



Law, Social Justice & Global Development
(An Electronic Law Journal)

‘Food Sovereignty’: A Step Forward in the Realisation of the Right to
Food

Richard Goulet
LL. M.
School of Law
University of Warwick

richardgoulet@mts.net

This is a **refereed article** published on: 16 April 2009

Citation: Goulet, R. ‘Food Sovereignty’: A Step Forward in the Realisation of the Right to Food’, 2009 (1)
Law, Social Justice & Global Development Journal (LGD).
<http://www.go.warwick.ac.uk/elj/lgd/2009_1/goulet>

Abstract

This paper assesses the usefulness of a new concept, food sovereignty, in approaching the problem of world hunger and advancing the concept of the right to food. Recent neo-liberal policies, implemented by a number of multi-lateral institutions, have made it increasingly difficult for the state to fulfill its primary obligation to ensure the realisation of the right to food as provided for under international human rights law. The fulfillment of this obligation is further challenged by the changing global economic environment and the emergence of powerful non-state actors. This paper argues that adopting the concept of food sovereignty can help the state reassert its role as the defender of its citizen's right to food by providing the necessary policy space to challenge existing neo-liberal orthodoxy and by reintroducing some of the values which underpin this right. It can also help the state reclaim control over the issue of food security and help foster democratic participation and decision-making in the area of food policy. Food Sovereignty can also enhance the accountability on non-state actors in the world food system by helping to further the evolution of their legal accountability under international law and by influencing public opinion on issues of food policy and self-regulation. Notwithstanding the importance of this concept, current debates about food sovereignty fail to fully integrate a gender perspective – an important factor in fully realising the right to food by ensuring that the interests of women are taken into account. It must do so in order to develop into a truly effective alternative policy framework which can tackle the problems which currently grip the global food system.

Keywords

Food Security, Food Sovereignty, Gender, Hunger, International Monetary Fund (IMF), Non-state Actors, International Economic System, Multilateral Institutions, Neo-Liberalism, Non-governmental Organisations (NGOs), Civil Society Organisations (CSOs), Right to Food, Transnational Corporations, World Bank, World Trade Organisations (WTO)

1. Introduction

The problem of hunger constitutes one of the most daunting human rights challenges facing the global community. Its dimensions are staggering and the problem is getting worse despite continued efforts by the international community to address it.

The extent and gravity of the problem is outlined by the 2005 report of the UN Special Rapporteur on the Right to Food to the Commission on Human Rights (CHR):

In its 2004 report, the Food and Agriculture Organization of the United Nations (FAO) reports that hunger has increased to 852 million gravely undernourished children, women and men, compared to 842 million last year, despite already warning of a 'setback in the war against hunger' in 2003. It is an outrage that more than 6 million small children are killed by hunger-related diseases every year, in a world that is wealthier than ever before and that already produces enough food to feed the world's population.¹

Recent estimates by the Food and Agriculture Organization of the United Nations (FAO) in 2007 puts the number of hungry people at 923 million, an additional 75 million added since the last estimates done for the 2003-2005 period.² This ever increasing number must be considered in light of the World's ability to feed itself. According to the FAO, despite a 70 percent population increase in the last 30 years, world agriculture produces 17 percent more calories per person today which is 'enough to provide everyone in the world with at least 2,720 kilocalories (kcal) per person per day (FAO 2002, p.9)'.³

The increase in hunger is most pronounced in Africa. A recent study by the International Food Policy Research Institute (IFPRI) concluded 'that chronic food insecurity in Africa has been increasing since 1970, with the number of malnourished people in sub-Saharan Africa soaring from 88 million to 200 million in 1999-2001'⁴, approximately one quarter of the total population of 794 million.⁵

In order to tackle the problem of hunger, it is important to understand two of its important dimensions. Firstly, hunger resides largely in rural areas of developing countries. According to the FAO, 96% of those facing hunger and malnutrition live in developing countries and 76% live in rural area⁶, prompting it to conclude that 'the fight to eliminate hunger and reach other MDGs [Millennium Development Goals] will be won or lost in the rural areas where the vast majority of the world's hungry lives'⁷.

