



Research Article

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Legal complexity and state obligations to the right to food: Towards an analytical shift of progressive realisation

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Abstract: The article aims to analyse what it means to study state obligations to progressive realization of the right to food from the perspective of legal complexity. This perspective studies law not in isolation, rather in the existence of multiple legal systems at socio-political space of states. The article highlights that employing legal complexity, particularly with its understanding on interlegality and space, may enable one to gain alternative insights in the ways that states measure their commitment to carry their obligations to respect, protect and fulfill the right to food.

Keywords: interlegality, legal complexity, progressive realisation, right to food, state obligations

1 Introduction

The United Nations High Commissioner of Human Rights, Navanethem Pillay, once pointed out that the word ‘methodology’ in the context of human rights should not be construed as a ‘one size fits all’ approach. Rather it must be adaptable and responsive to specific contexts and individual circumstances but maintain rigorous standards that are the guarantee of sound outcomes.¹ What this means is that in gathering and analyzing the information, human rights officers,

¹ Human Rights Investigations and their Methodology: Lecture by Ms. Navanethem Pillay United Nations High Commissioner for Human Rights, 24 February 2010, Office of the High Commissioner of Human Rights. Accessed online <https://unispal.un.org/UNISPAL.NSF/0/C9222F058467E6F6852576D500574710>, 16 Mar. 20, at 15.14.

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scholars, and advocates need to consider, amongst others, the social and political contexts and the cultural differences that set out negotiations towards the realization of human rights. Academic reporting that examines how human rights are not only enforced as legal norms but also are practiced according to the socio-legal context usually falls between two disciplinary domains of law and social sciences. The term legal complexity may be used by scholars to identify their research interests to study law not in isolation and social and political issues connected with law.

The objective of the article is to discuss the meaning and the implication of understanding human rights, particularly the right to food from a legal complexity perspective. This will be done by examining two distinctive points of interest in legal complexity. The first is the phenomenon of interlegality, and the second is the recognition of space. By discussing the relevance of these concepts, the article will further identify their possible consequences to the idea of state obligations of the right to food. The right to food is chosen here because social and economic rights are constructed in international politics with an awareness that standards of and efforts towards realization may be different in one state and another. This backdrop leads to the conceptualization of ‘progressive realization’, adopted to give room for states to move progressively to implement the right to food based on their maximum available resource. In reality, the realization may rely on interventions of and by institutions, including the invocation of power and laws that can either strengthen or jeopardize the realization of the right to food. The article will conclude with a discussion on the contribution of legal complexity with its understanding of interactions and locations of laws might have to the conceptualization progressive realization of the right to food.

2 Uncoupling law and human rights from the state

The presence of international law in the organization of human rights has the effect of embedding the certainty of law and mobilizing sovereign states to endorse human rights. Notably, human rights laws are deemed to reside in the acts of official, state-sanctions entities and they are seen as an exclusive function of state. The focus of analysis of human rights in international law is hence on state, particularly on how collective agreements and endorsements by states may serve as legal resources and political instruments for realization of human rights ideas. Aspiring for this objective, human rights in international law may deliver a rosy picture – an optimism that promises consistency and cooperation between international norms and domestic/local values, which are the characters to assure the proliferation of human rights ideas. Law as a trajectory to regulate practices is

presupposed to organize differences while at the same time maintaining that progress towards realization remains on the agenda.

Legal complexity may offer a different view of analyzing the law of human rights. Rather than focusing on the certainty and the resulting political power of human rights laws, scholars on legal complexity are concerned about the law of human rights in motion. Their view has been categorized as a post-modern view of law (de Sousa Santos 1987; Ruhl and Katz 2015; Webb 2014), with the re-conceptualization of law and society relations as their central themes. Laws and practices of laws are no longer the monopoly of or found their sources of being in states.

