

# Women and the Right to Food

## International Law and State Practice







RIGHT TO FOOD STUDIES

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## International Law and State Practice

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FOOD AND AGRICULTURE ORGANIZATION  
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## RIGHT TO FOOD STUDIES

Right to Food Studies is a series of articles and reports on right to food related issues of contemporary interest in the areas of policy, legislation, agriculture, rural development, biodiversity, environment and natural resource management.

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Right to Food Studies are available at [www.fao.org/righttofood](http://www.fao.org/righttofood). For those without web access, mail or paper copies may be requested from the Right to Food Unit, FAO, Viale delle Terme di Caracalla 00153, Rome, Italy, [righttofood@fao.org](mailto:righttofood@fao.org). Readers are encouraged to send any comments or reactions they may have regarding a Right to Food Study.

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## International Law and State Practice

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## *Women and the Right to Food: International Law and State Practice*

### LIST OF ACRONYMS

#### INTRODUCTION

1. WOMEN'S RIGHT TO FOOD AS A HUMAN RIGHTS
2. INTERRELATEDNESS OF RIGHTS
3. IMPLEMENTATION AND MONITORING

#### CONCLUSIONS

## List of Acronyms

|               |  |
|---------------|--|
| <b>CRC</b>    | Convention on the Right of the Child                                       |
| <b>CEDAW</b>  | Convention on the Elimination of All Forms of Discrimination Against Women |
| <b>CERD</b>   | Convention on the Elimination of Racial Discrimination                     |
| <b>FAO</b>    | Food and Agriculture Organization of the United Nations                    |
| <b>ICESCR</b> | International Covenant on Economic, Social and Cultural Rights             |
| <b>ICCPR</b>  | International Covenant on Civil and Political Rights                       |
| <b>IHL</b>    | International Humanitarian Law   |
| <b>ILO</b>    | International Labour Organization  |
| <b>NGO</b>    | Non-governmental Organization  |
| <b>SOFI</b>   | The State of Food Insecurity   |
| <b>UDHR</b>   | Universal Declaration of Human Rights                                      |
| <b>UN</b>     | United Nations   |
| <b>WFS</b>    | World Food Summit  |



LIST OF ACRONYMS

INTRODUCTION

1. WOMEN'S RIGHT TO FOOD AS A HUMAN RIGHTS
2. INTERRELATEDNESS OF RIGHTS
3. IMPLEMENTATION AND MONITORING

CONCLUSIONS

## Introduction

At the World Food Summit (WFS) in 1996, States set themselves the goal of reducing by half the number of people suffering from hunger by the year 2015. In 2000, 'to eradicate extreme poverty and hunger' became number one of the Millennium Development Goals. Tackling the problems of hunger and malnutrition is, however, not only a policy commitment, but also a legal obligation. The right to food has been formally recognised in several instruments of international law, among which the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of the Child (CRC).

In the light of Millennium Development Goals No.1 – *to eradicate extreme poverty and hunger* – and No.3 – *to promote gender equality and empower women* – the present study provides a cross-cutting analysis of the right to food from a gender perspective, examining relevant international instruments as well as State practice.

The study will, first of all, examine international instruments protecting the right to food in general, and the right to food of women in particular. The analysis of these documents will give an idea of what is today's level of awareness of women's right to food and related issues, how much is covered by law and how much is missing.

The level of incorporation of the above-mentioned instruments into national legislation will also be looked at, with regard to the effects this has on the implementation process. In some countries, discrimination is reflected in customary law and in others the existence of a pluralist system challenges women's right to food. However, even in cases where the law is comprehensive, and gender equality is established *de iure*, women continue to suffer from *de facto* discrimination: legal equality does not always amount to substantive equality.<sup>1</sup> In this regard, other related rights will also be examined, as "the interaction of *all* rights may be crucial to the achievement of *any*".<sup>2</sup>

Since CEDAW is the main instrument protecting *women's* rights, the absence in its text of a specific article on the right to food is an important omission that will be dealt with, considering the fact that the Convention was adopted at a time when the idea of the right to food as a self-standing right was well-established in several international instruments. There are, however, articles in the Convention which include food-related provisions and incorporate the right to food in other rights. In this regard, the study

<sup>1</sup> On equality of rights between men and women - art.3 of ICESCR – see CESCR General Comment 16, 2005.

<sup>2</sup> International Council on Human Rights Policy, *Duties sans Frontières – Human Rights and Global Social Justice*, 2003, p.12.

will analyse difficulties arising from such 'implicit' recognition of the right to food – and the implication this may have with regard to a correct understanding of the food *problématique*.

Specific issues will be looked at: How much of women's hunger and food insecurity is a matter of health alone and not one of life, survival and development? How much is denial of food for women a matter of violation of 'mothers' rights', or of 'children's rights' rather than one of 'women's rights'? How much of food insecurity and eating disorders is a matter of health and disease, or of violation of human rights?

Some of the above questions are reflected in States' understanding of this right, which is evident in the analysis of the reports they submit to CEDAW. In this regard the study will highlight both the advantages and the limits of the reporting mechanism.

In particular, on the basis of a survey of States' reports submitted to the Committee on the Elimination of Discrimination Against Women, ranging from 1994 to 2003, findings emerged which brought to light a lack of clarity with regard to the understanding of women's rights - especially women's right to food, and also the critical nature of the latter where the problem of food security and the right to food (an issue which is already critical *per se*) assumes a particularly complex dimension since it overlaps with that of *gender discrimination*. Such analysis aims at highlighting what is possibly the prevailing legal opinion with regard to women's right to food, in parallel with the reality of violations of such right.



## **Women and the Right to Food: International Law and State Practice**

LIST OF ACRONYMS

INTRODUCTION

1. WOMEN'S RIGHT TO FOOD AS A HUMAN RIGHTS

2. INTERRELATEDNESS OF RIGHTS

3. IMPLEMENTATION AND MONITORING

CONCLUSIONS

# 1. Women's Right to Food as a Human Right

## AN OVERVIEW

Across the world, women are treated unequally and less value is placed on their lives because of their sex. Women's differential access to power and control of resources is central to this discrimination in all institutional spheres, i.e. the household, community, market, and state. Within the household women and girls can face discrimination in the sharing out of household resources including food, sometimes leading to higher malnutrition and mortality indicators for women. Because of their lower social and economic status, as well as their physiological needs, women are often more vulnerable to nutritional problems.

Poor female nutrition early in life reduces learning potential, increases reproductive and maternal health risks, and lowers productivity. This situation contributes to women's diminished ability to gain access to other assets later in life and undermines attempts to eliminate gender inequalities. In essence, women with poor nutrition are caught in a vicious circle of poverty and under nutrition. Considering the role women have in the household, with regard to food production, food preparation and child care, gender inequality in access to and control of resources may well result in misallocation of scarce resources, increased health care costs, lowered productivity, and poor human development trends. Investment in women's nutrition returns to improving household nutrition and overall human development capacity for a country.<sup>3</sup>

In September 2000, the Millennium Development Goals marked a significant step towards the achievement of fundamental human rights by setting 8 priority objectives, among them: promoting gender equality and empowering women.

## INSTRUMENTS PROTECTING WOMEN'S RIGHT TO FOOD

### A) INTERNATIONAL STANDARDS

Efforts to consider food as a human right date back to the early years of the United Nations (UN). Sensitivity to the problem was visible even prior to the establishment of the UN when, in January 1941, American President Franklin D. Roosevelt, in his "State of the Union" address, since known as the 'Four Freedoms' speech, coined the notion of 'freedom from want'. Roosevelt's vision provided an important basis for the drawing up of the Universal Declaration of Human Rights (UDHR), through which the right to food achieved formal recognition in international law.

<sup>3</sup> Ruth Oniang'O and Edith Mukudi, Nutrition and Gender, in Nutrition a Foundation for Development, Geneva: ACC/SCN, 2002.

“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food...”. Thus states article 25 of the **UDHR**, adopted by the United Nations (UN) General Assembly in 1948.<sup>4</sup> Furthermore “everyone is entitled to all the rights and freedoms set forth in this Declaration, *without distinction of any kind*, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”, says article 2.[emphasis added].

Being a declaration of principles, a so called ‘soft law act’, the UDHR does not create binding obligations. However, it can be argued that the solemn nature and significance of the UDHR, and the broad consensus it received among States, reflects a strong desire to respect the principles contained therein. To the extent that such desire was confirmed by the practice of States, the UDHR could be considered customary international law, containing binding rules for States.<sup>5</sup>

Eighteen years after the UDHR, the **ICESCR**, to date ratified by 156 States, marked a significant positive step, making the right to food a rule of binding international law for the States Parties.