Secondly, there is an important gender dimension to hunger. Despite the fact that women are responsible for half the world's food production and most of the food production in developing countries (60 to 80%), they are the ones who suffer most from poverty and hunger. According to a recent report by the United Nations Research Institute for Social Development (UNRISD),

it is reasonable to assume that women constitute a disproportionate share of the world's poor given their constrained access to capital and land, their lower labour market status, and their disproportionate responsibility for the provision of unpaid domestic and care work.⁸

The preceding identifies some of the important dimensions of the problem of hunger and suggests that current policy prescriptions have failed to effectively address this problem and reverse its worsening trend. As a result, new and innovative perspectives and approaches are urgently needed.

Recently, a new and promising concept, food sovereignty, has emerged which challenges current approaches to solving the problem of hunger. In this paper we will assess the usefulness of this concept to determine whether it is helpful in bringing about new solutions to the problem of world hunger and to make the main players in the food system more accountable. In doing so, we will focus on three areas which are crucial in realising the right to food.

Firstly, we will look at the state as the bearer of the primary responsibility for ensuring the realization of the right to food under existing international human rights law. Can the concept of food sovereignty help make the state become better able and more accountable in fulfilling its responsibility for realising the right to food of those who live within its borders?

Secondly, the increased dominance of non-state actors in the food system and the concurrent loss of sovereignty of states obliges us to look at ways in which this emerging group can be made more accountable for their actions

when they have a negative impact on food security. To what extent can the concept of food sovereignty be used to make non-state actors more accountable and to participate in resolving the problem of hunger? Can it help to shape emerging developments in human rights law which would attribute human rights obligations to these actors? Can food sovereignty policy proposals influence non-state actors in other ways that could contribute to the alleviation of hunger?

Thirdly, it is important to look at food sovereignty from a gender perspective to assess whether it can address the issues of importance to women given their unique role in the food system and the fact that they suffer disproportionately from hunger. Does the concept of food sovereignty help bring a gender perspective to our understanding and interpretation of the right to food and help provide effective solutions?

Before looking at these questions, however, it is important to outline the origins and development of the concept of food sovereignty and identify the principles on which it is based and the policy prescriptions it proposes.

2. Food Sovereignty – Context, Origins and Development of the Concept

Food Sovereignty evolved as a response by Non-Governmental Organisations (NGOs) and Civil Society Organisation (CSOs) to the failure of the current food system to effectively tackle the problem of hunger as described below.

2.1. Structural Causes of Hunger

Although this paper does not aim to provide a detailed discussion of the structural causes of poverty and hunger, it is nevertheless important to provide a general overview of how proponents of food sovereignty characterise these problems and how they seek to address them. A number of authors such as Windfuhr and Jonsén, Mowbray and Hauter have identified the international economic system and the policies under which it operates as one of the main factors contributing to world hunger and food insecurity especially in developing countries.

Mowbray points to three characteristics of the international economic system which are worth noting when considering the effectiveness of a rights based approach to hunger and the potential benefit of incorporating the concept of food sovereignty. Firstly, the inequities produced in the international economic system and its contribution to hunger 'are the result of deep, structural problems' inherent in this system and have developed over a long period of time.⁹ Secondly, this system is not exclusively controlled by states and is increasingly influenced by non-state actors who 'are coming to play a greater and greater role in the operation of the system, while states and governments are correspondingly losing control over both the international system and their own economies.'¹⁰ Thirdly, the effects of the system 'are often the result of individual actions by particular actors, but of interactions between these actors in a sort of diffuse 'web' of economic influence' which Mowbray terms as a 'network effect'.¹¹

Given the nature of the international economic system and the current state of international human rights law, how effective can a rights-based approach be in tackling the problem of world hunger? Can the concept of food sovereignty contribute to enhancing the effectiveness of this approach? We will attempt to answer these questions further below. However, it is first worth noting examples of the way in which the system operates.

Since the mid-1980s, structural adjustment policies (SAPs) have been implemented in most developing countries by the World Bank and the International Monetary Fund (IMF) forcing these states to open their agricultural market to cheap imports and encouraging them to produce products for export for which they have a 'comparative advantage'.¹² According to this theory, 'countries benefit most by producing goods in which they have the least disadvantage compared to other countries'.¹³ These policies also require that states restructure their fiscal and social policies in ways which lessen the states' presence in the economy and their ability to deliver effective social programs.

