fisiológico**. 3. ed. Série Brasileira. São Paulo: Companhia Editora Nacional, 1939. p. 09).

⁸Interestingly, the first encounter with the issue of hunger occurred in the field of nutritional medicine, reaffirmed when stating: "The overall construction of the postulates of nutrition in our environment must

Drawing on medical-scientific knowledge about the physical-chemical constitution of living matter, that is, the human body and its physiological metabolism, together with its dynamic balance in view of expenditures and vital needs based on the prevailing concept of nutrition, the author sought, from the laws of physiology, to understand the effects of food shortages on the physical constitution of human beings.

With a study on the nutritional and energy values available to the Brazilian population compared to those necessary for its maintenance, the author made the first realistic contact between theory: what each person, according to their age and needs, should consume; and the current situation, reality: the accessible and available food often proved inadequate, resulting in shortages and hunger. His interest in the subject of hunger and food was aroused from this. The issues raised by Josué de Castro many decades ago still resonate in our reality: hunger is not a natural or even rational phenomenon; rather, it results from the failures and mistakes of government policies (or their absence), coupled with faulty economic circumstances.

In Brazilian legal order, food represents a fundamental right of a social nature: expressly provided for in Article 6, caput, of the Federal Constitution, included by Constitutional Amendment No. 64, 2010. At the international level, Brazil is a signatory to the Covenant on Economic, Social and Cultural Rights (Decree No. 591/92), which prescribes in its Article 11, the fundamental right of every person to be protected against hunger.

Hunger and food insecurity and malnutrition directly affect the fundamental human right to food in both its aspects: the right to adequate food and the right to be free from hunger. The right to food is thus realized when every person has physical and economic access, at all times, to adequate food and the means to obtain it. The right to be free from hunger, on the other hand, cannot be narrowly interpreted because it would mean only a specific set of calories, proteins, and other concrete elements.

The numbers and results from the II National Survey on Food Insecurity in the Context of the Covid-19 Pandemic in Brazil are extremely concerning and alarming: the results reveal that 41.3% of households were in a situation of food security, while in

start from the physiological investigation of nutrition and the utilization of experimental evidence according to the variants that climatic conditions impose on the inhabitants of the tropics. We need to solve the problem of tropical nutrition, and the only effective path is the study of nutritional functions in tropical inhabitants."(CASTRO, Josué de. **O problema da alimentação no Brasil**: seu estudo fisiológico. 3. ed. Série Brasileira. São Paulo: Companhia Editora Nacional, 1939, p. 10).

28.0% there was uncertainty regarding access to food, in addition to compromised food quality, meaning mild food insecurity. According to the studies, quantitative food restriction occurred in 30.1% of households, of which 15.5% are experiencing hunger: a state of severe food insecurity. Hunger is present in 43.0% of families with a per capita income of up to 1/4 of the minimum wage, and affects more families where women are responsible and/or those in which the head of household identifies as black or brown.

In terms of population, there are 125.2 million people living in food insecure households and over 33 million in situations of hunger, that is, in a state of severe food insecurity. The study conducted by the Brazilian Researchers Network resulting in this survey has significant representation of the Brazilian population: it covered 05 macro-regions (rural and urban) and all 27 Federative Units. For its results, 12,745 (twelve thousand seven hundred and forty-five) households were included in the sample, with face-to-face interviews of one adult per household. Data collection took place between November 2021 and April 2022, showing its current and updated situation.

The issue of hunger, food insecurity, and the right to food in both aspects - the right to be free from hunger and the right to have adequate and sufficient food quantity and quality - are not government problems or the domain of certain political or ideological groups. They result from a complexity of factors and circumstances: economic crises, social crises, political crises, crises of humanity. However, like any complex and multifaceted problem, they require various practices, actions, and public policies on numerous fronts and involving various entities: it requires a social, public, collective, and effective commitment that includes all federative entities, organizations, private sector, third sector, among others.

The issue of hunger cannot and should not be restricted to assistance measures. To alleviate and solve it, economic, assistance, legal, and nutritional actions are needed in a nationally and regionally efficient network where locations, groups, families, and individuals in situations of food insecurity and hunger can be identified.

Addressing hunger and reducing food insecurity factors should not only materialize in speeches or government projects (especially in election years), but in legal, economic, and political commitments of the entire society. Hunger and its combat do not represent a government project but rather a State project: a set of numerous public and social policies from all Federative Entities and all people. Hunger takes on a demeaning and dehumanizing situation that affects the most valuable and important assets of our social organization: life, freedom, human dignity, health, and safety. We urgently need to

reclaim Josué de Castro and acknowledge that the contemporary reality of hunger requires complex measures and solutions: they are state policies that require the (re)construction of an agenda to combat these situations: after all, its beneficiaries are hungry, in a hurry, and urgent.

Since the proposal of this chapter is the study of the right to food - including the fundamental social right inscribed in article 6 of the Federal Constitution - we need, before delving into the understanding of this right as a fundamental social right enshrined through a constitutional amendment, to understand the antecedents surrounding this kind of prerogative. Even though the inclusion of this legislative item recognized food as a social right, a fact to be more clearly detailed in the following topic, we need to briefly go through the events preceding this positivation.

Before its existence as a fundamental social right, could food be considered a considerable value? Since when has its absence causing hunger or resulting from poverty been legally considerable? Even though a prescriptive provision of law arises with the positivation, before this fact, the new attribute of consideration was not nonexistent in the realm of life and reality. Food did not become important, an essential act, only from when our codes and legislations foresaw it. Before, they were perhaps denied or disregarded by Law, yet not irrelevant from the point of view of our identification as Brazilians or as humans.

Before legal foresight, would its nonexistence be for this science? Or perhaps a possible invisibility? This is because reality was not always the main concern of Law.⁹ And if even before being included in the laws and normative predictions of the Brazilian State, food, since time immemorial, has been a concern of flesh and blood people; therefore, its denial by the legal universe in past times must be considered. But not only by this circle of principles and methods, hunger as a problem and food as an essentiality, finally a right, have been denied and unexcused for considerable decades. This has been the case since the trajectory of our country and the people over its territory, a fact only modifiable when the first studies on the subject began, removing the veil of complacency and complicity regarding such an important issue.

By denaturalizing hunger as something common or fully acceptable, we can truly understand its interference in the realm of sciences and International Law or the

⁹MERLO, Tarso de. **Direito e ideologia**: um estudo a partir da função social da propriedade rural. São Paulo: Expressão Popular, 2009. p. 121-122.