#### **ARTICLE 11**

#### **International Covenant on Economic, Social and Cultural Rights**

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

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

The ICESCR deepened the right to food concept. Article 11, which can be considered the core provision with regard to the right to food and its protection under international law, confirms “...the right to...adequate food”, adding “...the fundamental right of everyone to be free from hunger”. Referring to “freedom from hunger” meant that the

<sup>4</sup> GA Res.217 A(III),10 December 1948

<sup>5</sup> C. Zanghí, Protezione internazionale dei diritti dell'uomo, in *Digesto delle discipline pubblicistiche*, vol. XII, Torino, 1997, p.155.

state would commit itself to ensuring that its people did not starve, at the very least. In this way, the right to be free from hunger was closely related to the right to life as spelled out for instance in article 3 of the UDHR, article 6 of the International Covenant on Civil and Political Rights (ICCPR) and article 6 of the Convention on the Rights of the Child (CRC).

In article 2.2 “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised *without discrimination of any kind* as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” and in article 3 “The States Parties to the present Covenant undertake to ensure the *equal right of men and women* to the enjoyment of all economic, social and cultural rights set forth in the present Covenant” [emphasis added].

Protecting the right to food for all in a non-discriminatory manner, implies giving particular attention to women, leading to what is known as *positive discrimination/affirmative action*. In General Comment 11, the Committee on Economic, Social and Cultural Rights (CESCR) explains: “The adoption of temporary special measures intended to bring about *de facto* equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination [...], so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.” The Committee further stressed the importance of giving “particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families (as stipulated in article 7 (a) (ii) of the Covenant); maintaining registries on rights in land (including forests)” (para. 26).”

The Convention on the Rights of the Child (CRC), adopted by the UN in 1989, affirms, in article 24: “States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health [...]. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures...to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily-available technology and through the provision of adequate, nutritious food”. Furthermore, at article 27: “States Parties recognize the right of every child to a standard of living adequate for the child physical, mental, spiritual, moral and social development”. This provision recalls the wording of article 25 of the Universal Declaration of Human Rights, and of article 11 of the International Covenant on Economic, Social and Cultural Rights and it spells out States obligations with particular regard to nutrition, clothing and housing.

A particular dimension of the right to food is that of armed conflict. International Humanitarian Law (IHL) deals with this issue through provisions in the Geneva Conventions of 1949 and their Optional Protocols. Although IHL does not, proclaim the right to food as such, it sets out rules to protect access to food and prohibit denial of food, as a preventive function, as well as rules related to humanitarian assistance for the civilian population. In particular, article 54 of Additional Protocol I regarding the

protection of objects indispensable for the survival of the civilian population, states: “Starvation of civilians as a method of warfare is prohibited...”.

According to the 1998 Rome Statute of the International Criminal Court, “Intentionally using starvation of civilians as a method of warfare by depriving them of items indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions, is a war crime when committed in international armed conflicts.” There are food related provisions in article 55 of the Fourth Geneva Convention, with regard to ensuring food to the population of occupied territories, and in article 49 relative to prohibition of displacement which contributes to starvation.

Other relevant provisions can be found in the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (1984), which forbids starvation as a form of torture; and in the Convention on the Prevention and Punishment of the Crime of Genocide (1948). Article 2 of the Convention on the Suppression and Punishment of the Crime of Apartheid (1973) refers to the infliction of serious bodily harm and any form of torture or degrading treatment or punishment (including intentional starvation) as “inhumane acts”. The right to food in this sense becomes also a civil and political right, in addition to being an economic, social and cultural right.

With particular regard to women, the Declaration on the Protection of Women and Children in Emergency and Armed Conflicts states, at article 6 : “Women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories, shall not be deprived of shelter, food, medical aid or other inalienable rights, in accordance with the provisions of the UDHR, the ICCPR, the ICESCR, the Declaration of the Rights of the Child or other instruments of international law.” Other relevant provisions are those in the ILO Conventions - for instance the Convention (No.111) concerning Discrimination in Respect of Employment and Occupation, 1958 and the Convention (No.100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 - which if on the one hand do not specifically tackle the right to food, on the other, they cover issues related to it, such as for instance access to resources.

Gender-specific provisions have been adopted also in instruments relating to issues such as environment and sustainable development: the Rio Declaration on Environment and Development, the Johannesburg Declaration on Sustainable Development and the Convention to Combat Desertification. Moreover the international community solemnly affirmed its commitment to gender equality and women’s empowerment at the Fourth World Conference on Women, in September 1995 (Beijing Declaration and Platform for Action), at the World Food Summits in 1996 and 2002. Most recently, women’s rights in food issues have been reaffirmed in the *Voluntary Guidelines on the Progressive Implementation of the Right to Adequate Food in the context of National Food Security* (hereinafter Right to Food Guidelines), adopted by the FAO Council in November 2004.

The document – which is voluntary in nature but which at the same time builds on international law and provides guidance on implementation of already existing obligations – encourages a gender perspective throughout its provisions and stresses equal rights of women, as well as special protection for pregnant women and mothers.

Overall, international law appears to provide a substantive legal framework for the protection of women's rights and for their right to food in particular. Surely some provisions are more developed than others due to a number of factors, historical circumstance and geopolitical and social contexts during times of adoption in *primis*. However, considering the fact that *de facto* protection of women's rights is so weak compared to *de iure* protection, the question arises: Where is the gap? What is missing? It could be argued that, in some cases, the law does not make sufficient provision to engage state actors or to empower individuals. International ruling must be followed by the national incorporation of norms, which need to be further elaborated and implemented according to domestic contexts. Efforts should be made at the national level to build the legal capacity of right-holders to demand that their rights be respected and, at the same time, to build the capacity of duty-bearers to fulfil their obligations.

### **B) A CLOSE LOOK AT CEDAW**

The instrument that deals more comprehensively with women's rights is the Convention on the Elimination of All Forms of Discrimination against Women.

The Convention creates binding legal obligations to pursue "by all appropriate means and without delay, a policy of eliminating discrimination against women". (article 2 ) It also constitutes a powerful advocacy and awareness-raising tool to increase women's knowledge of their rights and capacity to claim these rights.

Although the Convention does not specifically refer to the right to food as such, it protects women's equal access to land, credit, income and social security or safety nets, which are all essential elements for the full realization of the right to food.

The articles that can be seen as being most related to food are article 12 and article 14. In article 12: "...States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation." In article 14.2: "States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: [...] to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."

These two articles refer to the right to food in dealing with two particular situations where women's vulnerability is high: pregnancy and rural livelihoods. Together with the rest of the norms condemning discrimination throughout the Convention, the two articles can be seen as providing a solid structure for the protection of women's right to food. However, something is missing. Is that a specific article on the right to food? Would that make a difference? Is the gap merely in implementation or could the Convention have provided for more? One aspect that could be stressed more in relation to violation of women's right to food is cultural food habits, which in many countries hamper women's enjoyment of the right to food on an equal footing with men. We refer to household contexts where for instance women eat last or others where women are not allowed to eat certain foods, available only to men.

In this regard, it should be noted that a number of reservations have been made to the Convention by Governments entering it on the grounds of culture and custom, by which

much of the protection guaranteed by the Convention becomes meaningless. There is, of course, a need to protect culture and differences but that should not lead to the persistence of discrimination, or to violating human rights principles that are universal and overcome any cultural relativism.