Similar neo-liberal policies have been implemented under the World Trade Organisation's (WTO) *Agreement on Agriculture* (AoA). Trade rules have been agreed to which require developing countries to open up their markets to foreign agricultural products which mostly originate from developed countries. This exposes their domestic agricultural sectors to competition from these heavily subsidized exports with the negative consequences described below.

While developing countries have opened up their markets during the last fifteen years, their smallholder farmers still have to compete with subsidized exports from industrialized countries. Because poor countries are not able to pay subsidies to their farmers and are forced to remove trade barriers, almost no agricultural policy instruments prevail in these countries....The amount of subsidies provided,

particularly export subsidies, enable developed countries to sell their products at lower prices than the cost of production, sometimes in both food exporting and importing countries.¹⁴

This has had a devastating impact on small-holder farmers who cannot compete with agricultural imports. They are forced out of business which in turn creates a dependence on imported food. The extent of this dependence is dramatically illustrated by the fact that 'half of the foreign exchange of the FAO's 88 low income food deficit countries goes to food imports.'¹⁵

Other trends have exacerbated the problem of hunger. The industrialization of agriculture has concentrated productive resources in large commercial entities.¹⁶ In many countries, 'the most fertile and extensive areas of land remain in the hands of a decreasing number of producers'.¹⁷ The different parts of the food system are coming under the increased control of large trans-national corporations (TNCs).¹⁸ For example,

[t]he input sectors of the food production industry is [sic] undergoing rapid concentration. Many traditional seed-producing companies have been bought by agrochemical companies or oil-companies. Intellectual property rights (IPR) systems are promoted that provide monopoly privileges over what was once common property and thus facilitate the control over genetic material and life forms such as seeds and livestock breeds.¹⁹

These developments are restricting the economic freedom traditionally enjoyed to freely exchange seeds and livestock breeds and are allowing 'corporations to expropriate farmers' knowledge of food production and prevent farmers from sharing this.'²⁰ The capacity of the indigenous farming sector to provide a reliable food supply and to make food production decisions appropriate to local circumstance and conditions has been seriously constrained.

2.2. Response to Neo-Liberalism

The neo-liberal policies described above, impose a uniform model on developing countries which has failed to solve the problems of hunger and poverty. As a result, attention is now shifting to policy alternatives. According to McMichael, there have been two responses to this crisis. The first can be characterised as a corporate response which attempts to redeem the neo-liberal model by redefining 'development as a global project, including harnessing biotechnology to resolve the food security question'.²¹ The second, can be characterised as a countermovement response which challenges the prevailing neo-liberal orthodoxy and proposes policy alternatives.

The concept of food sovereignty was developed as part of this second response by civil society organisations (CSOs). It attempts to address the negative consequences that arise from the concentration of power and decision-making in large and powerful non-states entities in the global food system such as multi-lateral institutions like the World Bank, the IMF and the WTO, and Transnational Corporations (TNCs).

For the most part, these non-state actors support and promote the dominant development model of neo-liberalism. TNCs, in particular, have benefited from the prevailing neo-liberal environment which has favoured their increasing dominance in the food system. Critics of the current model of development have rightly focused on these players who have an enormous influence in shaping the food system.

Others players such as the state have lost influence. The traditional model of the state exercising sovereignty, defined as 'absolute authority within a given territory',²² has eroded. Even if states are not always accountable to their populations, the latter still have the possibility of making a claim that this institution, at least in theory, represents their interests and therefore should act in a manner which fulfils this role. The whole human rights structure and the right to food is based on this premise. Food Sovereignty is an attempt to regain some of this lost sovereignty and to reclaim the democratic right in the decision-making process regarding food policy.²³

2.3. History and Development of the Concept

We will now trace the origins of the concept of food sovereignty to see how its definition has evolved over time and to identify the common elements found in the definitions proposed by CSOs.