International Order. Ensuring and realizing the right to food as a human right extracted from the legal panorama of human rights treaties and conventions presents itself as a basic prerequisite for guaranteeing the other rights internationally recognized such as life, freedom, among others.

This work is the result of research developed with the Graduate Program of the São Paulo State University (UNESP). To carry out this research, we sought to use the dialectical and analytical methods by conducting a historical research of a bibliographic and documentary nature.

1. FOOD AS A HUMAN RIGHT IN THE (INTER)NATIONAL SCENARIO.

Food represents a universal and unconditional right, not requiring any prior conditions other than those fundamental principles identifying every subject of law: life, liberty, and dignity. The identification of food as a fundamental right is supported by domestic legal norms and international human rights documents. While some authors conceive of human rights as primarily rights of the poor, in our understanding, they are rights attributable to any individuals regardless of differentiating attributes.

Fundamental rights, especially as human rights constitutionally recognized within the internal scope of the State, are rights whose integrity contributes to the identification of the individual and the community in a life with dignity and whose deficiencies and omissions encroach upon the sphere of integral protection. In this regard, fundamental rights - also known as human rights by some - are the basic and unfulfilled demands of a people and of each individual comprising this people. Such identification of human rights as a right primarily of the poor finds support up to the point of equalization, bridging the vast social gap between conditions and opportunities.

If food is a fundamental human right and constitutes an intrinsic necessity for survival, its disregard inevitably negates the qualifying attributes of life. By denying fundamental rights and neglecting a basic human need: to feed oneself to survive; the foundations of other rights cannot be sustained.¹⁰ Embarking on a study of human needs would require someone dedicated to such an endeavor to have a broad knowledge of theories from various fields of knowledge. Delving into this task would allow for historical, philosophical, sociological analyses, limited only to the social human sciences;

¹⁰BOFF, Leonardo. In: ALDUNATE, José (Coord.). **Direitos humanos, direito dos pobres**. 2. ed. Tradução de Jaime A. Clasen. São Paulo: Vozes, 1992. p. 198.

as well as various branches of knowledge in psychology, and medical-nutritional areas. This is just to limit ourselves to bio-psycho-social needs. In the modern conception of the world and the dynamics of current times, needs are constantly renewed, where new needs are added to replace the previous ones, especially in the areas of new technology and informatics.

For many today, human needs would include the use of certain technological devices such as cell phones, computers, and automobiles. Some objects today cause so much dependency on humans, as appendages of individuals and existence, that the suppression of some in the current forms, such as the internet, would certainly cause serious harm to the continuity of people's lives in the standards as currently observed, as well as countless social upheavals by its suppression. Among all human needs, we could highlight those considered basic, that is, essential and indispensable to everyone.

Basic needs would be understood as those whose absence or deficiency would cause serious harm. They would be the needs that all people have if they do not want to undergo situations of great risks.¹¹ The basic need would therefore be a special relevant need because its deprivation would result in a state of suffering or extreme harm to the individual.¹² Among all basic needs for survival and social interaction, we wish to give greater emphasis precisely to food. We reiterate the question:

In this prism, our inquiry is the same as that posed by the eminent professor Miracy Gustin: after all, would there be a single human need that has primarily grounded legal protection throughout human history in all times and places? In this study, we rely on the understanding of basic human needs as something different from human interests and desires. Needs would be more properly identified as the objectives or specific ends generally accepted as natural or moral. They would be, so to speak, generalizable because they can be attributed to any person. Unlike desires or interests, which refer to objects deemed necessary based on the individual's will, according to their particularity. Considered as generalized issues inherent to everyone, needs are also subject to modifications by socio-cultural criteria relevant to a particular period. However, according to the same author, this does not prevent us from deducing certain basic human needs that are generalizable, not restricted to people of a particular group at a given time and place, but to all human beings indiscriminately.

¹¹DOYAL, Len; GOUGH, Ian. **A theory of human need**. New York: The Guilford Press, 1991. p. 50.

¹²ROIG, Maria José Añón. **Necesidades y derechos**. Madrid: Centro de Estudios Constitucionales, 1994.p. 266.

Now, our question arises: is there any more basic need for every person than the need for food? Without food, living beings experience deprivation because the maintenance of their bodies and even the simplest activities require energy for their realization. When lack of food is present, hunger indicates a circumstance that violates the right to life and to life with dignity. Without food, there is no life. Without life, there is no possibility of any other right or legal good being protected or even legally safeguarded because it lacks the fundamental condition of subjectivity: the individual.

If a basic need like food is not exercised by the subject as a fundamental right, logically, food deprivation leading to hunger, or caused by poverty, are acts that violate rights and do not fulfill a basic human need. This leads us to reflect that "[...] the existence of unmet basic needs is a strong argument for the existence of rights to their satisfaction." Essentially because "[...] the rights to the satisfaction of these needs must be sought in norms that prescribe fundamental rights, especially in social fundamental rights."¹³ If there is a need to eat, and food is a fundamental social right as the right to be free from hunger, then the exercise of this right is not only fully achievable but must also exist in a State that elects itself democratically based on the construction of rights and duties.

Therefore, without delving into theoretical discussions and treatments about the classification of human needs in a philosophical or legal context, for us, it is essential to establish the idea that any fundamental, basic, essential human need is one that any person, in any geographical location worldwide, at any historical period, at all times, and regardless of the social and political system governing that person's life, may have.

For this reason, whether in a tribe, a community, or a contemporary society, every person needs to eat to stay alive. Therefore, in our view, there is no more fundamental human need than the need to eat.¹⁴ It is undoubtedly a corollary of sustaining all other rights, a prerequisite for survival and existence. If a person cannot eat, there will inevitably be a violation of a fundamental right and of their basic need, intrinsic to the maintenance of their life, and, above all, their life with dignity. If there is no food, there

¹³LEIVAS, Paulo Cogo. O direito fundamental à alimentação: da teoria das necessidades ao direito ao mínimo existencial. In: PIOVESAN, Flávia; CONTI, Irio Luiz (Coord.). **Direito humano à alimentação adequada**. Rio de Janeiro: Lumen Juris, 2007.p. 84.