The starting point of socio-legal authors devoted to legal complexity is an recognition that there is no agreement on the underlying concept of law. De Sousa Santos defines law in more elaborate terms as a 'body of regularised procedures and normative standards, considered justiciable in any given group, which contributes to the creation and prevention of disputes and to their settlement through an argumentative discourse, coupled with threat of force' (de Sousa Santos 1995: 114–115). Other scholars attempt to provide a wide range of definitions of law based on the understanding law in motion in society. Yet, the answer to 'what is law' remains in so many diverse and paradoxical ways (Tamanaha 2000: 297). Differences may occur as the term 'law' is applied to a construct of the human mind for the sake of convenience (von Benda Beckmann and von Benda Beckmann 2006: 44).

In this vein, the notion of law is not always connected to the state. Not all the phenomena related to law and not all that are law-like have their source in government (Moore 1986: 15). Socio-legal scholars perceive that there are all sorts of normative orders that are not attached to the states, which nevertheless are 'law'. These non-state 'legal orders range from pockets within state legal systems where indigenous norms and institutions continue to exert social control, to the rule-making and enforcing power' (Tamanaha 2000: 298).

As legal systems and legal traditions have interacted throughout history, themes concerning interaction and influence among legal systems and tradition are often dealt with as part of broader concerns within legal history, comparative law, law reform and development, post-conflict reconstruction, legal theory, sociology of law, anthropology of law and so on. Any analysis of law in this regard is viewed to take into account that different legal spaces operating simultaneously on different scales and from different interpretive standpoints constitute the socio-legal life.

De Sousa Santos outlines how there are different levels or scales of law from local to nation-state to world law and that each form of law creates different legal objects on the same social object. He labels the phenomenon as 'interlegality' (de Sousa Santos 1987: 288), which he defines as 'the impact of legal plurality on the

legal experiences, perception and consciousness of the individuals and social groups living under conditions of legal plurality, above all the fact that their everyday life crosses or is interpenetrated by different and often contrasting legal orders and legal cultures'. (de Sousa Santos 2002).

In de Sousa Santos' view, all these levels in law are not isolated from one another but interact in different ways. In the intersection of different legal orders, one needs to account for the superimposition and inter-penetration of legal spaces and the 'porous legality or legal porosity, of multiple networks of legal orders forcing us to constant transitions and trespassings'. Thus, interlegality is a highly dynamic process 'because the different legal spaces are non-synchronic and thus result in uneven and unstable mixings of legal codes (codes in a semiotic sense)', which requires complex analytical tools (de Sousa Santos 1987: 297–8).

Using the concept of interlegality to analyze the incorporation of aboriginal justice into the Canadian justice system, Proulx (2005: 104) explains that the penetration of the Aboriginal philosophy and procedure into the Canadian Criminal Code and formal justice system practices develop an understanding of each others' legal sensibilities despite cultural difference, histories of oppression and mistrust. Here, the phenomenon of interlegality is used as the modality for negotiations of claims of the vulnerable. Aboriginal and non-Aboriginal justice/law stakeholders, practitioners and communities are incorporating each other's 'socially legitimate sense of limits' and each other's sense of injustice into their justice/legal spheres. While this particular case in Canada shows a degree of harmonization, one can easily find instances where interlegality leads to, amongst others, a preference to specific law over the other. Judges in the town of Takengon, highlands of Aceh were observed to change their preference in laws in treating the claims based on Islam and *Gayo* laws (Bowen 2000: 97). Between 1960s to mid 1990s, Judges had been changing the way they resolved conflicts over inheritance cases, from accepting village settlements as valid to rejecting those settlements as contrary to Islam or as coercive.

Notably, interlegality concerns with the dynamic of interactions and influences of laws in the society, which in turn leads socio-legal scientists also to consider space in their analysis. von Benda Beckmann and von Benda Beckmann (2009: 3) explain that space, time and place are constituent elements of social life and organizations that help to individuate people, interactions and relationship. This includes the processes of giving meaning to space and bordering it. It involves considering the ways places are carved out, and people, relationships and objects are located and bounded in space. Space forms the environment, medium, and outcome of social interactions. Space is a grounded, physical setting in which law affects the life of people (von Benda Beckmann and von Benda Beckmann 2009: 22).