It should also be noted that within the context of economic, social and cultural rights, including the right to food, the obligation of non-discrimination is one of immediate effect and is not, therefore, limited by the provision of progressive realization applied to other obligations under the ICESCR (article 2.2). Furthermore, the right to equality and non discrimination – recognized in UDHR, ICESCR and ICCPR, is considered in international law as having the character of *ius cogens*<sup>6</sup>, status made explicit in the ICCPR where at article 4 it is stated that even when the life of a nation is threatened by a public emergency, although the parties may take steps derogating from certain obligations under the Covenant, such measures may not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin.<sup>7</sup>

### C) NATIONAL PROTECTION

Quite apart from international law, a number of national Constitutions today protect the right to food, either through direct mention of the right (explicit recognition) or by including food as part of a broader right, such as health or an adequate standard of living, social security or minimum wage (implicit recognition).<sup>8</sup>

At the national level, since the adoption of CEDAW, there has been significant progress in the recognition and implementation of the human rights of women and the right to food. The legal framework for equality has been strengthened in many countries, ensuring that *de iure* equality for women is now better established. Constitutions in many countries include provisions guaranteeing equality on the grounds of sex. Legislation prohibiting discrimination in general and with regard to specific areas, such as employment, has become a standard component of regulatory framework. Many countries have repealed discriminatory provisions in civil, penal and personal status codes to bring them into conformity with the Convention. New laws have been adopted to create protection and remedies for women.<sup>9</sup>

Numerous laws prohibit discrimination and provide for equality of women, and States are required to act with due diligence to prevent, investigate and punish discrimination and violence against women committed by the State or private actors.<sup>10</sup> Many countries have adopted national plans of action and established institutional machinery to follow

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<sup>6</sup> A peremptory norm, a fundamental principle of international law considered to have acceptance among the international community of states as a whole. Unlike ordinary customary law that has traditionally required consent and allows the alteration of its obligations between states through treaties, peremptory norms cannot be violated by any state. Under the Vienna Convention on the Law of Treaties, any treaty in violation of a peremptory norm is null and void.

<sup>7</sup> On non-discrimination as a norm of *ius cogens* see Advisory Opinion OC-18/03 of September 17, 2003, Requested by the United Mexican States: Legal Status and Rights of Undocumented Migrants, Inter-Am. Ct. H.R. (Ser. A) No.18 (2003), paragraph 1.

<sup>8</sup> Margret Vidar, Recognition of the Right to Food at the National Level, FAO 2004, IGWG RTFG INF/2

<sup>9</sup> CEDAW, Statement delivered on the occasion of the 25th Anniversary on the adoption of CEDAW, 14 October 2004.

<sup>10</sup> CEDAW, General Recommendation No 19 para 9.

up the Beijing Platform for Action. More generally, legislative reforms have brought about changes in family law (towards equality between spouses and full legal capacity of married women) in succession law (toward joint titling and the elimination of discriminatory norms in relation to access to land in agrarian reform programmes).

In some cases, discrimination has been prohibited with specific regard to access to credit and to the exercise of self employment economic activities. Moreover, women's legal status has been improved by judicial decisions declaring the unconstitutionality of discriminatory norms. However, in many countries the implementation of legislation protecting women's rights is constrained by entrenched cultural practices, lack of legal awareness, limited access to courts and lack of resources. These implementation problems are generally stronger in rural areas. In these cases, effective interventions to improve women's legal status need to include not only legislative reform but also steps to bridge the gap between law and practice. Often, socio-cultural practices have affected the application of statutory legislation.<sup>11</sup>

In some countries, discrimination is reflected in customary law and in others the existence of a pluralist system challenges women's right to food. However, even in cases where the law is comprehensive, and gender equality is established *de iure*, women continue to suffer from *de facto* discrimination: legal equality does not always amount to substantive equality.

## NORMATIVE CONTENT OF THE RIGHT TO ADEQUATE FOOD

There has been considerable progress in understanding the meaning of the right to food, in developments that started in the 1980s and accelerated in the follow-up to the WFS of 1996, which called for the clarification of the right to food in Objective 7.4 of the Plan of Action. The seminal work of Mr Asbjørn Eide as Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in the 1980s had a positive influence but, given the global geopolitics, was perhaps somewhat before its time.<sup>12</sup>

In the follow-up to the WFS, the human rights community and FAO cooperated in achieving better understanding of the right to food and considering better ways of implementing it. Efforts to clarify the right to food culminated in the adoption by the Committee on Economic, Social and Cultural Rights of General Comment 12, which is generally considered to constitute an authoritative interpretation of article 11 of ICESCR.

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<sup>11</sup> Lorenzo Cotula, *Gender and the Law: Women's Rights in Agriculture*, FAO, Rome, 2002, p.3. 12 UN, *Right to Adequate Food as a Human Right*, in *Human Rights Study Series 1*, New York, 1989, final report of Asbjørn Eide, Special Rapporteur on the right to adequate food of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4 Sub.2/1987/23). Mr Eide updated his study in 1999 at the request of the Sub-Commission, UN, Sub-Commission on the Promotion and Protection of Human Rights. Updated study on the right to food, submitted by Mr. Asbjørn Eide, UN Document No E/CN.4/Sub.2/1999/12, 28 June 1999.

<sup>12</sup> UN, *Right to Adequate Food as a Human Right*, in *Human Rights Study Series 1*, New York, 1989, final report of Asbjørn Eide, Special Rapporteur on the right to adequate food of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1987/23). Mr Eide updated his study in 1999 at the request of the Sub-Commission, UN, Sub-Commission on the Promotion and Protection of Human Rights. Updated study on the right to food, submitted by Mr. Asbjørn Eide, UN Document No E/CN.4/Sub.2/1999/12, 28 June 1999.

General Comment 12 affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights.

According to General Comment 12, the realization of the right to adequate food requires: “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” (para 8). By “accessibility” the CESCR refers to both economic and physical accessibility. The former relates to financial costs associated with the acquisition of food which should be such that the attainment and satisfaction of other basic needs are not threatened or compromised. The latter refers to food being physically accessible to everyone, including vulnerable people (para 13). General Comment 12 also provides guidance as to the implementation of the right to adequate food, looking into States’ obligations. This particular aspect will be dealt with in the next section.

The Special Rapporteur on the Right to Food <sup>13</sup> elaborated on this definition and stated: “The right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.” <sup>14</sup>

## STATE OBLIGATIONS

Considering that States alone are Parties to the ICESCR, they are ultimately accountable for compliance with it and primarily responsible for the full realization of the right to food for all persons within their territory.

Under international law, States have both progressive and immediate obligations to realize the rights contained in the Covenant. Under the terms of the ICESCR, “Each State Party to the present Covenant undertakes 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 recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures” (article 2.1).

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<sup>13</sup> The Commission on Human Rights nominated in 2001 a Special Rapporteur on the Right to Food, Mr

Jan Ziegler, with the following mandate:

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

<sup>14</sup> Commission on Human Rights, Report of the Special Rapporteur on the Right to Food, Jan Ziegler, submitted in accordance with Commission on Human Rights resolution 200/10, February 2001, UN doc E/CN.4/2001/53.

The emphasis on “progressive realization” is due to the multifaceted nature of economic, social and cultural rights and to resource constraints. However steps towards achieving the full realization of these rights must be taken within reasonable time and should be deliberate, concrete and targeted.

Regarding the way in which to achieve results, States have a margin of discretion in deciding on the most appropriate measures under given circumstances. States should take steps to the maximum of available resources, meaning that where resources are available, they should be used to enable people to exercise their rights, and not get diverted to other fields.<sup>15</sup>

Furthermore, article 11.2 describes specific obligations pertaining particularly to the right to food: from improving methods of production, conservation and distribution to dissemination of knowledge and reforming the agrarian system. It should be noted that under this provision States must not only work towards the realization of the right to food, but also guarantee the fundamental right to be free from hunger – the only right qualified as ‘fundamental’ in the Covenant. This particular right guarantees protection against starvation at the very least, and is in this sense interpreted as referring to the minimum essential for people’s survival.

States obligation to ensure the right to freedom from hunger is of immediate effect and thus not subject to the condition of progressive realization.

General Comment 12 further examined the obligations emanating from the Covenant and in particular identified three types of obligations: to respect, protect and fulfil (facilitate and provide).<sup>16</sup> In the light of women’s right to food, which is the subject of this paper, the obligation to respect the right to food means that the State is obliged to refrain from doing anything that impedes women’s existing access to food, water, land, income or other resources.

The obligation to protect the right to food for women means that the State is obliged to protect women from all forms of discrimination by non-State actors, including discrimination in the workplace, in the private sphere, and in access to resources.

The obligation to fulfil the right to food for women means that Governments have a positive obligation to create an enabling environment to ensure that women have sufficient access to resources to be able to feed themselves and, as a final resort, to support women who, for reasons beyond their control, cannot feed themselves.

This positive obligation means that the State must take concrete positive action to improve the substantive equality of women and to challenge norms, traditions and customary laws that legitimate discrimination and violence against women, including within the family and within the household, particularly in relation to the allocation of food.

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<sup>15</sup> CESCR, General Comment 3 The nature of States parties obligations (art.2.1 of the Covenant), 1990.

<sup>16</sup> Such categorization for the right to food was originally introduced by Asbjorn Eide in: Eide, Bart Eide, Goonatilake, Gussow and Omawale, *Food as a Human Right*, Tokyo: UNU, 1984.