¹⁴ "It is relevant here to refer to the concept of need, which, according to Miracy Gustin, is "[...] a situation or state of non-intentional and inevitable character that constitutes deprivation of what is basic and indispensable and that places the individual or collective person in direct relation to the notion of harm, deprivation, or serious suffering, a state of degeneration of the quality of human life and well-being that persists until satisfaction is obtained that acts in a different direction."(GUSTIN, Mirazy Barbosa de Souza. **Das necessidades humanas aos direitos: ensaio de sociologia e filosofia do direito**. 2. ed. Belo Horizonte: Del Rey Editora, 2009. p. 14).

is hunger. With hunger, there will be harm to the primary need, and a blatant violation of all other fundamental rights born from the assumption of the individual's existence. Protecting property without a person capable of exercising it is not conceivable. Freedom cannot exist without a life to enjoy it. Social rights or rights of any other kind are unthinkable without people to exist.

Everything we observe in the present - from the greatest technological innovations, means of communication, discoveries, and scientific advances in various areas - is built and established for human beings. Any machine or equipment would be useless without the main subject benefiting from and enjoying such innovations. This being, the individual, whether man or woman, child, adult, or elderly person, of any nationality, exists solely because of their life. Life is not possible without the means of maintaining it.

Therefore, food is the most fundamental and basic human need of all. When food is insufficient or even nonexistent, hunger arises as a direct result of the individual's or group's failure to realize their fundamental right, basic need, and also procedurally claimable social right. Where there is hunger, inexorably, there is a violation of the right to life and a qualitative dignity of this act of living. In Brazil, it is impossible to speak of hunger without celebrating the pioneering scientific work: an example for the international stage.

2. JOSUÉ DE CASTRO'S PIONEERING WORK AND ITS LESSON FOR THE (POST) MODERN WORLD.

The theoretical discussion on the right to food in Brazil, in the face of the problem of hunger affecting its population, was first addressed by Josué de Castro. Undoubtedly, the discovery of hunger was the initial step toward recognizing food as a right.¹⁵ His studies paved the way for discussing hunger as a social problem to be identified and addressed by all.

Research on the issues of food and nutrition in Brazil began with studies and compilations conducted to address the issue of hunger in the early 1930s. These studies stemmed from Josué de Castro's initiative, leading to the publication of the first work on this delicate subject in 1932—a topic considered nonexistent by Brazilian society at the

¹⁵ROCHA, Eduardo Gonçalves. **Direito à alimentação**: teoria constitucional-democrática e políticas públicas. São Paulo: LTr, 2011. p. 33.

beginning of the 20th century. It was only with the publication of "The Problem of Food in Brazil" that the issue of food and its connection to hunger became references in the social and intellectual landscape of our country. When this first work was crafted, nothing had been written in Brazil about this social and political problem of hunger.

Josué de Castro reported that during this period (the 1930s), in the United States, interest in the subject of food was the subject of numerous studies, with various publications, essays, articles, and even scientific monographs addressing the issue of food. The only Brazilian work whose theme briefly approached the question of food was the result of a book published in 1908 by Eduardo de Magalhães, titled "Food Hygiene." After this single publication—which even then only sought to address food in terms of health and hygiene for maintaining health—for more than two decades, no one else paid attention to this subject.

No researcher, no scientist, no one dared to delve into this problem. The magnitude of the hunger problem, a pressing reality for the Brazilian population at the beginning of the century, was no longer a subject of study. Given this, at that time, it was conceivable that academic disinterest would be a scientific reflection of the nonexistence of food shortages and the unimaginable lack of nutrition among national subjects. After all, scientific studies and research gravitated toward other issues considered more relevant and in addressing other dilemmas unrelated to hunger.

After Josué de Castro's pioneering work on food in Brazil, numerous other scientific documents were published and made public, still in the 1930s, especially works resulting from research in the fields of biology and medicine, with the main focus being the study of the problem of hunger and in opposition to the lack of reference and socio-intellectual denial of the issue before 1932.¹⁶ In the words of the great national trailblazer on the subject: "The food factor, acting on Brazilian men and society, in connection with other factors, was completely ignored for a long time."¹⁷

¹⁶CASTRO, Josué de. **O problema da alimentação no Brasil: seu estudo fisiológico**. 3. ed. Série Brasileira. São Paulo: Companhia Editora Nacional, 1939.

¹⁷From the preface to the third edition, revised and expanded compared to the first publication of the work in 1932 (Ibidem, p. XVII.), the author reaffirms: "This ignorance among us [of the problem of food] is deeply regrettable because in the economic and social development of our country, the food problem is basic and indispensable. From its social aspect, this problem imposes itself by the need to standardize: the minimum food for the deprived classes and the rational food for the workers for the proportional use of their productive energy and to establish a truly scientific consumption of our natural products."(CASTRO, Josué de. **O problema da alimentação no Brasil: seu estudo fisiológico**. 3. ed. Série Brasileira. São Paulo: Companhia Editora Nacional, 1939. p. 09).

Born on September 5, 1908, in Recife, in the state of Pernambuco, Josué de Castro obtained his medical degree in 1929 from the Faculty of Medicine of the National University of Brazil. In 1932, he obtained the title of Free Professor in Medical Physiology at the Faculty of Medicine of Recife. In his teaching activities, he was a professor of Anthropology and Human Geography from 1940 to 1964 at the former University of Brazil. Additionally, he was a Federal Deputy from 1954 to 1962 and a Brazilian ambassador to the UN from 1962 to 1964.

His dedication to food-related causes and combating hunger led to his appointment as president of the Council of the United Nations Food and Agriculture Organization (FAO), created in 1945. With the military coup of 1964, his political rights were revoked, leading him to exile in France, where he became a professor at the Sorbonne University. After his exile, he passed away on September 24, 1973, in Paris, without ever returning to Brazil.

His first work on hunger, contrary to what many think— the result of his free-lecture thesis and published as a study on the problem of food in Brazil— aimed to systematize the prevailing notions in medical physiology at the time regarding the food problem. This thesis was confined to the field of biological sciences (medicine and nutrition), predating the publication of the first edition of "Geography of Hunger" in 1946. Based on medical-scientific knowledge about the physico-chemical constitution of living matter, that is, the human body and its physiological metabolism, along with its dynamic equilibrium concerning expenditures and vital needs, based on the prevailing concept of nutrition, the author sought, through the laws of physiology, to understand the effects of food deprivation on the physical constitution of the human being.