Von Benda-Beckmann and von Benda Beckmann (2009: 9) also apply the construction of space in analyzing the exertion of legal orders. The construction of space may be used as an instrument to control people and resources. State governments use construction of space to transform their imagined community under their organization effectively. It creates a centralization of legal narratives in steps towards the formation of national state structure. Peculiarities in the community are being masked into one representing narratives that give legitimacy to their existence.

Several authors have used spatial metaphors to characterize social space in which laws are being transformed, rejected or adopted. The analysis includes both discursive space and geographical space. In their research on the peasant community in highlands of Peru, Nuijten and Rodriguez, 2009 observe that laws and programs are issued with specific aims so that their ultimate effects might be very different in particular territories. While researching migrants, settlers and refugees in Bhutan, Whitecross (2009: 72) examines how law is a powerful tool that exercises control over people and resources. Locations are also regarded as the contributing factors that shape the negotiations of rights and regulations in a newly decentralized Indonesia (von Benda-Beckmann and von Benda-Beckmann 2009: 131). This applies not only in geographical space but also in discursive space. Population in a lower status with less political and economic rights are negotiated different sources of laws (adat laws, customary laws) in various manners. Similarly, scholars also use spatial analysis to study how society, geography, and justice interact in the case of Rakhine, Myanmar and argue that there are spatial implications to the mobilization of human rights rhetoric and law that affect the relationships that produce injustice (Carmalt 2019: 1830)

Of importance here is to look at the interactions and influences of law in a grounded space. The spatial character of law contributes to the internal relationship between people affected by the law and their responses to it are depending on the space they belong to geographically, economically, socially, politically and/or culturally. Thus the value that people place to laws is not an inherent property of the law, instead it reflects a judgment they made to the objects and its environment that is mediated by transcendent temporal, cultural and social caveats.

While interlegality often finds its argumentative basis in the function of law as an instrument of settlements and negotiations (ICHR 2009: 11), the spatial turn of law has been heightened interest in the effects of globalization and the challenges it has posed to notions of state-based territoriality. Transnational movements of legal models and their appropriations or rejections at different levels of state organizations and by local actors occupy the analysis of space in law.

Pertaining to human rights, social and legal scholars cannot avoid the phenomenon of interlegality and the presence of space that give meaning to human

rights and shape its efforts towards realization. States give birth to the idea of human rights in international conferences, workshops and meetings. The interaction of states and the location, in which it takes place, gives legitimacy for the state to declare human rights as part of international laws. With the formal endorsement, state and non-state actors could use and integrate human rights ideas in policies, programs or projects. The phenomenon of actors using the concept of human rights, outside its place of birth, in national and local space would require confronting the legal order of human rights with the existing orders regulating, for example, social security or economic development issues.

A growing body of scholarly works on the legal complexity of human rights deals with space not so much as geographically bounded but as transboundary social processes. Goodale and Merry (2007: 22–23) argue that what is considered as ‘local’ or ‘global’ becomes blurry as state and non-state actors move freely as a result of technology and communication. The focus of their analysis is on the discursive and constitutive influences of human rights - an attractive global idea due to the centrality of values or principled ideas, and the believe that individuals can make a difference. Such attributes enable both the space of transnational human rights discourses and social practices of human rights to be mutually constitutive. The proliferation of human rights is not isolated from the practice of actors in using and abusing human rights. Here, space of ‘betweenness’ is particularly prevalent in human rights practice (Goodale and Merry 2007: 22–24). It is in this space of betweenness that legal orders of human rights are plural as a result of and shape the dynamic of interactions and influences that people have and create to the idea of, put it bluntly, what constitutes a good life.

Scholars arguing for legal complexity examine its importance in analyzing the mechanism regulating economic, social and cultural rights, such as the right to food. Interlegality and space are inescapable factors that constitute fluid mechanisms of regulating resources necessary for food as basic needs, such as water, land, seed or labor (Hospes 2010, Roth and Warner 2010). Communities and states have long regulated food supplies, food distributions and food consumption in different ways before human rights ideas inserted their moral values into how people arrange their basic needs. Their practices may still be imprinted in the ways food-related struggles are practice in national and local domains.