LIST OF ACRONYMS

INTRODUCTION

1. WOMEN'S RIGHT TO FOOD AS A HUMAN RIGHTS

**2. INTERRELATEDNESS OF RIGHTS**

3. IMPLEMENTATION AND MONITORING

CONCLUSIONS

## 2. Interrelatedness of Rights

### THE RIGHT TO FOOD AND OTHER HUMAN RIGHTS

“All human rights are universal, indivisible, interdependent and interrelated”. Thus states the Vienna Declaration adopted at the World Conference on Human Rights in 1993.

In looking at women's human right to adequate food, other related rights need to be taken into consideration since “the interaction of all rights may be crucial to the achievement of any”.<sup>17</sup> The full realization of the right to food therefore depends on parallel achievements in the field of health, education, and access to resources. Although each right is worthy of achievement in itself, each has an instrumental value in that different types of rights reinforce each other, and respect for one category may be essential to achieving another. If, on the one hand, the right to food is essential for the realization of other rights - the right to life *in primis*, on the other hand other rights are essential for the realization of the right to food.<sup>18</sup>

This study will now look at what we will call food-related rights, their content, their interrelationship with the right to food, and at how implementation of one may affect the other.

### RIGHT TO HEALTH

The right to health is formulated in article 12 of ICESCR as: “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Other international and regional instruments have recognised this fundamental right, among them: article 25 UDHR; article 5(e) (iv) Convention on the Elimination of Racial Discrimination (CERD); article 24 CRC; article 11 of the European Social Charter; article 16 of the African Charter of Human and People's Rights and article 10 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

The right to health is not to be interpreted as merely a right to be healthy or to health care, it embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such

<sup>17</sup> International Council on Human Rights Policy, *Duties sans Frontières – Human Rights and Global Social Justice*, 2003, p.12.

<sup>18</sup> Margret Vidar, *The Interrelationships between the Right to Food and Other Human Rights*, in Wenche Bart Eide and Uwe Kracht (eds.), *Food and Human Rights in Development*, Vol. I Legal and Institutional Dimensions and Selected Topics, Intersentia, 2005, Chapter VI, p.141.

as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

Particularly in terms of access, women have different and unequal access to and use of basic health resources, including primary health services for the prevention and treatment of diseases, and malnutrition. They also have different and unequal opportunities for the protection, promotion and maintenance of their health. Women's health and well-being is determined by the social, political and economic context of their lives, as well as by biology. Lack of food and inequitable distribution of food for girls and women in the household, inadequate access to safe water, sanitation facilities and fuel supplies, particularly in rural and poor urban areas, and deficient housing conditions, all overburden women and their families and have a negative effect on their health. Good health is essential to achieving the right to food, to leading a productive and fulfilling life and is basic for women's empowerment.

With regard to women's health, CEDAW covers it in two provisions. Article 11.1 reads: *"States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:..... (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction."*

Article 12. reads: 1. *"States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. 2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation"*. While art.11.1 refers particularly to the field of employment, article 12 provides a broader coverage of the right to health with further emphasis on reproductive health.

The right to food is particularly related to the right to health. On the one hand, enjoying the right to food is an essential condition to be healthy. Food that is not 'adequate', meaning nutritionally adequate and free from adverse substances, can severely affect one's health. An adequate nutrition helps in improving immunological integrity and preventing non-communicable diseases such as, for instance, diabetes. On the other hand, health itself is a pre-condition for the realization of the right to food. Sickness, disease (i.e. HIV/AIDS) or malnutrition can affect one's ability to use the food one eats, to work, to access the resources she needs, and, more generally, to lead a healthy life.

Protection of women against discrimination in health care and nutrition is stressed in the Right to Food Guidelines, according to which "States should adopt measures to eradicate any kind of discriminatory practices, especially with respect to gender, in order to achieve adequate levels of nutrition within the household"(Guideline 10.8).

The right to food, quite apart from being a self standing right, is also a means for achieving food security for all and individual nutritional well-being through her entire life cycle.

Since women play a vital role in food security, it is widely recognised that the health of women is crucial for the health of whole societies.<sup>19</sup> Underweight and malnourished mothers are more likely to give birth to underweight babies, whose mental and physical capacities may be severely stunted. They may grow into malnourished adults affecting in this sense the food/health status of future generations (the ability to work, to participate in development) and, in economic terms, contributing to the perpetuation of poverty. This intergenerational link in nutritional status is what is called the ‘life-cycle approach to nutrition’ which is now widely part of the thinking in this subject.<sup>20</sup>

In order to break this vicious circle, and to enhance women’s right to food and to health, there is a need to increase women’s access throughout the life cycle to appropriate, affordable and quality health care, information and related services; to remove all barriers interfering with access to health facilities, services, shelter, housing, sanitation, potable water; encouraging breastfeeding and healthy food habits; to strengthen preventive programmes that promote women’s health; undertake gender-sensitive initiatives that address sexually-transmitted disease, HIV/AIDS, and sexual and reproductive health issues; and promote research and disseminate information on women’s health. It is fundamental to invest in girls’ nutrition and health so as to help advance the status of women. In General Comment 14 on the *Right to Health* (2000), the Committee recommended States to “*integrate a gender perspective in their health-related policies, planning, programmes and research in order to promote better health for both women and men. A gender-based approach recognizes that biological and socio-cultural factors play a significant role in influencing the health of men and women. The desegregation of health and socio-economic data according to sex is essential for identifying and remedying inequalities in health*”.

## RIGHT TO EDUCATION

Another cross-cutting dimension of the right to food is education. As the Committee on Economic, Social and Cultural Rights points out in General Comment 13, “Education is both a human right in itself and an indispensable means of realizing other human rights.” The Committee calls this an ‘empowerment right’ and in this sense education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in the economic, social and political life of their society.

The Committee highlights the vital role this fundamental right has in empowering women. Education enhances a woman’s potential, and contributes to improvements in health, nutrition and well-being for women and their families.

International law deals with this fundamental right on several occasions. Starting off with the ICESCR, at article 13 we read: “1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the *full development of the human personality* and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

<sup>20</sup> UN, Administrative Committee on Coordination Subcommittee on Nutrition (ACC/SCN) 4<sup>th</sup> Report on the World Nutrition Situation: Nutrition Throughout the Life Cycle, Geneva 2000.

They further agree that education shall *enable all persons to participate* effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.” [emphasis added] This includes compulsory and free primary education for all, general availability of and access to secondary education including technical and professional education, and higher education with the progressive introduction of free education and liberty for parents to choose schools for their children. With regard to these, the Committee in General Comment 3 placed the right to education among those rights “which would seem to be capable of immediate application by judicial and other organs in many national legal systems”. Furthermore the Convention on the Rights of the Child recognizes for every child a right to education (article 28) to be achieved progressively and on the basis of equal opportunity. Similarly to ICESCR provisions, article 28 provides for availability of primary and compulsory education, the development of different forms of secondary education including vocational and professional education, access to higher education, encouragement of school attendance and international cooperation with a view to contributing to the elimination of ignorance and illiteracy.

With particular regard to women, CEDAW deals with the issue in article 10: “States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women”.

Measures include providing for: the same conditions for career and vocational guidance; access to same curricula, same standard and school premises; an education that can help to eliminate any stereotyped concept of the roles of men and women and gender discrimination; same opportunities to benefit from scholarships and for accessing programmes of continuing education; reduction of female student drop out rates, same opportunities to participate in sports and physical education and access to specific educational information to help ensure the health and well-being of families, including information and advice on family planning.

Most recently, the Millennium Development Goals touched upon this issue by establishing as Goal no 2 to: “achieve universal primary education”.

Education is development, it is empowerment, and it creates choices and opportunities for people opening doors to economic and social prosperity. Finally, Guideline 8.8 of the Right to Food Guidelines should be mentioned. In dealing with Labour market it states: “In order to improve access to the labour market, States should enhance human capital through education programmes, adult literacy and additional training programmes, as required, regardless of race, colour, gender, language, religion, political opinion, national or social origin, property, birth or other status.”