With a study on the nutritional and energy values available to the Brazilian population compared to those necessary for its maintenance, the author made the first realistic contact between theory— what each person should consume based on their age and needs— and the current situation, the reality¹⁸: the accessible and available food often

¹⁸ The author specifies very well this transformative contact of his thinking from reality when he presents us with: "It was, fundamentally, like a kind of sublimation of this complex of an entire people of hungry, always worried about hiding or, at least, disguising their eternal hunger. [...] It was not at the Sorbonne, nor at any other wise university, that I became acquainted with the phenomenon of hunger. Hunger spontaneously revealed itself to my eyes in the mangroves of the Capibaribe, in the miserable neighborhoods of Recife: Afogados, Pina, Santo Amaro, Ilha do Leite. That was my Sorbonne: the mud of the Recife crabs. [...] And so it was that, through the stories of men and the itinerary of the river, I learned that hunger was not an exclusive product of the mangroves. That the mangroves only attracted the hungry men of the Northeast: those from the drought zone and those from the sugar cane zone. All attracted by this promised land, coming to nest in that nest of mud, built by the two and where the wonderful cycle of the crab sprouts. And when I grew up and went out into the world, seeing other landscapes, I realized with new

did not suffice because it was insufficient, resulting in deprivation and hunger. From this arose his interest in the issues of hunger and food.

Thus, from this first contact with the scientific "ought" as opposed to the "how it is" of the prevailing socio-historical reality, the issue of hunger and its consequences for life and survival effected a valuational revolution in Josué de Castro's thinking, later leading him to studies whose objectives were to establish connections between sociology, political geography, and the problem of food shortage resulting in hunger as a social problem to be considered relevant by the human sciences.

Did hunger not exist in Brazil before Josué de Castro's studies? Obviously, it did! Hunger has always been a constant concern for people in all times and places. Alongside abundance and excesses, hunger also presents itself as the reverse side of abundance. It resides in the daily life, diminishing people's vitality. Other issues or problems were considered more urgent and important by society. Other topics drew more attention from researchers and scholars. Even in our country, this fact was no different.

Before Josué de Castro, the issue of food and the problem of hunger were nationally neglected by science and society.¹⁹ Perhaps it was only not neglected by those individuals and families who felt and experienced the insufficiency or total lack of food for survival on a daily basis. It was with Josué de Castro that the issue of food became a foremost element of consideration for everyone indiscriminately because it is not just a problem restricted to a few and disregarded individuals, but something urgent, imminent, and above all, excluding. That is why the food of our population constitutes a capital problem, the most relevant, the true first problem of our country: the Brazil.²⁰

After the publication of his first work in 1932, on food and hunger based on a medical-biological study and influenced by experiences and interests in geography,

surprise that what I thought was a local phenomenon was a universal drama. That the human landscape of the mangroves was reproduced all over the world. That those characters in the mud of Recife were identical to the characters in countless other areas of the world plagued by hunger. That the human mud of Recife, which I had known in childhood, continues to dirty to this day the entire landscape of our planet like black smudges of misery: the black demographic stains of the geography of hunger."(CASTRO, Josué de. **Homens e caranguejos**. São Paulo: Brasiliense, 1967.p. 11-24).

¹⁹The author questions: "What are the hidden factors behind this true conspiracy of silence surrounding hunger? Is it simply by chance that the topic has not attracted the proper interest of the creative and speculative spirit of our times? We do not believe so. The phenomenon is so striking and occurs with such regularity that, far from being a random occurrence, it seems conditioned by the same general laws that govern the other social manifestations of our culture. It is a silence premeditated by the very soul of the culture: it was the interests and prejudices of moral, political, and economic order of our so-called Western civilization that made hunger a forbidden topic, or at least one that was not advisable to be publicly addressed." (CASTRO, Josué de. **Geografia da fome**. 5. ed. São Paulo: Editora Brasiliense, 1957. p.20).

²⁰MELLO, Antonio de Silva. **A alimentação no Brasil**. 2. ed. Rio de Janeiro: José Olympio, 1961.p. 21.

Josué de Castro published the work "Brazilian Food in the Light of Human Geography" in 1937. Already familiar with the reality of hunger, Josué de Castro publicly presents the study on the geography of hunger, published in 1946, perhaps one of his best-known works. In this work, he seeks to analyze the eating habits of different Brazilian groups linked to specific geographical areas, thus trying to unravel both the natural causes and, more importantly, the social causes that conditioned the type of food of each human group. Through this work, he seeks to provide an explanation for social phenomena, from an ecological perspective, not yet understood, making it clear his objective to analyze the problem of hunger from a collective perspective, that is, hunger affecting different groups in different ways across the country.

Still in his endeavor to fight hunger and the scientific silence on the topic, in 1951, a study on the geopolitics of hunger was published. While in the previous work, the focus was on a regional approach to the problem of hunger in Brazil, in this latest work, attention is turned to an analysis of the same problem in a global context, thus constituting a continuity of the author's study to understand the problem of hunger and mainly its economic and social significance.²¹ While trying to conduct a study on universal food deprivation, the author exposes his finding as a global problem and of all nations whose facet has roots in the biological crisis and the political crisis in which everyone was immersed. With this, he seeks to present a scientific method of interpreting the dynamics of political phenomena in its spatial reality and which are responsible for conditioning hunger as a taboo and at the same time as a global phenomenon.²²

Although the interest aroused by Josué de Castro as a trailblazer of the social-academic-scientific discussion on the problem of hunger and the role of food in maintaining life and as instruments of essential minimums characterizing human rights, was not able to promote significant social changes, the brilliance of this researcher and his unique sensitivity to this reality often hidden from our eyes or vehemently denied should be taken into account. After the initiative of the professor from Pernambuco, several studies emerged to discuss the issue of food for the Brazilian population and the

²¹ According to the renowned author from Pernambuco, the subject of his book is "quite delicate and dangerous. So delicate and dangerous that it has become one of the taboos of our civilization. It is truly strange, shocking that in a world like ours, characterized by such an excessive capacity for writing and publishing, there is still so little written about the phenomenon of hunger, in its various manifestations."(CASTRO, Josué de. **Geografia da fome**. 5. ed. São Paulo: Brasiliense, 1957.p.19).

²²CASTRO, Josué de. **Geopolítica da fome**: ensaio sobre os problemas de alimentação e de população do mundo. 4. ed. São Paulo: Brasiliense, 1957.p. 45.

reality of hunger, ranging from medical and health discussions to sociological and economic studies.