In this vein, many issues that manifest themselves as legal problems regarding access to food and land may not be conclusively settled through official legal routes. Many times settlements require a broader view, in which other norms, regulations and practices may interplay with the normative idea of the right to food. There may be other sets of rules that run parallel to (or different from) state laws and regulations to regulate people’s methods of production. These rules may not be acknowledged as ‘law,’ or be attributed to a specific legal system,

nevertheless, as explained before, they fall under the analysis of legal complexity. Access to land, for example, maybe perceived as a right as well as a private property under state laws as well as be embedded in local customary systems of land tenure under diverse arrangements ranging from private to common property or even open-access systems. In many parts of the world, common resources such as forest, fisheries and rangelands, are held under customary property arrangements, which have more legitimacy in the eyes of the population than state laws.

Notably, interlegality and the recognition of space demonstrates that firstly, lawmaking is not a matter of state power but of community definitions. Lawmaking is not confined to states but can be claimed by all kinds of community (Bermann 2005; 2018). Secondly, over time, different societies have arrived at quite different solutions for negotiating different rules and regulations. Adjustments and amendments to laws are being made as responses or resistances to, for examples, market, religious, or cultural mechanisms.

3 State obligations to the right to food and the concept of progressive realisation: Some contentious issues

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) bounds access and availability to food as subjects of international human rights law. The article asserts the ‘the right of everyone to an adequate standard of living for himself and his family, including adequate food’ and ‘the fundamental right of everyone to be free from hunger’. Specifically, General Comments No. 12 on the Right to Adequate Food clarifies that ‘the right to food’ ought to imply that the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture and the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights’.²

Asserting access and availability to food in international human rights legal frameworks creates a legal obligation for states, as duty-bearers, to respect, protect and promote the entitlement of food of the right-holders.³ This is an essential step as right ought to correlate with duty. To say a person has a right is to say that

² E/C.12/1999/5, 12 May 1999, General Comments 12, The Right to Adequate Food, para. 8.

³ The tripartite typology of obligations is to be found in Mr. Eide's presentation on the Right to Food at the Committee's General Discussion at its Third Session (E/C.12/1989/SR.20). See also A. Eide. Right to Adequate Food as a Human Rights (1989).

interest of his is sufficient group for holder another to be subject of duty (Raz 1984: 5). Similar as other economic, social and cultural rights, state obligations to the right to food are regulated based on, what is known as, progressive realization.

The concept of progressive realization implies that states ought to take steps as expeditiously as possible to achieve the right to adequate food.⁴ This means, as explained in Article 2(1) of the ICESCR, states should ‘undertake to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures’.

The adoption of the concept of progressive realization may be interpreted as to provide a balance between the activation of the economic, social and cultural rights and the peculiarities exist pertaining to the national resources available for appropriation. Regulating peculiarities in this way is assumed as a way to manage the persistence tensions arising from human rights. Legal scholars observe how different states understood state obligations towards economic, social and cultural rights during the drafting of the ICESCR (Alston and Quinn 1987; Craven, 1995). Regardless of the divergent views, generally, it was also documented that states were of the opinion that the fulfillment of the provisions concerning the realization of economic, social and cultural rights would take a long time to achieve. Progressive realization may thus introduce a dynamic element, indicating that no final fixed goal had been set in the implementation of economic, social and cultural rights. The essence of progress here is to be continuity, meaning that realization does not stop at a given level (Craven 1995). There is a line signaling ‘full realization’, but that is more akin to a horizon line (Brems 2009).⁵ Furthermore, the inclusion of the word ‘progressively’ was also considered to encourage individual states to ratify the Covenant, even if they were quite unable to implement its

⁴ E/C.12/1999/5, 12 May 1999, General Comments 12, The Right to Adequate Food, para. 14.