Despite international recognition, 100 million children, at least 60% of them girls, do not have access to primary education.<sup>21</sup> Nine hundred million adults in the world are illiterate, and more than two thirds of them are women. Discrimination against women at all levels of education represents a tremendous obstacle to their advancement. Illiteracy and lack of education reduces productivity and earning capacity and increases

<sup>21</sup> Malini Sur, Women’s Right to Education – A Narrative on International Law, in *Indian Journal of Gender Studies*, 2004, Vol 11, No 3, p.1.

vulnerability to hunger and extreme poverty. In this sense education plays an important role in the achievement of the right to food. Improving education means feeding both minds and bodies, it means making people aware and in control of their choices. It means enabling people to understand which foods are healthy and how to handle them correctly, it means learning about conservation and preparation of food, promoting food safety, quality nutrition, healthy food habits, and discarding food traditions that are against human rights – especially with regard to women’s roles in the household. On the other hand, the right to food is also relevant towards achieving education: malnourished children do not develop the ability to concentrate and learn. Again there is a need for an integrated approach.

Investing in education means investing in the intellectual potential of people, which is at the basis of development. Education and information on nutrition, on the one hand, and on the right to food, on the other, should be intensified.

According to the CESCR, knowledge of the scope and content of the right should be enhanced among civil society, national human rights institutions, human rights commissions, parliamentarians, judges, advocates, educators, and administrators by drawing extensively on General Comment 12.<sup>22</sup>

According to the State of Food Insecurity in the World (SOFI) 2004 “improving education can be one of the most effective ways to reduce hunger and malnutrition. Malnutrition rates decline with increased literacy, especially female literacy”.<sup>23</sup>

Education is also fundamental, the Report says, for the fight against HIV/AIDS. Education should be a priority for Governments and special attention should be given to girls and women in rural areas.

## **RIGHT TO INFORMATION**

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information..”. So states article 19(2) of the ICCPR. Freedom of opinion and information are one of the most fundamental freedoms guaranteed in any democratic system. These so-called political freedoms are provided for in several international and regional instruments<sup>24</sup> and represent an important dimension also for economic and social rights, including the right to food.

Every individual has a right to seek and receive information which must be guaranteed by the State through, *inter alia*, the introduction of new legislation on the basis of the principle of maximum disclosure.

With particular regard to the right to food, the right to freedom of expression plays two important functions. First of all, in more general terms by enhancing democracy in a country, that country is less likely to suffer famine.<sup>25</sup> Already in 1946 the UN General Assembly had affirmed, in Resolution 59(I): “freedom of information is a fundamental

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<sup>22</sup> CESCR, The Right to Food, Report on the Third Expert Consultation on the Right to Food, UN doc A/CN.4/2001/148

<sup>23</sup> FAO, The State of Food Insecurity in the World 2004: Monitoring Progress towards the World Food Summit and Millennium Development Goals, Rome 2004, p.28.

<sup>24</sup> See for instance art 19 UDHR, art 5(d)(viii) CERD, arts 13 and 17 CRC and art 9 ACHPR.

<sup>25</sup> Amartya Sen, Poverty and Famines: An Essay on Entitlement and Deprivation, Oxford University Press, Oxford, 1981.

human right and the touch-stone of all the freedoms to which the United Nations is consecrated". Democracy means freedom of the press, publicity of information, and transparent and accountable government, all contributing to the fight against poverty and hunger. Freedom of information is fundamental for women as one of the essential elements of their empowerment and their full participation in development as agents and not mere beneficiaries.

Secondly, from a practical standpoint, information is crucial for food security. It enables individuals to receive information on food and nutrition, on markets, and on allocation of resources. It enhances people's participation and free consumer choice. According to the Right to Food Guidelines, States should "collect and disseminate information to the public regarding food-borne diseases and food safety matters, and should cooperate with regional and international organizations addressing food safety issues." (Guidelines 9.6) and "adopt measures to protect consumers from deception and misrepresentation in the packaging, labelling, advertising and sale of food and facilitate consumers' choice by ensuring appropriate information on marketed food, and provide recourse for any harm caused by unsafe or adulterated food, including food offered by street sellers." (Guideline 9.7).

With particular regard to women, market information often remains restricted to the literate as well as more urban-based women. Because of persistent low levels of literacy among low income women, information regarding farming and particularly food security does not readily reach women farmers. Besides, most of the information packaging and dissemination channels are unsuitable for them. Considering the particular role women play in household food security, their accessing related information is crucial. Rural women's groups and associations need to be strengthened in the bid to realize more sustainable food security. There is a need for focused training, and extension delivery to women groups will largely improve access to agricultural knowledge and information among farming women and communities.<sup>26</sup>

## **RIGHT TO PARTICIPATION**

The right to participation is spelled out in article 25 of the ICCPR, according to which every citizen shall have the right and the opportunity, without any discrimination, to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections and to have access, on general terms of equality, to public services in her country.

Participation of beneficiaries in programmes and projects that effect them is a general principle of development, as well as being one of the key components of a human rights based approach to development and emergency assistance. Participation is essential in a democracy, for people to be free to choose their government and to take part in the formulation of policies. With particular regard to food it is of paramount importance to involve local communities in the design and implementation of food security programmes so as not to miss out on the real needs of populations.

According to the Right to Food Guidelines, full and transparent, social and political,

participation of the groups that are most affected by food insecurity is essential to a rights based approach. States should “promote the participation of the poor in economic policy decisions” (Guideline 2.6) and “promote women’s full and equal participation in the economy” (Guideline 8.6). Particularly, in developing poverty reduction strategies, “States are encouraged to consult with civil society organizations and other key stakeholders at national and regional levels, including small-scale and traditional farmers, the private sector, women and youth associations, with the aim of promoting their active participation in all aspects of agricultural and food production strategies” (Guideline 3.8).

Women are often excluded from decision making processes in local governments, whereas their participation is crucial, given their primary role in household food security. Women should take part in any process or programme aimed at devising and developing methods, policies and strategies that help to empower women in offsetting barriers to their full exercise of rights. It is necessary therefore to enhance women’s participation in programmes and projects, as contributors and beneficiaries, and to put particular emphasis on the integration of women’s activities in all development activities, on an equal basis with those of men. This will help to better assess women’s demands and needs, thus mainstreaming gender sensitivity in all aspects of food security planning.

### **ACCESS TO LAND** <sup>27</sup>

Access to land is a crucial issue when dealing with the right to food. Land as well as other natural resources - such as, for instance, water and trees - is essential for people’s livelihoods; it is a primary source of wealth, social status and power. Gender is an issue with regard to accessing land since women often get marginalized in land-related policies. Their needs are not cared for in cases of land reform or land administration projects; they are excluded from benefits and do not exercise rights, such as property rights, on an equal basis with men.

Land is not defined in international law as a human right *per se*; however several instruments cover aspects that are relevant to land, either directly or indirectly, such as for instance issues of ownership, management and administration of property, access to and utilization of natural resources, food production, access to agricultural credit and loans, and agrarian reform. <sup>28</sup> With particular regard to food, ICESCR mentions land-related measures to be taken, among others, for the progressive realization of this right. Article 11.2 reads: “...to improve methods of production, conservation and distribution of food....by developing or reforming agrarian systems”.

CEDAW at article 14 requires State Parties to take into account the particular problems faced by rural women and to ensure that they receive equal treatment in land and agrarian reform as well as in land resettlement schemes.

The accent on rural people is justified by the crucial role land plays for them towards achieving their right to food - according to SOFI 2004, small farmers and landless

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<sup>27</sup> The choice of dealing with land, and not with other natural resources, is related to the prominent position this issue holds with regard to gender discrimination in the area of interest for FAO

<sup>28</sup> See for instance art 17 UDHR, art 11 ICESCR, art 5 (d)(v) CERD, arts 14(2)(g),15(2) and 16(10)(h) CEDAW.

<sup>29</sup> *supra* 23, p.20.

labourers are among the world's most food insecure.<sup>29</sup> In rural areas, where people depend entirely on agriculture, poverty and hunger are largely due to lack of access to resources and assets; therefore what is most needed is reforms aimed at securing the land tenure of smallholders and improving the access of landless and poorer farmers to land and natural resources.

Furthermore, in dealing with access to resources and assets, the Right to Food Guidelines affirm "States should promote women's full and equal participation in the economy and, for this purpose, introduce, where it does not exist, and implement gender-sensitive legislation providing women with the right to inherit and possess land and other property. States should also provide women with secure and equal access to, control over, and benefits from productive resources, including credit, land, water and appropriate technologies." (Guideline 8.6)

Women face great difficulties in gaining secure access to, and control over land and other resources such as water and credit, as they are often not recognized as producers or juridical equals. Without access to productive resources women's economic independence and ability to feed themselves are limited. According to FAO, while the proportion of women heads of rural households continues to grow, reaching more than 30 per cent in some developing countries, less than two per cent of all land is owned by women.<sup>30</sup>

Women rights may be held back by *de iure* direct or indirect discrimination or by *de facto* restrictions. The first case is that of family law (which may restrict the legal capacity of married women to administer property) and of succession law (which may restrict women's inheritance rights). Considering that in rural areas of many developing countries inheritance is the primary form of land acquisition, such discriminatory succession norms can hamper women's land rights enormously.