The concept of 'food sovereignty' was first proposed at the 1996 World Food Summit²⁴ by Via Campesina²⁵ and defined as,

... the right of peoples to define their own food and agriculture; to protect and regulate domestic agricultural production and trade in order to achieve sustainable development objectives; to determine

the extent to which they want to be self-reliant; [and] to restrict the dumping of products in their markets.²⁶

Over the years the concept has been debated and its definition has evolved. In 2004, the International NGO/CSO Planning Committee for Food Sovereignty (IPC), a global network of NGOs/CSOs²⁷, adopted the following definition which further elaborated on the initial concept.

Food Sovereignty is the right of individuals, communities, peoples and countries to define their own agricultural, labour, fishing, food and land policies, which are ecologically, socially, economically and culturally appropriate to their unique circumstances. It includes the true right to food and to produce food, which means that all people have the right to safe, nutritious and culturally appropriate food and to food-producing resources and the ability to sustain themselves and their societies.²⁸

Others have proposed different definitions but common to most of these are the following principles:

- giving priority to local agricultural production to feed people locally;
- giving access to smallholder farmers, pastoralists, fisher-folk and landless people to land, water, seeds and livestock breeds and credit;
- recognising:
 - the right to food;
 - the right of smallholder farmers to produce food
 - Farmers' Rights;
 - the right of consumers to decide what they consume and how and by whom it is produced;
 - the right of countries to protect themselves from under-priced agricultural and food imports;
 - the need for agricultural prices to be linked to production costs and to stop all forms of dumping;
 - the right of citizens to participate in agricultural policy decision-making;
 - the rights of women farmers who play a major role in agricultural production in general and in food production in particular; and
 - agroecology as a way to produce food and achieve sustainable livelihoods, living landscapes and environmental integrity.²⁹

From the principles identified above the following policies have been proposed in order to achieve food sovereignty:

- 'A *Code of Conduct on the Human Right to Food* to govern the activities of those involved in achieving the right to food, including national and international institutions as well as private actors, such as transnational corporations...
- An *International Convention on Food Sovereignty* that replaces the current Agreement on Agriculture (AoA) and relevant clauses from other WTO agreements...
- A *World Commission on Sustainable Agriculture and Food Sovereignty* established to undertake a comprehensive assessment of the impacts of trade liberalization on Food Sovereignty and security, and develop proposals for change....
- A *reformed and strengthened United Nations* (UN), active and committed to protecting the fundamental rights of all peoples, as being the appropriate forum to develop and negotiate rules for sustainable production and fair trade....
- An *independent dispute settlement mechanism* integrated within an International Court of Justice....
- An international, legally binding *treaty* that defines the rights of smallholder farmers to the assets, resources, and legal protections they need to be able to exercise their right to produce.'³⁰

All these proposals focus on solutions which rely on international law and international organisations - an important feature which will be discussed in greater detail below. Despite the principles of local control or sovereignty outlined earlier, it is worth noting that none of these proposals include local policy solutions.

Having outlined some of the important ideas and policy prescriptions advocated by the proponents of food sovereignty, we will now evaluate its potential contribution to the three important areas in realising the right to food outlined earlier.

3. Food Sovereignty and State Obligations

When discussing the right to food it is important to consider the role of state as the bearer of primary responsibility for ensuring the realization of this right under existing international human rights instruments. Can the concept of food sovereignty help make the state more accountable when exercising responsibility for those

under its jurisdiction? To further explore this question it is important to understand the existing international legal obligations of States.

3.1. International Human Rights Obligations of States

The right to food first attained international legal recognition with the enactment of the *Universal Declaration of Human Rights* (UDHR) in 1948. Paragraph 1 of article 25 provides that '[e]veryone has the right to a standard of living adequate for the health and well-being of himself [sic] and of his [sic] family, including food'. Contrary to the international human rights instruments which followed, the UDHR was explicit in suggesting that the state was not the only entity with human rights obligations. The Preamble of the UDHR indicates that the principles enshrined in this document are:

a common standard of achievement for all peoples and all nations, to the end that every individual and **every organ of society**... shall strive ...to promote respect for these rights and freedoms and by progressive measures...to secure their universal and effective recognition and observance....[my emphasis]

Authors such as Weissbrodt and Kruger therefore argue that businesses may indeed have some obligations under the UDHR arising from this reference to 'organs of society'.³¹ This interpretation is further supported by article 29 which refers to 'everyone' and their duties, and article 30 which states that no 'State, group or person [has] any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms set forth therein'.³²

While the UDHR supports the arguments that attribute human rights obligations of non-state actors, international human rights instruments have traditionally focused on the obligations of the state.