⁵ In addition, there is a bottom line of state obligations under economic, social and cultural rights: The Committee on Economic, Social and Cultural Rights (CESCR) defines ‘core obligations’ that have to be realized by all states: [T]he Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*. See: CESCR General Comment No. 3 (1990): The nature of States parties’ obligations, E/1991/231; 1 IHRR 6 (1994) at para. 10.

provision forthwith. States whose social development was inadequate would not be bound by the obligations laid on them in the Covenant.

Yet it is far too optimistic to maintain the view that progressive realization would be sufficient to provide a universal compromise to negotiate state obligations and to be regarded as a technology for generating impersonal progress. From the perspective of legal complexity, acknowledging the progressive realization to the implementation of human rights and the right to food raises some contentious issues because of the centralization of state in its analysis.

First of all is that progressive realization may generate a significant excretion of power by granting states the discretion in allocating measures for the right to food. The concern was posed by some delegations during the preparatory meetings of ICESCR too. They were anxious about how states may acquire considerable discretion in determining what resources are, in fact, available for use in economic, social and cultural rights-related concerns (Alston and Quinn 1987: 180). Economy policy and national defense policy are notably strictly related to national sovereignty. Rules and regulations being engineered to maintain both policies might not always be consistent with the ethical values of human rights.

This apprehension may be true. Goldstein (2007: 53) explains the ‘state of exception’ exists at the heart of state sovereignty in the declaration of the rule of law. What follows is a provision whereby the state (in times identified as ‘crisis moments’ that threaten the very continuity of state itself) is empowered to act outside the constraints of measures, permitting the state to adopt arbitrary measures in its own defense. Using the case of expropriation of natural resources in Bolivia, he concludes that the state of exception as space without law, a ‘juridical void,’ where violence (could be manifested in the absence of action) in the name of defending development growth (for example) becomes possible. Ironically, he even argues that violence in such context is necessary for the maintenance of juridical order (Goldstein 2007: 74).

With this in mind, advising efforts to maximize the allocation of available resources as an effort towards progressive realization of the right to food could also be misinterpreted as rigorous intervention, centralization and concentration, massive appropriation of natural resources and forced change of livelihoods. Reflecting from the case of agricultural modernization in Papua Indonesia, once being appropriated these suggestions could serve as new technologies of power and governance by the government; at least it can be interpreted that way (Hadiprayitno 2015). Notably, by regarding state as the unitary source for the analysis of the legal framework of human rights stipulated in the United Nations documents may fail to penetrate below or to look outside, the level of the state to identify the source of human rights violations (Messer 1997: 309).

Albeit the excretion of power that it might raise, the reason for adopting the concept of progressive may be how human rights have become a political value with global ambitions that overrule diversity and plurality of contextual realities. Generally, the human rights framework offers much less in the way of actual content or vision of what governments cannot do to their citizens and lists of the things that they must do to citizens (such as to ensure access and availability to food). In result, despite these shared certain fundamental principles, human rights do not provide the basis for a fully worked out moral and political philosophy because they are being formulated elsewhere and then be brought to the discussion of rights (Wilson 2006: 78).

Notably, the existence and survival of human rights depend on state sovereignty, which means they rely on the extent of power that states are willing to compromise. As observed by Merry (2006a: 45) in the Beijing Five Conference organized by the United Nations, developing countries, particularly in Africa advocated references to poverty, armed conflict, and the problems caused by globalization and structural adjustment in negotiating new human rights documents. While Europe was concerned about genetically modified foods, many countries, in this regard, Libya, Pakistan and Cuba, sought to avoid mechanisms for international monitoring for compliance with terms of the documents. Legal language and formulation assist the universalising process of these differences with terms that are left purposively vague so than the national political cultures can define actual standards to fit their own context (Messer 1997: 305).