Furthermore, discrimination also occurs in agrarian reform legislation which may entitle only men over a certain age to obtain land, while women qualify only if they are household heads. Women's natural resource rights may be determined by the interaction between norms of different nature coexisting in a context of legal pluralism (e.g. customary and statutory law). Gender struggles for access to and control of natural resources may be fought by men relying on statutory law and women relying on customary norms (to claim rights not recognized under statutory law). In cases where there is no formal discrimination, women's rights may be restricted in practice; factors such as socio economic perceptions on women's role in the family and in society and/or female seclusion practices can constrain the full enjoyment of rights and women's participation in natural resource management institutions.<sup>31</sup>

Measures should be taken by States to increase equality between men and women in accessing land, by favouring *inter alia* land ownership, inheritance and access to credit, by making these rights enforceable and secure and especially by providing institutional structures that can protect and strengthen equitable access to land for women, which is threatened by both statutory and customary laws.

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<sup>30</sup> <http://www.fao.org/News/2002/020302-e.htm>

<sup>31</sup> Cotula, *ibid.*



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**3. IMPLEMENTATION AND MONITORING**

CONCLUSIONS

## 3. Implementation and Monitoring

### INCORPORATION OF INTERNATIONAL INSTRUMENTS INTO NATIONAL LEGISLATION

As of January 2007, 179 States were Parties to CEDAW. If, on the one hand, women's rights now receive formal recognition in international law, such success is not reported with regard to practice in implementation. The conflict between protection *de iure* and *de facto* remains crucial. Countries that have ratified CEDAW are legally bound to its provisions. The Convention lays down governments' obligations – which correspond to individual rights and freedoms – in abstract terms so as to provide a general framework to be applied to all Parties and adapted to changing local contexts. At the national level, countries show differences not only with regard to their political, social and economic context but also with regard to the legal system in which these international norms are to be incorporated. In particular, in countries that follow the so-called monistic system, once ratified, a treaty becomes part of the law of the land and thus applicable by courts. However, countries that follow the dualist approach normally need to adopt specific legislation to this effect before the provisions of a treaty become applicable.

Based on a review of a hundred State Parties Reports to CEDAW dated 2003<sup>32</sup>, an FAO survey found that in at least 31 countries in the world<sup>33</sup> the provision of international treaties such as CEDAW are part of the domestic legal order and directly applicable while in others the incorporation of such provision in the domestic system is subject to the adoption of specific national laws. In this regard, some countries have taken important steps to incorporate the entire Covenant, which in some cases was incorporated into the National Constitution, while others took action to enforce single rights only.

As a result of the ratification of international instruments, at the national level different types of norms affecting women's right interact with each other in a dynamic process. In a pluralist legal domain conflicting norms coexist in the same territory and on the basis of each, claims can be raised. Statutory and customary rules violating constitutional and international human rights norms have often been struck down by courts. The interaction of these different bodies of norms is at the basis of women's legal status. The relationship between statutory and customary law is determined by the legal status of customary law within the legal system which varies across countries, ranging from official recognition to abrogation.<sup>34</sup>

<sup>32</sup> See Annex.

<sup>33</sup> Albania, Algeria, Andorra, Armenia, Austria, Azerbaijan, Belgium, Belize, Brazil, Canada, Cameroon, Costa Rica, Croatia, Czech Republic, Egypt, El Salvador, Finland, France, Georgia, Guatemala, Kyrgyzstan, Lithuania, Mongolia, Morocco, Netherlands, Peru, Philippines, Sri Lanka, Switzerland, Ukraine, Venezuela.

<sup>34</sup> Cotula, *ibid.* p.16. Alg

Important issues also come up with regard to the relationship between norms of a religious origin and statutory law. In many countries, religion and women's human rights often come into conflict. Frequently statutory law encompasses religious norms into family and succession law. The same goes for some cultural habits which become custom. The diversification of laws coexisting in pluralist countries leads to a de facto diversification of women's legal status in the same.

### **ACHIEVEMENTS AND SHORTCOMINGS OF EXISTING MONITORING MECHANISMS**

Once States have incorporated international norms into their domestic legal system, it is important at the international level to strengthen monitoring mechanisms for supervising States' performance and their compliance with the provisions of the Convention to which they are bound.

To date, the mechanisms available for monitoring women's rights, and in particular their right to food are, firstly the examination of states' reports to the Convention – mechanism which is available under other treaty bodies also (i.e. ICESCR, CRC) – and secondly, the possibility of bringing an individual complaint of violations to a relevant international body and receiving an authoritative pronouncement, under CEDAW Optional Protocol. To date, such formal complaint procedures exist, apart from CEDAW, for all civil and political rights under the ICCPR.<sup>35</sup>

#### **A) REPORTING OBLIGATIONS**

According to article 18 of the Convention:

*“States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:*

*(a) Within one year after the entry into force for the State concerned;*

*(b) Thereafter at least every four years and further whenever the Committee so requests.*

*2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.”*

The Committee has adopted guidelines to help states prepare these reports. According to the guidelines, the initial report is intended to be a detailed and comprehensive description of the position of women in a particular country at the time of submission; it is meant to provide a benchmark against which subsequent progress can be measured. Second and subsequent national reports are intended to update the previous report, detailing significant developments that have occurred over the last four years, noting key trends, and identifying obstacles to the full achievement of the Convention.

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<sup>35</sup> There is an ongoing effort to adopt a similar Optional Protocol to ICESCR. This was already recommended in by the World Conference on Human Rights in 1993, but the process since then has been slow due to considerable resistance from states with a strong neo-liberal focus on their economic policy. See Asbjorn Eide, The Importance of Economic and Social Rights in the Age of Economic Globalization, in Wenche Barth Eide and Uwe Kracht (eds.), *Food and Human Rights in Development*, Vol.I Legal and Institutional Dimensions and Selected Topics, Antwerpen-Oxford, 2005, p.30.

Following consideration of each State Party's report, the CEDAW Committee formulates concluding comments which outline factors and difficulties affecting the implementation of the Convention for that State party, positive aspects, principal areas of concern and suggestions and recommendations to enhance implementation of the Convention.

The State reporting system has limited effectiveness, not least because it is elaborated by the very State whose behaviour is the object of investigation – and who could then present information or data as it may see fit – but also because the Committee has no direct power over information provided. There are also structural obstacles in many cases, where the extreme difficulty of accessing data, or the lack of adequate means and resources, make the task of elaborating an accurate country report even more complicated. Also, States' work on reports may at times suffer from a lack of focus, moving from treaty interpretation to a general policy discussion. In order to overcome some of these difficulties, shadow reports prepared by NGOs could provide support for the information required, observing objectiveness as external agents. A more in-depth examination of the structure, scope and difficulties of this mechanism is presented in para c) through an analysis of reports to CEDAW 1994-2003.

## **B) OPTIONAL PROTOCOL TO CEDAW**

The adoption of an Optional Protocol to provide a right to petition was one of the commitments made by States, both at the 1993 Vienna Conference on Human Rights and the 1995 Fourth World Conference on Women. Its entry into force, on 22 December 2000, represents a major step towards the realization of the objectives set out in the Beijing Platform for Action.

Under the Optional Protocol, two additional monitoring procedures applicable to States Parties to CEDAW are foreseen: a communications procedure allowing individual women, or groups of women, to submit claims of violation of rights to the Committee on the Elimination of Discrimination against Women; and an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights. In this sense, it can be argued that the right to food, in its gender dimension, receives in a way a higher degree of protection than that provided for in ICESCR article 11, a body which has not yet set up a mechanism to deal with individual complaints. Ratifying States may opt out of the inquiry procedure - which is one limit to this innovative instrument - but no other reservations are permitted to its terms. As of March 2007, 86 States have become party to the Protocol.