Since 1948, the right to adequate food has been recognised in a number of international legal instruments³³ and is dealt with most comprehensively under the *International Covenant of Economic, Social and Cultural Rights* (ICESCR). In article 11, paragraph 1, of the Covenant, state parties 'recognize the right of everyone to an adequate standard of living for himself [sic] and his [sic] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.' We note that the gender bias in the language used indicates the acceptance of the notion of the traditional male-headed household. This is particularly problematic given the unique role played by women in the food system and their exclusion from decision-making processes that impact its operations. These issues will be further discussed below.

The next paragraph of the Covenant recognises that state parties have an obligation both 'individually and through international co-operation' to take 'the measures, including specific programmes, which are needed' to realise this right. However, states have been 'unwilling to accept that the right to food imposes an absolute obligation on them'.³⁴ A recent General Assembly resolution '[e]ncourages all states to take steps with a view to *achieving progressively* the full realization of the right to food'.³⁵ Similarly, article 2 of the ICESCR speaks of 'achieving progressively the full realization of the rights under the ICESCR including the right to food'. The language of progressive realisation is likely one of the reasons why the right to food may not be taken as seriously as other rights where absolute obligations maintain.

Under the ICESCR the primary responsibility with regard to the right to food clearly rests with national governments.³⁶ In *General Comment 12*, the Committee on Economic, Social and Cultural Rights (CESCR) indicated that '[s]tates have a core obligation to take the necessary action to mitigate and alleviate hunger'.³⁷ It defines the right to food in the following terms: 'The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement'.³⁸ In order to comply with the right to adequate food, states must meet three levels of obligations to 1) respect; 2) protect and 3) fulfill this right:

The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.³⁹

According to Ziegler, the state must not only ensure that the right to food is realised in its own territory, there

...is a minimum obligation which requires States to ensure that their policies and practices do not lead to violations of the right to food in other countries [and] that their own citizens and companies, as well as other third parties subject to their jurisdiction, including transnational corporations, do not violate the right to food in other countries.⁴⁰

As the foregoing discussion has shown, the State plays a pivotal role and has important and wide-ranging responsibilities when it comes to ensuring that the right to food of those living under its jurisdiction and even beyond its borders are respected.

3.2. How useful is the concept of food sovereignty?

Despite the elaborate legal architecture in place to ensure the realisation of the right to food, legal norms and requirements are not enforceable in the same way under international law as they are in a domestic legal system. Although a state may be criticized or censured for not abiding by its legal commitments, most states cannot be forced by a tribunal to uphold the rights under an international covenant to which they are a party. As Hauser puts it, despite progress made 'in defining the international right to adequate food, the implementation in this area of law at the national, regional, and international levels is in its infancy'⁴¹.

Given this problem of enforceability, how useful is the concept of food sovereignty in helping to ensure that the state meets its primary legal responsibilities in realising the right to food of those living under its jurisdiction? Can food sovereignty help the state to reassert its role as the primary actor in the food system? In our view the concept of food sovereignty holds promise in revitalising the state's role as the primary protector of its citizen's right to food in a number of areas which will be discussed below.

3.2.1. Rights-based approach to food issues

The previous section has outlined the state's primary human rights obligations to ensure the realisation of the right to food for those living within as well as outside its borders. States, however, do not always fulfil their obligations when operating in the international arena. For example, a state may agree to implement certain domestic economic reforms as a condition of receiving financial assistance from the IMF or the World Bank even though these programs may constitute violations to the right of food of those living under its jurisdiction.

How effective is the current rights-based approach in tackling the problem raised in this example and can the concept of food sovereignty contribute to enhancing its effectiveness in achieving greater food security?