Consequently, the stipulation of state obligations seems to leave out the issue of the governance of plurality of laws, with its multi-dimensional ways of law makings and implementation. As observed by scholars (Hanegraff and Poletti 2018, Michaels 2005) globalization demonstrates that states could not have unlimited factual power to regulate all transactions and that non-state communities have actual power that are at times equal, at time even superior to those of the state. This is particularly relevant in the context of the right to food. The increasing scale in economic and agricultural enterprise in the age of globalization creates a paradox that complicates the realization of the right to food. The relationship between global, national and local law is arguably fluid and it has plural legal and institutional ramifications.

Multinational corporations involving in food and feed businesses such as Kraft, Nestle and Nutreco have reacted to criticism of exploitation practices in Asia, Africa and Latin America by publicly launching human rights consultation programs (Hospes 2014, Sasson 2016, Steger et al. 2007). Institutional mechanisms responsible for regulating climate change or palm oil and soya oil business have also set up their own regulatory frameworks that affect people's access to food. This development shows that regulations, people and practices regarding food and

land at the level of grassroots are no longer derived from a unitary body of law of the state with its institutions. Notably, the multiplicity of actors involved in food-related concerns implies that the realization of the right to food can no longer exist only in a state domain.

Furthermore, human rights and its attributes regarding state obligations may also miss the crucial distinction between what governments do with human rights and what social movements seek to achieve them. Using the case of Narmada Valley in India, Rajagopal (2005: 183) examines how law provides the space of resistance. The growing body of laws that operates at multiple scales of international, national and local levels, such as human rights and the right to food, is examined to provide greater political opportunities for claim makings using laws as tools of contestations by social movements.

In this light, Rajagopal (2003: 44) argues for the importance of ‘social movement’ to understand the relationship between the Third World and international law and the modern conceptualization of international law. The Third World that international institutions are dealing with, are no longer the ‘Third World’ of the post-independence or post-colonial period in the 1950s and 1960s. Rather, it means a collection of movements, for example environmental movements, feminist movements and human rights movements that de-elitise international law by writing resistances into it. In result international law, which has never been concerned with mass protests except in the context of self-determination and the formation of states, has to regard other widespread protests and movements organized outside the state no longer as illegitimate and unruly. Notably, the rising significance of social movements offers a fundamental challenge to redefine ‘law’ in pluralistic terms, from being ethnocentrically narrow and built on significant exclusions of categories of marginalized people.

State obligation is the focal point of studies of human rights and the right to food in international relations, political science and international law. The strong presence of international law indeed empowers human rights ideas to penetrate national and local domains. At the same time by advancing the interests of the powerless, human rights has gone global by going local, embedding itself in the soil of cultures to sustain ordinary people's struggles against unjust state and oppressive social practices (Hadiprayitno 2017). Yet, it has been discussed in this section how a traditional focus on state obligations, particularly with the assertion of the concept of progressive realization, may leave out some contentious issues that result from the globalization of human rights ideas and the contemporary development of states and non-states relations. As observed, the emerging debate regarding this concern has highlighted how such an approach on state notably does a disservice to the complexity of international and local political processes of human rights.

4 Moving beyond state obligations: Some uncomfortable questions for the legal complexity approach

Following the emerging debate of legal complexity in uncoupling law and human rights from states as well as some limitations raised from viewing the state obligations using this perspective, one might raise some concerns to bring the debate to reality. The questions are now what sort of new research agendas does the perspective of legal complexity with its understanding on interlegality and space offer to the study of the negotiation of state obligations of the right to food? More importantly, how realistic is to study the state obligations from the perspective of legal complexity? And what are the consequences of analyzing tensions and compromises on progressive realization of the right to food using the way legal complexity analyses law, state, people and their interactions?

As mentioned, human rights languages in international documents exhibit an optimistic view to the realization of the right to food. The concept of progressive realization is selected as the vocabulary to mask the complexity in norms, interests and values that exist in global, national and local levels. This is done in quite the opposite way, by highlighting the peculiarities in the availability of resources between states. Furthermore, human rights texts offer merely normative propositions without an adequate analytical framework regarding the ways to address the tensions between rights and obligations concerning land as well as food.