In October 2004, on the occasion of the 25th Anniversary of the adoption of the Convention on the Elimination of All Forms of Discrimination against Women, the Committee highlighted the importance of the availability of a right to petition, as well as of an inquiry procedure, under the Optional Protocol. The Committee affirmed that through such mechanisms women are provided with a means of redress for claims of violations of rights protected under the Convention. Here, the Optional Protocol can play a positive role in the national implementation and realization of the provisions of the Convention.<sup>36</sup>

<sup>36</sup> UN, CEDAW, Statement to commemorate the twenty-fifth anniversary of the adoption of the Convention on the Elimination of All Forms of Discrimination against Women, 13 October 2004, p.3.

## AN ANALYSIS OF REPORTS TO CEDAW 1994-2003

In examining States' interpretation of food-related provisions in the Convention, and the implementation of same, the author of the present study undertook in 2003 an analysis of country reports to CEDAW, taking as the baseline period the decade 1994-2003. All reports submitted to the Committee during those years were analyzed, with particular reference to their response to two articles of the Convention: article 12 and article 14 - the only two provisions related to women's right to food.

### A) STRUCTURE AND CONTENT OF REPORTS

With regard to structure and layout, reports did not appear to be homogeneous. Although the Committee gives precise guidelines as to structure, length, and type of information<sup>37</sup> to be covered in a report, countries frequently depart from such indication and structure and elaborate information as they see fit.

In the guidelines, the Committee calls for reports to be "as concise as possible"; however many of the reports analyzed seemed to unfold in unnecessary lengthy divagations on human rights in general, while at the same time missing out on relevant and more specific information. In some cases, countries chose the aspect on which they wished to report, instead of providing a systematic examination of all issues related to the Convention's articles. Often remarkable effort was made to provide extremely detailed information on laws, programmes and activities relative to one or two areas, leaving other sections completely blank. Food, in particular, was one area often left out.

In line with the Committee's recommendations, countries indicated whether the Convention was directly applicable in their domestic system, if it was part of the National Constitution, whether its provisions could be invoked before a court of law and what remedies (administrative, judicial or others) were available to redress violations.

With particular regard to the information requested for each of the articles of the Convention, not always was the whole spectrum of provisions covered in the reports. Also, the Committee specified that "legal norms should be described, but that is not sufficient: the factual situation and the practical availability, effect and implementation of remedies for violation of provisions of the Convention should be explained and exemplified" (guidelines para D.1). Often reports described the situation within a given country as 'no formal discrimination is present' with no further detail on the extent to which its *laws and practices* complied with the Convention. Some provided a very comprehensive list of programmes to support women and to enhance their rights, while others focused more on relevant bodies, ministries and councils tasked with protection of women's rights.

Rarely was there a deep analysis of difficulties in implementation, restrictions or limitations and relative efforts made to overcome these obstacles. Many reports gave an extensive description of the *status quo* with no deep analysis of causes and of action taken to progress. Overall, structural and material difficulties for some countries in collecting and analyzing data, inevitably affected the report.

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<sup>37</sup> CEDAW, Compilation of Guidelines on the form and content of reports to be submitted by states parties to the international human rights treaties, 2003, UN doc HRI/GEN/2/Rev.1/Add.2.

Best practices in reporting were shown by those countries which provided a detailed and schematic analysis of the situation of women in different fields, going straight into measures taken to implement CEDAW provisions in the observed period. Among these were Bangladesh, Philippines, Burkina Faso, Colombia and Cuba.

### **B) RIGHT HOLDERS: WOMEN OR MOTHERS?**

With regard to reporting on food-related issues – which was the ultimate object of our survey - two elements particularly caught our attention: the understanding of women as right-holders and the understanding of food as a self standing right.

Most reports focused on the situation of mothers and children with evident confusion between the role of women as mothers, and their independent existence as women *per se*. When reporting on health and on food (often seen as part of health) for instance, all the attention was placed on maternal issues, reproductive health and pregnancy. Such interpretation however is already present in the Convention itself when at article 12 (health) the text mentions ‘adequate nutrition’ only in relation to ‘pregnant women’. Countries drafted their reports along the same lines, often even shifting the focus from mothers directly to children to the extent that reporting on women became reporting on children. Has this consideration of women as mothers only, got its roots in the culture and traditions of some countries? Women are not only mothers and, moreover, they are not vulnerable merely due to pregnancy, but to discrimination. It may be easier to attribute a ‘vulnerable status’ to pregnant women than to recognize such vulnerability for other women as well, simply on the basis of discrimination: here again, misinterpretation or political choice?

### **C) CONTENT OF THE RIGHT TO FOOD: NUTRITION, HEALTH AND HUMAN RIGHTS**

As seen above, the Convention implicitly refers to the right to food in article 12 and article 14. Countries’ reports reflect an interpretation of the Convention that looks at the right to food as a health issue alone. Under the same article countries reported situations of anorexia/bulimia and those of malnutrition and starvation. If, on the one hand, both sets of problems are undoubtedly of an extremely delicate nature, on the other, their very nature can vary. Some considerations should be made: illnesses are not always preventable; they do not necessarily reflect a deprivation in terms of access – which on the other hand is the case for violation of the right to food – and, most importantly, they are not necessarily (although some may be) the result of a human rights violation.

There is surely some common ground shared by both sets of problems: however, given their peculiarities, it may be advisable to tackle them separately. Illnesses like anorexia and bulimia are for sure matters of public health, and gendered in their distribution. However, why was reporting on right to food interpreted in most cases as relating to these issues alone

In talking about bulimia/anorexia on the one hand, and of hunger/starvation on the other, how much can be considered a matter of violation of human rights for each?

On another note, country reports did not pay enough attention to issues such as chronic malnutrition, starvation, the impact of HIV/AIDS on the right to food, the role women play in agriculture and in all stages of the food chain, and the relative dynamics in

the household. With particular regard to article 14, reporting on food as part of an adequate standard of living in rural livelihoods focused mostly on issues such as: social insurance, employment and agrarian reform. No light seemed to come even from the Committee's recommendations which appear to adopt the same interpretation. Few reports mentioned food under other provisions - for instance, under article 13: economic and social benefits.

The Convention and - as a reflex - the reports confine food to a tight net, not in line with the developments that have taken place over time in several other areas of human rights law. A call for uniformity and parallel development of all related disciplines is advisable.

#### **D) POSSIBLE REMEDIES TO WEAKNESS OF THE REPORTS: SOME SUGGESTIONS**

The reporting mechanism *per se*, as originally conceived, could be an effective monitoring tool if some of the current difficulties were overcome. Countries' full and timely reporting under the Convention is still considered by CEDAW a critical contribution to effective implementation at the national level.

Further specifications as to the type of information needed under each article in order to assess its implementation could be envisaged by the Committee in reviewing the guidelines on reporting. In this regard, the Right to Food Guidelines could provide an extremely useful checklist in terms of policy areas to draw attention to.

At the same time, the monitoring efforts of NGOs should be encouraged as an additional tool, with the value added of overcoming the obstacle represented by reports being prepared by the same State that is the object of investigation.

The question of monitoring, however, goes beyond the reporting obligation to a more complex issue regarding the understanding of rights and relative obligations. In this regard, it could be argued that both the Convention, and in some instances the Committee's observation, lack clarity. The absence in the Convention of an article specifically devoted to the right to food is one point. Secondly, the limitation of the two articles that do somehow refer to food but confine it to two categories: pregnant women and rural women. Finally, as the Committee is the body mandated to interpret the Convention, greater initiative on its part would be advisable.

The development of the right to food as a self standing right, its normative content and relative obligations should be reflected in all instruments that attempt to refer to this fundamental right. No standard should be weakened depending on context. And even more so when dealing with the right to food of particular groups which, in some circumstances, are more vulnerable. Renewed focus on women's rights and gender equality as called for in Millennium Development Goal 3 must go hand in hand with the development of the rights of which women are holders: food *in primis*.



LIST OF ACRONYMS

INTRODUCTION

1. WOMEN'S RIGHT TO FOOD AS A HUMAN RIGHTS
2. INTERRELATEDNESS OF RIGHTS
3. IMPLEMENTATION AND MONITORING

CONCLUSIONS

## Conclusions

This study reviews the legal background and content of the right to adequate food in one of its dimensions: the gender dimension. Having gone through legal provisions and looked at countries' experience in understanding and implementing same, the time is now right to draw some preliminary conclusions on the extent of protection of women's right to food, the achievements and the challenges ahead.

From a legal point of view, it should be noted that since the adoption of the Convention in 1979 there has been significant progress in the recognition and implementation of the human rights of women. However, a lack of clarity remains with regard to the understanding of women's rights and especially women's right to food. Since CEDAW is the main instrument protecting women's rights, the absence in its text of a specific article on the right to food is an important omission to be dealt with, considering the fact that the Convention was adopted at a time when the idea of the right to food as a self-standing right was already well-established in several international instruments.