Perhaps, from the perspective of not being mistaken, one of the last sciences to recognize this field of discussion – food as a right and hunger as an institutional problem – in its studies and postulates was precisely Law. If food is recognizably a social right and social rights are constitutionally recognized fundamental rights, it must be understood that hunger, as a disqualifying qualifier of life due to lack of food, is invariably currently a violation of a fundamental right in the Brazilian legal universe.

3. HUNGER AS A VIOLATION OF HUMAN RIGHTS IN THE INTERNATIONAL ORDER.

The Universal Declaration of Human Rights of December 10, 1948, adopted and proclaimed by the United Nations General Assembly, advocates for the recognition of the inherent dignity of all individuals of the human family, as the foundation of freedom and all other rights. It also proclaims that all human beings are born free and equal in dignity and rights. Dignity is an attribute of life. Thus, every living person would have the capacity to enjoy the recognized rights and freedoms.

Using elementary logic, let's consider the following: there can only be freedom if there is life. It is inconceivable to grant or protect the freedom of those who cannot enjoy it, for example, because they are dead. Life is maintained in this active state only if there is nourishment of the human body, providing for the maintenance of the being in its bio-psycho-physiological functioning. If nourishment is presupposed for the existence of life – of any being from unicellular organisms to us humans – and life is a prerequisite for the exercise of all rights, the lack of nourishment, or hunger, is an attack on life and on every fundamental human right. For this reason, one of the conditions and means for the effectiveness of fundamental rights domestically and human rights internationally is undoubtedly the eradication of hunger.

The term "hunger" originates from the Latin word "fame." Although it may seem like a simple word with an easily understandable meaning, to understand hunger as representing a violation of a fundamental constitutional right in this work, it is important to emphasize that we are referring to only one of two possible aspects. Before delving further, it is necessary to establish the following: not every form or type of hunger represents a violation of a fundamental right!

Hunger is commonly understood as the appetite born from our organism. How many times a day do we say or think: "I'm hungry"? This is a coded representation of our body as the need for a person to carry out a food supply, the ingestion of components: calories, proteins, carbohydrates, among others; which, after molecular-organic synthesis, will be transformed into energy and fat, thus providing for the maintenance of the living body, primarily functioning in an organized and harmonious manner. This hunger that every person feels, regardless of age, sex, or location, does not signify a lack of food intake but merely a desire to eat, an appetite, an instinctive reflex phenomenon. It simply alerts the physiological body to the person, calling them to a meal or to any consumption that can satisfy it. This is the reason that leads us to pause for meals, promoting various eating routines throughout the day.

Another understanding of hunger is one that truly represents a violation of a fundamental right: hunger as a shortage of provisions. This is an attack perpetrated and maintained by modern societies in the current millennium. It is the hunger in which a person has the need and also the desire to eat; however, they cannot do so due to their lack of economic-financial conditions or due to lack of access to food or ingredients for preparation due to circumstances beyond their control and effort. It is hunger without prospects, undignified for the individual, dehumanizing them, and denying them the right to maintain their life, their full health, and consequently their dignity.

The hunger that disrespects fundamental rights is the one that presents more scientifically perceptible social results such as malnutrition or undernourishment and organic weakening, opening gaps to diseases, marginalization of the individual, and leading to death due to society and the State's omission in combating it with all its weapons. The hunger against which we intend to build an idea of the justiciability of the social right to food with juridical-procedural mechanisms to protect this right is not the hunger felt between meals that trigger the free and conscious act of eating. As soon as its existence is verified by me, I can very well go to the refrigerator, or buy, or prepare, or take advantage of the possibility to choose what pleases me most. The hunger that triggers the procedural dispute against the State is nothing more than the hunger in which the person, wherever they are in the national territory, has been without food for a long time or lacks the means to exercise it and does not see ways to satisfy it and ensure their survival.

Furthermore, food, more than an act of subsistence, is a cultural act. Foods are always ingested under some form of culturalization, rituals, liturgies, specific

preparation methods, and often organized for festive reasons of gathering and meetings. Our intention is not to discuss a right to food for Brazilians, mainly because the food ingested or appreciated by our population can vary significantly in a country with regionally recognized habits worldwide.

A fundamental social right constitutionally recognized and which will be adapted at the moment of the meal or food preparation, that is, food according to the habit and location of the person. The problem of hunger, although statistically greater in certain Brazilian states (provinces), is a relevant problem if it is still present throughout the country, as it actually occurs.

Food as a human right is a category of fundamental social rights constitutionally recognized and adaptable at the moment of meal consumption or food preparation, that is, food according to the habits and location of the individual.²³ Although the problem of hunger may be statistically greater in certain Brazilian states (provinces), it remains a significant issue if it persists throughout the entire country, as is the case.

While many people enjoy full access to food without any debate about whether it is healthy or harmful – as the issue is one of personal choice rather than impossibility – unfortunately, many others still experience hunger at some or all of their daily meals, on specific days, or routinely. Josué de Castro's statement serves as a reminder of this realistic contrast when he ironically remarked that half the population does not sleep due to hunger, and the other half does not sleep out of fear of those who are hungry. Ignoring this statement is turning a blind eye to the reality that despite many

²³ Various social studies and anthropological research have highlighted the issue of hunger and specifically discussed the differentiation between feeding oneself and eating. Undoubtedly, these two acts involve a direct connection with the cultural context of one's experience because: "From a sociological perspective, aggregated data on food production and consumption tell us little about what a population actually 'eats'. The reason for this is a cultural distinction between food and sustenance, which is rarely made when addressing this topic from an economic or nutritional perspective. No one eats generically. People eat black beans with more or less broth, with farofa or rice; they eat stewed or roasted meat; they eat wheat bread in the form of rolls, French bread, or croissants; they eat green beans stewed or in salad form, with salt or simply seasoned with lemon, among countless other possibilities. Foods are always consumed in a culturally informed manner. This means that foods are always manipulated and prepared using specific cooking techniques, presented in a particular form, and consumed at specific times and under certain circumstances, in the company of certain people. Dietary habits imply knowledge of food and attitudes toward it, rather than the class of foods consumed by a population. And food signifies what, how, when, with whom, where, and in what manner the foods selected by a particular human group are ingested. Thus, food encompasses the entire process of transforming sustenance – a set of nutrients necessary for the physical reproduction of human life – into what is actually eaten in a specific form."(BARBOSA, Livia. Feijão com arroz e arroz com feijão: O Brasil no prato dos brasileiros. In: **Horizontes antropológicos**, Porto Alegre, vol. 13, n. 28, p. 87-116, jul./dez. 2007. p. 92).

advancements, there are still individuals in our country, Brazilians, citizens who are hungry. Hungry for many things, including food and nourishment.