Legal scholars are not entirely neglecting the concern of the intricacy of international and local domains of human rights. An academic analysis of the right to food from legal perspectives has been based on a common argument regarding the importance of recognizing contextual realities in which rights can be activated. As a lawyer, Coomans (2009) mentions that in a developed country such as the Netherlands, the government considers the right to food in the scope of development cooperation and thus has more relevance to their work in developing countries. This affects the formulation of Dutch food law, which, according to Wernaart and van Der Meulen (2016) is designed outside the context of the right to food. On the other hand, not mainly aimed at studying the right to food, analyzing the global and local domains of human rights invites Southern legal scholars to establish different claims about universality that sit uneasily without reference to other standpoints and traditions. Deng (1998) speaks for the traditions and culture of his own people, the Ngok Dinka of Sudan, which are compatible, in most respects, with the values underlying the Universal Declarations of Human Rights. While addressing the situation in Asia, Yash Ghai (2000) adopts a pragmatic stance

on human rights as a workable framework for negotiating political and constitutional settlements among political leaders claiming to represent a different majority, minority and ethnic interests.

The difference of these concerns with the scholarly works written from the perspective of legal complexity is their stance on extralegal dimensions. Using the understanding of interactions and locations of laws in interlegality and space, socio-legal scholars would study the plurality in diffusion and reception of human rights laws that define and give meanings to the right to food and shape their enforcement.

Hitherto, there has been a large amount of theoretical work on the diffusion of law, ranging from disciplines of comparative laws, roman laws and legal history, sociology of law, historical jurisprudence, European integration and so on. Twining argues that diffusion of law is identified as one aspect of interlegality (Twining 2004: 14). The source of importation is often diverse and relationships between exporters and importers are not necessarily bipolar; they may be more than one exporter and one importer. The pathways of diffusion may be complex and indirect, involving cross-level interactions, with reciprocal influences. The reception usually involves different actors other than governments in a long drawn out process in which rules and concepts are not the only or even the main objects of diffusions. Furthermore, rather than assuming instrumental, technological and modernizing functions of law, the concept of interlegality is argued to allow an understanding of the diffusion of laws as to involve tensions (Azuelos-Atias and Ye 2016), between technological, contextual expressive and ideological perspective of laws (Twining 2004: 18–27).

The diffusion of law may be said as the background that sets up the study of human rights from legal complexity perspective. The particular interest here is not whether the transfer is top-down or bottom-up, rather on the dynamics created by multidimensional actors in multilevel spaces of legal orders throughout the process. The first would invite an analysis of human rights achievements. At the same time, the latter is concerned more about the communicative action using and/or resulting from the language of human rights, which can often collide with other languages used in the society. In its invocation, human rights may produce moments of incompatibility that cannot be easily be resolved through juridical measures.

Using the methodology of ethnographic studies, socio-legal scholars apply legal complexity to gain insights regarding processes in which actors apply different legal resources simultaneously, such as international human rights laws, national laws, or indigenous laws. In that process, adjustments to and/or application of human rights norms are being made as responses or resistances to, for examples, market, religious, or cultural mechanisms (Goodale and Merry 2007).

Middle actors, such as non-governmental organizations, local groups or forums, are observed to draw together claims based upon notions of descent, culture and tradition but also used the language of sovereignty, citizenship, and constitutionalism (Wilson 2007: 348).

A key dimension of the process is identified by Merry (2006b: 39) with the term 'vernacularization'. The term refers to how people in the middle, particularly non-state actors and non-governmental organizations, translate human rights discourses and practice from the arena of international law and legal institutions to specific situations of suffering and violations. The people refashion global rights agendas for local context and reframe local grievance in terms of global human rights principles and activities as they translate up and down (Merry 2006b: 42). Specifically, the call for local vernacularization by self-governing peoples can only begin to be heard by recognizing the many spaces of law before, during and after the events (Nagarajan and Parashar 2013).