The legal framework for equality has been strengthened in many countries and also for food, but *de iure* is not *de facto*. There is a need to put in place, or to strengthen if already existing, institutional mechanisms that act as catalysts for the promotion and protection of the human right to food in its gender dimension.

National machineries for the advancement of women, gender equality commissions and ombudspersons are among the mechanisms that now exist in many countries, and which, at different levels and with different mandates, actively work to make implementation of the Convention a priority of national development. Courts and judicial procedures have likewise become more attuned to the requirements of the Convention, and are increasingly developing a jurisprudence of gender equality, informed and guided by the Convention. Civil society, and especially women's groups and organizations, have become essential actors in awareness-raising and lobbying efforts concerning the human rights of women. Legislative advancements are supported in many countries by policies, programmes and other measures to ensure that women's *de iure* equality becomes a *de facto* reality. Temporary special measures are in place in many countries to accelerate the achievement of *de facto* equality.<sup>38</sup>

On several occasions, the Committee has called for increased gender participation in all development programmes and activities and the full reflection of the Convention's principles in national Constitutions. Action is needed in both the public and private sphere. Millennium Development Goal No.1 is to eradicate extreme poverty and hunger; Millennium Development Goal No.2 is to promote gender equality and empower women. The gender dimension of the right to food is key to development.

**ANNEX: LIST OF COUNTRY REPORTS ANALYSED**

- Albania**  
CEDAW/C/ALB/1-2 (2002)
- Algeria**  
CEDAW/C/DZA/1 (1998)
- Andorra**  
CEDAW/C/AND/1 (2000)
- Antigua e Barbuda**  
CEDAW/C/ANT/1-3 (1994)
- Argentina**  
CEDAW/C/ARG/5 (2002)
- Armenia**  
CEDAW/C/ARM/2 (1999)
- Australia**  
CEDAW/C/AUL/3 (1995)
- Austria**  
CEDAW/C/AUT/3-4 (1997)
- Azerbaijan**  
CEDAW/C/AZE/1 (1996)
- Bangladesh**  
CEDAW/C/BGD/3-4 (1997)
- Barbados**  
CEDAW/C/BAR/4 (2000)
- Belarus**  
CEDAW/C/BLR/3 (1993)
- Belgium**  
CEDAW/C/BEL/3-4 (1998)
- Belize**  
CEDAW/C/BLZ/1-2 (1996)
- Bhutan**  
CEDAW/C/BTN/1-3
- Brazil**  
CEDAW/C/BRA/1-5 (2002)
- Bulgaria**  
CEDAW/C/BGR/2-3 (1994)
- Burkina Faso**  
CEDAW/C/BFA/2-3 (1997)
- Burundi**  
CEDAW/C/BDI/1 (2000)
- Canada**  
CEDAW/C/CAN/5/Add.1 (2002)
- Cameron**  
CEDAW/C/CMR/1 (1999)
- China**  
CEDAW/C/CHN/3-4 (1997)
- Colombia**  
CEDAW/C/COL/4 (1997)
- Congo**  
CEDAW/C/COG/1-5 / Add.1 (2002)
- Costa Rica**  
CEDAW/C/CRI/1-3 (2001)
- Cuba**  
CEDAW/C/CUB/4 (1999)
- Cyprus**  
CEDAW/C/CYP/1-2 (1994)
- Czech Republic**  
CEDAW/C/CZE/2 (2000)
- Dem.People's Rep. of Korea**  
CEDAW/C/PRK/1 (2002)
- Dem. Republic of the Congo**  
CEDAW/C/COD/1
- Denmark**  
CEDAW/C/DEN/5/Corr.1 (2002)
- Dominican Republic**  
CEDAW/C/DOM/4 (1997)
- Equator**  
CEDAW/C/ECU/4-5 (2002)
- Egypt**  
CEDAW/C/EGY/4-5 (2000)
- El Salvador**  
CEDAW/C/SLV/6 (2002)
- Equatorial Guinea**  
CEDAW/C/GNQ/2-3 (1994)
- Ethiopia**  
CEDAW/C/ETH/4-5
- Fiji**  
CEDAW/C/FJI/1 (2000)
- Finland**  
CEDAW/C/FIN/3 (2000)
- France**  
CEDAW/C/FRA/5 (2002)
- Georgia**  
CEDAW/C/GEO/1 (1998)
- Germany**  
CEDAW/C/DEU/4 (1998)
- Greece**  
CEDAW/C/GRC/4-5 (2001)
- Guatemala**  
CEDAW/C/GUA/3-4 (2001)
- Guinea**  
CEDAW/C/GIN/1-3 (2000)
- Hungary**  
CEDAW/C/HUN/4-5 (2000)
- Iceland**  
CEDAW/C/ICE/3-4 (1998)
- Israel**  
CEDAW/C/ISR/1-2part3 (1997)
- Italy**  
CEDAW/C/ITA/3 (1997)
- Jamaica**  
CEDAW/C/JAM/2-4 (1998)

- Jordan**  
CEDAW/C/JOR/1 (1997)
- Kenya**  
CEDAW/C/KEN/3-4 (2000)
- Kyrgyzstan**  
CEDAW/C/KGZ/2/Add.1 (2003)
- Lithuania**  
CEDAW/C/LTU/1 (1998)
- Luxembourg**  
CEDAW/C/LUX/4 (2002)
- Mexico**  
CEDAW/C/MEX/5 (2000)
- Mongolia**  
CEDAW/C/MNG/3-4 (1998)
- Morocco**  
CEDAW/C/MOR/2 (2000)
- Myanmar**  
CEDAW/C/MMR/1 (1999)
- Netherlands**  
CEDAW/C/NET/3/Add.2 (2000)
- New Zealand**  
CEDAW/C/NZL/5 (2002)
- Nicaragua**  
CEDAW/C/NIC/5 (1999)
- Nigeria**  
CEDAW/C/NGA/2-3 (1997)
- Norway**  
CEDAW/C/NOR/6 (2002)
- Panama**  
CEDAW/C/PAN/2-3 (1997)
- Peru**  
CEDAW/C/PER/5 (2001)
- Philippines**  
CEDAW/C/PHI/4 (1996)
- Portugal**  
CEDAW/C/PRT/5 (2001)
- Republic of Korea**  
CEDAW/C/KOR/4 (1998)
- Republic of Moldova**  
CEDAW/C/MDA/1 (1998)
- Romania**  
CEDAW/C/ROM/4-5 (1998)
- Russian Federation**  
CEDAW/C/USR/5 (1999)
- Saint Kitts and Nevis**  
CEDAW/C/KNA/1-4 (2002)
- S. Vincent and the Grenadines**  
CEDAW/C/STV/1-3/Add.1 (1994)
- Serbia and Montenegro**  
CEDAW/C/YUG/3 (1998)
- Slovakia**  
CEDAW/C/SVK/1 (1996)
- Slovenia**  
CEDAW/C/SVN/3 (2002)
- South Africa**  
CEDAW/C/ZAF/1 (1998)
- Spain**  
CEDAW/C/ESP/4 (1998)
- Sri Lanka**  
CEDAW/C/LKA/3-4 (1999)
- Suriname**  
CEDAW/C/SUR/1-2 (2002)
- Sweden**  
CEDAW/C/SWE/5 (2000)
- Switzerland**  
CEDAW/C/CHE/1-2 (2002)
- Thailand**  
CEDAW/C/THA/2-3 (1997)
- Trinidad and Tobago**  
CEDAW/C/TTO/1-3 (2001)
- Tunisia**  
CEDAW/C/TTO/1-3 (2001)
- Turkey**  
CEDAW/C/TUR/2-3 (1996)
- Uganda**  
CEDAW/C/UGA/3 (2000)
- Ukraine**  
CEDAW/C/UKR/4-5 (1999)
- United Kingdom**  
CEDAW/C/UK/3 (1995)
- United Republic of Tanzania**  
CEDAW/C/TZA/2-3 (1996)
- Uzbekistan**  
CEDAW/C/UZB/1 (2000)
- Venezuela**  
CEDAW/C/VEN/3 (1995)
- Viet Nam**  
CEDAW/C/VNM/3-4 (2000)
- Yemen**  
CEDAW/C/YEM/5 (2002)
- Zambia**  
CEDAW/C/ZAM/3-4 (1999)
- Zimbabwe**  
CEDAW/C/ZWE/1 (1996)

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