The Constitution of the Federative Republic of Brazil of 1988 dedicates special attention to fundamental rights. In Article 5, it selects freedom, equality, security, and property as fundamental individual rights, in addition to numerous other rights and forms of guarantees in the subsections of that article. Immediately afterward – Article 6 – is dedicated to social rights, expressing among them the right to food. The right to food is the right to be free from hunger. Even amidst a complex set of legal norms, rights, and institutionalized guarantees, for some issues, there have been no means of dissipation: one of them is hunger. As specified, not the momentary hunger easily satiable, but rather the hunger constantly present and against which the individual lacks the strength to resist and overcome.

Perhaps the perceived insignificance of this type of hunger is due to the fact that, being such an ancient phenomenon, we have learned to live with it and to treat it as a natural or even inevitable occurrence; a fate comparable to death and over which no human being has any control.²⁴ We do not have the gift or magic capable of eliminating it, so we should learn to live with it. If before, the shock of realizing the existence of hunger and the fact that people in our Brazil are still hungry today was a shameful discovery, we cannot accept false propositions of combat or institutional accommodation. We must reverse society and government's desensitization to this evil. There are still those who cannot feed themselves and who therefore beg, practice begging, or search for "leftovers" in landfills, dumps, and waste produced by our rampant consumerism and daily waste.

For Schieck Valente, both hunger and malnutrition and illiteracy constitute acts of dehumanization.²⁵ They are facets of a life of imposed misery under which the individual does not always have the conditions to fight for its modification. Although directly related to each other, hunger and malnutrition present themselves as processes of denial of differentiated human rights. Both human rights at the international level and fundamental rights at the national level recognize food as an indispensable right for anyone.

²⁴ABRAMOVAY, Ricardo. **O que é fome**. 9. ed. São Paulo: Brasiliense, 1998. p. 113.

²⁵VALENTE, Flávio Luiz Schieck. Alfabetização e desnutrição. In: VALENTE, Flávio Luiz Schieck (Org.). **Direito humano à alimentação: desafios e conquistas**. São Paulo: Cortez, 2002.p. 27.

Only through the fulfillment of certain rights currently recognized as essential is the structure of human life completed with attributes of dignity and is capable of participating alongside the community in the designation of duties. Food is one of these rights. It directly represents an undeniable contribution to the existence of life for any being, including human life. Hunger was revealed by Josué de Castro as an intermittent reality in our country and worldwide: a violation of the most fundamental human rights and without which there is no support for other rights.

4. HUNGER AS AN ISSUE OF INTERNATIONAL LAW.

The same question raised by Leandro Konder when discussing alienation in a Marxist concept is the driving force behind our discussion on the justiciability of the social right to food, because it is a direct result of indignation towards social reality. This reality is our moment, still. Where many people do not have the minimum necessary for their survival. We passively agree that our governments spend millions on weapons and military equipment only usable in cases of war or international conflicts, while a large portion of our fellow citizens – nationals or foreigners – suffer from the scourge of hunger without any prospects of being able to adequately feed themselves. Or that they provide millions in subsidies to large producers whose market interest sympathizes with maintaining a large percentage of food waste in harvesting, transportation, or distribution; not to mention the destruction of food for a smaller supply in the market and consequent price increase for greater profitability at any cost. After all, how has it been possible until today for us to historically acquiesce to human ambition?²⁶

Especially in the interest of sending man to the moon, establishing the space race between nations, or even venturing into cosmic space exploration, if in our countries our compatriots still live in poverty? Some cannot even fulfill the basic element of the law of nature: survival. If within the same terrestrial planetary home an individual like us – a human being, man or woman; child, adult, or elderly – undergoes grievous privations leading to death without any palliative measure of solidarity or support? By principle,

²⁶KONDER, Leandro. **Marxismo e alienação**: contribuição para um estudo do conceito marxista de alienação. 2. ed. São Paulo: Expressão Popular, 2009. p. 24. "For this author, the problems that manifest themselves in certain events of our current reality are issues that directly involve everyone's life, by concerning what is most important, most valuable, most significant to us; involving our desires and affections. These are problems that challenge freedom, jeopardize our own survival as individuals and as a human species in general; as the paths of our pursuit of happiness are at stake. (Ibidem, p. 23).

"how has humanity managed to master the energy and laws of nature to the point of launching artificial satellites and sending spacecraft to the Moon, without having managed to eliminate hunger on Earth?"

For Carlos Alberto Libânio Christo, popularly known as Frei Betto, hunger is a political issue that only entered the Brazilian government agenda a few years ago. The fight against malnutrition and the eradication of total hunger as assumed priorities of the public power demonstrate that hunger does not stem from any inevitability and, therefore, must be taken as priorities in reform programs and in the implementation of public policies.²⁷ Although this task is assumed by the Executive, it is not, for that reason, exigible from the actions and forms of exercise of their functions by the other powers of the republic.

Through the production of food, large monopolies of market domination are built, conditioning prices, quantities, qualities; all tied to the shady gains of large companies aiming only for large profits. Food trade is prioritized over hunger. The search for bread and a plate of food is thwarted by prices or the free market initiative of the agricultural sector. It would truly cause us to lack reasonable answers to find people living permanently in hunger while their country stands out prominently in the production and exportation of food to other well-fed nations.²⁸ As is the case with our Brazil.

Food is treated as a mechanism of domination; it is a weapon of power, representing the imposition of wills and interests.²⁹ The problem of hunger in the world today, as well as in Brazil, is not so much the lack of food. Hunger reveals itself as a social determinant of exclusion due to economic characteristics. Often, a person cannot find employment due to lack of qualifications, and their daily efforts may not be enough to provide for their own food, let alone that of their family or dependents. Or the criteria set for participation in income distribution programs or public social policies are so low that it is impossible to meet them.

Further on, we will clarify that public assistance programs seek to address extreme poverty, misery in its most extreme connotations, while others may be excluded from their qualitative assistance parameters without, however, considering the fact that

²⁷BETTO, Frei. A fome como questão política. In: BETTO, Frei (Org.). **Fome zero: textos fundamentais**. São Paulo: Garamond, 2004.p. 21.