Proponents to legal complexity consider that their approach of looking at human rights laws as to offer a review on their legitimacy and reconceptualization of their benchmarks on violations. Legal complexity is believed to provide insights how the universality of human rights could only be perceived as such from a Western perspective and therefore would raise some cultural legitimacy issues in national and local domains. In the light of legitimacy, some also argue against the global production of human rights, particularly on how human dignity and human sufferings can also be formulated in a different 'language' (Baxi 2002: 96–110) that incorporate needs and interests with ethical values. Moreover, one should also considers how the legalization of needs, interests or conflicts depoliticizes insofar as it turns political problems involving inequality of power into a technical and legal problem (Wilson 2007: 352).

Additionally, studying human rights and the right to food from the perspective of legal complexity also requires identification of violations and workable boundaries for rights in society. What emerges from the study of top-down or bottom-up human rights and the right to food is a sense of the limitations of available methodologies and epistemologies for a comprehensive understanding of what violations meant for victims and, indeed, for perpetrators (Wilson 2006: 81). Messer (1997: 309; 1993: 237) argues how ethnographic studies on the right to food have been including the identification of local cultural and household notions and practice of the obligation to feed and provide medical care for young children that may be organized through customary institutions and practices. A detailed empirical analysis of the content and consequences of various human rights, including the right to food, allows proponents of legal complexity to evaluate which laws and discourses are more likely to realize specific desired social and political goals (Hadiprayitno 2010). Such contribution is assumed to provide a

missing link of critical feedback on the right to food policies and laws made in New York or Geneva and this has clear implications for how the right to food is implemented.

On the other hand, research based on the perspective of legal complexity may be bland in their analysis concerning the messiness of plural legal orders as a constitutive factor that could in fact strengthen state obligations to realize the right to food. The changing complexity developed in the food-related struggles, plurality of legal orders in social spaces is indeed a given reality in which the negotiation to the realization to the right to food is taking place. In this regard one might be interested in which ways and when the interactions and dynamics of inter-legality and spaces as well as the plurality of politics of interpretation regarding the correctional relationship between state and people (as the duty-bearer and the right-holder of the right to food) should be as phenomena that should be honored or avoided in analyzing the fulfilment state obligations. Of particular interest is the area where legal pluralization and legal centralization collide in determining measures to implement the right to food. While this might be an interesting concern, nevertheless, the messiness raising from using the perspective of legal complexity to analyze human rights and the right to food may fail to trump any line drawing questions. As noted throughout, such a question can be exceedingly difficult to answer as every person or community will draw the line differently.

5 Concluding remarks

Law is not an exclusive domain for lawyers and legal scholars. The impacts that law has on society, its co-existence with other norms, values, and ethics as well as its interaction with power, institutions and people invite scholars from various academic disciplines. Pertaining to the right to food, this view is of importance for several reasons. The globalization of human rights norms, the convolution of food-related struggles involving different actors at multi levels, and the growing numbers of newly (non-Western) actors resuming new roles in agricultural investments and industries urge for a new analytical shift to the realization of the right to food. Moreover, while the notion of state obligations places an important position in human rights analysis, the impacts progressive realization has, or it would have to the plurality of laws and the dynamic of space in the local context still gains insufficient attention.

This article highlighted the importance of recognizing interlegality and space in the human right to food. Employing the analytical approaches of legal complexity, using the understanding of interactions and locations of laws, enables one to gain insights in the ways in which states measures their commitment to

carry their obligations to respect, protect and fulfill. The perspective of legal complexity proposes a recognition of the excretion of power state may have from international frameworks of human rights. Further, this perspective approaches human rights and the right to food as to create space for resistances, something that may fall outside the view of legal positivists. In this regard, legal complexity calls into question any simple assumptions about the relationships between the socio-legal engineering instruments of human rights laws and human behavior. In conclusion, bearing in mind the importance of loading progressive realization with the legal obligations to the right to food, more identification is needed of the normative and ideological assumptions and formulas of the progressive realisation that is currently served as an instrument to measure the commitment of state to the right to food.

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