²⁸ Regarding the preponderance of food trade in addressing hunger in a joint analysis of food security, we recommend: MADELEY, John. **O comércio da Fome**. Tradução de Ricardo A. Rosenbusch. Petrópolis: Vozes, 2003.

²⁹ABRAMOVAY, Ricardo. **O que é fome**. 9. ed. São Paulo: Brasiliense, 1998. p. 101.

this keeps the person or group in the same state of hunger, denying them assistance under the authority of the State representatives.

Since time immemorial, human beings have struggled for their survival. Seeking food was just one of the tasks developed throughout the evolutionary process that enabled the continuation of life. There were other tasks contributing to man's posterity in his confrontation with adversities and obstacles. In those times, hunger could present itself as a natural phenomenon. Unlike the continuity from those times to the present. Humanity over millennia developed agriculture, fishing, hunting, animal husbandry. But then why are there still people going hungry?

We could say that today's hunger is artificial hunger.³⁰ It does not result from natural conditions or lack of knowledge of cultivation techniques. It is not due to lack of animals. It is not due to lack of options for essential food products like grains or fruits, vegetables. On the contrary. Abundance is the hallmark of our global community. We have an abundance of crops and cultures. Modern techniques and industrial-scale food production raise further questions as to why hunger still exists and invariably affects so many.

Mechanization or large-scale production equipment enables the overcoming of techniques considered rudimentary, increasing harvests per cultivated area. Animal products today are industrially extracted and processed, manipulated, modified, and various other derivatives are extracted from them. New snacks and treats are produced from the combination of some ingredients, which, while debatable from a functional and health perspective, demonstrate the use of technique and technology in the interest of producing more food. So why couldn't this same technology and mastery of technique become socially created instruments for alleviating hunger?

Through science and scientific knowledge³¹, various vaccines and medicines have been invented and discovered, which has led to the eradication or perfect control of

³⁰MELLO, Jorge Saldanha Bandeira de. **Epidemiologia da fome**. Rio de Janeiro: Leitura, 1966.

³¹ For Boaventura de Sousa Santos, one of the most characteristic features of our society, and consequently our science, from the late 20th to the early 21st century is paradigmatic transition. Dominant paradigms in all scientific fields give way to uncertainties and the emergence of new paradigms, yet still not perfectly identifiable. Many uncertainties and doubts remain open and unanswered, both in the field of scientific knowledge and in common sense. The Portuguese author calls for the rescue of our ability to ask simple, elementary questions capable of reaching the deepest aspects of our individual and collective complexity, so that, perhaps, we may reconcile science with social expectations by reclaiming common sense as a contribution to discoveries, advances, and solutions to unsolvable problems.(SANTOS, Boaventura de Souza. **Um discurso sobre as ciências**. 7. ed. Coimbra: Edições Afrontamento, 1995).

numerous diseases. However, some diseases continue to exist and cause deaths, especially in poorer regions. But why? Perhaps because we recognize the symptoms without carefully discussing the cause. From this arises a question: can hunger kill? The correct answer would be: it depends.

Hunger alone is incapable of annihilating anyone's life. What can and does lead to numerous deaths—especially in arid, desertified regions, or extremely poor countries—are the diseases or problems resulting from hunger. The consequences of this evil. Hunger is identified as a cause whose consequence can lead to death from other types of problems. Therefore, hunger will not be recorded in statistics as the cause of death. But we know very well that lack of food leads inexorably to death. Despite greater efforts, hunger is a human, historical, and social phenomenon so ancient that we have inevitably learned to accept it and live with it. We are insensitive.

After all, how do we understand what hunger is? Hunger represents a situation in which one or more people are deprived of food that provides them with calories, that is, the energy and nutritional elements necessary to maintain their life, health, and bodily integrity for a prolonged period of time. Food and hunger are therefore directly linked. The provision of food as a human right or fundamental social right cannot be conceived without the eradication of hunger among people. One (hunger) exists only because the other (food) is not yet a material, real, and effective right for all, but only a right formally inscribed in international documents agreed upon and ratified by Brazil as well as inscribed in Article 6 of the Federal Constitution without, however, any interference of political obligation or commitment assumed by social builders—especially us jurists!

The right to food is only realized when the person or group: (1) has the conditions to exercise their food intake through the means, access, or conditions to effectively and efficiently feed themselves, satisfying their hunger according to their will; or (2) when not having them (means, access, or conditions) in the first place or due to public policies for social promotion, they can demand judicially for its realization. In this second case, it means having the faculty to request appropriate judicial protection so that the object of provision can satisfy the food need at a specific moment, dispelling hunger.

The hunger of the moment, as the period before a meal where the subject knows their possibility of eating, is the one we have already paid attention to in order to differentiate it from the one we are fighting against: the hunger that violates fundamental rights. It could also be understood as "daytime hunger." This term serves to express the sensations and consequences resulting from the lack of food on a given day or even in a

measurable period. It signifies the lack of food due to not having the conditions to have one or all the meals recommended for that day, or else a very long period, within the same day, between meals causing hunger at a specific time. Our fight, as specified, is against this second type of hunger.

After all, it becomes "[...] indispensable to eliminate hunger in order to achieve the human right to food, as only this ensures dignity to the human being."³² The elimination of hunger, that constant and unmodifiable one, is part of the set of measures consistent with making the human right to food effective. In our case, it is hunger that is fought against when we seek to identify forms of judicial protection of a social right to food: a prestational right aimed at the realization of a fundamental right and whose goal is to promote social justice by reducing inequalities, thus achieving the promotion of human life dignity.

The discovery of hunger as a relevant problem to be seriously addressed by people and society, by the State, public powers, and rulers represents significant progress over decades of research and studies compared to the long historical period of denial of this evil. In our country, the knowledge of hunger on a national scale with regionalized, particular characteristics proves that although the problem of hunger presents itself the same, the causes and solutions demand combat characters and forms of mitigation consistent with each specificity. The unveiling of hunger as a political issue only localized in geographic space has immensely contributed to the understanding of the sensitivity of this problem.

Today, we understand the phenomenon of hunger as having a social connotation and no longer merely as a natural occurrence. This undoubtedly gives us hope for a more effective confrontation. Starting with Josué de Castro, as the initiator of unveiling this social problem, we began to consider hunger not only as a natural occurrence but from a scientific and political point of view with all the forces and means available today for its reduction and eventual eradication.

5. THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ICESCR) AND FOOD

³²BEURLEN, Alexandra; FONSECA, Delson Lyra da. Justiticiabilidade do direito humano à alimentação adequada: teoria x prática. In: PIOVESAN, Flávia; CONTI, Irio Luiz (Coord.). **Direito humano à alimentação adequada**. Rio de Janeiro: Lumen Juris, 2007.p. 176.

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) was adopted by Resolution No. 2,200-A on December 16, 1966, by the United Nations General Assembly. It entered into international force on January 3, 1976. From this document, rights of a social, economic, and cultural nature became part of the tree of fundamental human rights, alongside recognized individual, political, and freedom rights.

In Brazil, through Legislative Decree No. 226, of December 12, 1991, the text of the international covenant was approved by the Brazilian legislative Congress. Due to this approval, Brazil deposited its International Accession Charter to the Economic, Social, and Cultural Rights with the UN. With this, the Covenant ratified by our country came into force internally on April 24, 1992. Properly signed and ratified by the Brazilian State, it was promulgated by Presidential Decree No. 591, on July 6, 1992.

The text of the International Covenant on Social Rights is divided into five parts with a total of thirty-one articles. All are relevant from the perspective of achieving rights and mandatory respect by the ratifying State. Nevertheless, this international document catches our attention as a legal pioneer internationally, foreseeing the right to food, including the right to be free from hunger. Thus, the second part of Article 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) specifies:

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programs, which are necessary to:

(a) Improve methods of production, conservation, and distribution of foodstuffs by full utilization of technical and scientific knowledge, by disseminating principles of nutritional education, and by improving or reforming agrarian systems in such a way as to ensure the most efficient exploitation of natural resources;

(b) Ensure an equitable distribution of world food supplies in relation to need, taking into account the problems of both food-importing and food-exporting countries.

Brazil's accession to the Covenant demonstrates Brazil's international recognition as a state combating the problem of hunger and as a recognizer and guarantor of economic, social, and cultural rights. Transforming the international document into domestic legal norms corresponds to the same commitment, within the national territory, to ensuring that everyone is protected and free from hunger, as food as a fundamental human right should be realized.

From November 13 to 17, 1996, various heads of state and government gathered in Rome for the World Food Summit organized by the Food and Agriculture Organization (FAO) of the United Nations. From this meeting, documents were prepared, recognized as the Rome Declaration on Food Security and the World Food Summit Plan of Action, item 1: "Access to food is a right in itself, overriding any other reason that may justify its denial, whether economic or political."

FINAL REMARKS

Even with the provision of the right to food in the ICESCR and after the World Food Summit, the content of this fundamental human right still lacked further definitions. As the social rights pact on food and the action plans from that Summit prescribed norms of actions to be executed by States, there was discussion about the possibility of creating an International Code on the Human Right to Food. Although this code did not officially come to fruition, the UN High Commissioner for Human Rights, in partnership with various international institutions, brought forth in 1999 General Comment No. 12 from the Committee on Economic, Social, and Cultural Rights, incorporating part of the proposal from the international civil society and part of the plans widely discussed internationally. This General Comment sought to clarify the content of the social right to food.

Article 11 of the Covenant gave rise to General Comment No. 12. This general comment consists of a document elaborated by the United Nations Committee on Economic, Social, and Cultural Rights seeking to define food as a fundamental right and, at the same time, to set out political strategies and suggestions to be carried out by participating states of the ICESCR for the realization of that Article 11. The right to food would consist of two measures: the right to adequate food and the right of everyone to be free from hunger. But what kind of hunger? The same hunger we discussed earlier: hunger that violates fundamental rights.

In terms of this commentary, distinct aspects were recognized between the right to adequate food and the right to be free from hunger. The right to adequate food is configured in the first part of item 6 of that Commentary, materializing when every person has physical and economic access, at all times, to adequate food and the means to obtain it. On the contrary, the right to be free from hunger, in a strict sense, cannot be interpreted

restrictively or narrowly because it would signify a set of calories, proteins, and other concrete elements.

Despite the well-structured identification between these two aspects made by scholars, our understanding differs. Our view is that the right to food as a conforming presupposition of the precept to be free from hunger means physical and economic access to food or foodstuffs for the preparation of sufficient meals as needed by the person or group at their will. This situation would be much closer to combating hunger and poverty and would better fulfill the mandate of the right to food as a human right derived from international human rights systems and treaties. Its observance would fill the gap shaping a dignified life, as it would restore to the individual the dignity taken away by hunger, resulting in an inequality not accepted by our society or legal system.

The same understanding is captured in Item 8 of General Comment No. 12 when it specifies that the right to food is much closer to the exercise of food security than specifically the right to food as a means to combat hunger. The terms are as follows: "8. The Committee considers that the essential content of the right to adequate food consists of the following: a) The availability of food, in quantity and quality sufficient to meet individuals' dietary needs, free from adverse substances, and culturally acceptable; b) The accessibility of food in a sustainable manner that does not interfere with the enjoyment of other human rights."

On the other hand, adequate nutrition would be directly related to nutritional, energy, and caloric aspects recognized as minimally sufficient for individuals based on criteria of an overall average considering age, sex, and weight. This criterion of the right to adequate food would bear close similarities to the right to food security. This is because if food is consumed in accordance with the principles of food security, it is much closer to the fulfillment of adequate, sufficient nutrition, than the right to food aimed at removing the individual from a state of hunger, which is indeed specified in the Constitution as a fundamental social right. Thus, the right to reduce inequalities and injustices, whose equidistant points are: the poor, hungry person; and the one whose right is effective, able to feed themselves to survive.

The right to food—internationally recognized as well as prescribed internally in the Constitution—can present itself in two forms: the right to adequate food and the right to be free from hunger. The right to adequate food is closely related to the principles of food and nutritional security and also consists of a fundamental social right. When we use the term "right to food" throughout this work, we recognize it as the right to eliminate

hunger, to be free from this situation that undermines rights, is undignified, and dehumanizing. Those who already can feed themselves should do so satisfactorily, safely, and in accordance with the best hygiene, health, and nutrition requirements. For those who do not even have any means of feeding themselves, have no access to ready-made food, or the conditions to acquire and prepare it, suggesting healthy eating measures will be of no use if the person cannot even execute all the meals they would need for their maintenance.

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