As indicated earlier by Mowbray, the nature of the international economic system makes it difficult for the current rights-based approach to effectively tackle the problem of hunger. In her view 'the right to food, as currently articulated and employed, is ill-suited to achieve the fundamental structural changes to this system necessary to improve the supply of food to needy individuals and countries'⁴². She identifies a number of reasons. Firstly, the 'state-centric nature of international human rights law limits its effectiveness' in challenging the activities of non-state actors.⁴³ Secondly, by focusing too narrowly on individual violations the concept of human rights 'may miss the broader structural features of the problem' and may therefore not be adequate in providing an analytical framework 'for understanding and addressing harms produced as a result of interactions between different actors, or as an unintended consequence of well-meaning measures'.⁴⁴ Finally, by reducing the 'abstract ideals of justice and human dignity to purely legal devices', its 'textual and institutional limits' can be exploited to resist change and to dissipate the energy inherent in powerful human rights principles.⁴⁵

The above are valid criticisms of a rights-based approach and we will further develop some of these themes below. However, it is worth pointing out that the concept of food sovereignty can, in our view, help to transform the current notion of the right to food into one which can more effectively challenge the operation of the international economic system and its shocking failure to adequately address the problem of hunger.

According to Mechlem, 'the key characteristics of a rights-based approach...are: its basis in human dignity, its explicit acknowledgement of human rights standards, its transparency, accountability and empowerment dimension, particularly through participation, non-discrimination and attention to vulnerable groups.'⁴⁶ To seriously follow this approach 'implies comprehensive implementation of human rights and thereby tackling the difficult issues of underlying beliefs, legitimacy of action, practice of power, and lines of accountability.'⁴⁷

In order to do so, a genuine discussion of these difficult issues has to occur. However, the current dominance of neo-liberal ideology and policy prescriptions to deal with hunger makes it difficult to have such a discussion given the power and influence of the states and international institutions who subscribe to this view. Neo-liberalism's firmly held beliefs in increased efficiency and productive capacities through market reform have not faltered despite the failure of these policies and the continued increase in hunger. If the problem of hunger lies not in the overall lack of food but in the lack of access or entitlement of certain groups to food, as argued by Sen⁴⁸, then new thinking and new solutions need to emerge.

The food sovereignty framework provides an alternative paradigm for the organisation of food production and distribution based on a different set of priorities and values. This new approach could help to tackle more effectively the problem of hunger. Even if the policy prescriptions it proposes may not turn out to be the right ones, challenging the dominant paradigm of neo-liberalism has other salutary benefits. Firstly, it can reveal the ideological nature of this paradigm which is viewed by many of its proponents as ideologically neutral and the 'natural' way in which economic relations should be organised.

Secondly, alternative views of the world necessarily imply discussion and debate over values, the merit of policies and the assessment of outcomes arising from the implementation of certain policies. This is valuable as it holds policies and their proponents accountable for the result. More importantly it provides the space for creative thinking from which understanding of problems may more easily progress and creative solutions more readily found. In sum, food sovereignty provides the necessary policy space to ensure that a full discussion occurs in which all policy options are truly considered. This in turn could help states defend more effectively policies, which they may wish to implement, which do not fit into the neo-liberal mould.

3.2.2. Enhancing the role of the State

Another area in which food sovereignty can make a contribution is in helping the state to fulfil its obligations for realising the right to food within the context of the existing international economic system. The advent of globalisation and the tighter integration of the world's economies have limited

...governments' authority to regulate important national policy areas such as trade, biodiversity and even land policy. The policy space for a nation's own decisions is increasingly reduced, since international norms are prescribing what is possible at the national level. This is particularly visible in WTO agreements...[which] regulate many areas [including] food quality [and]...patents...which earlier had been regulated by national policies.⁴⁹

The food sovereignty framework directly addresses the decreasing regulatory power of the state by suggesting policies which give governments a greater role in all aspects of food and agricultural policy. For example, its emphasis on protecting the rights of local producers and small farmers, giving them better access to productive resources, and on including citizen participation in agricultural policy decision-making necessarily implies an active role for the state.

The democratic discourse of food sovereignty can help to empower developing countries in their relations with more powerful state and non-state actors when they are being pressured to implement internal policy reforms which negatively impact the food rights of those who live within their territories. The right of all societies to have a say on the issues which fundamentally affect them is an important democratic value which most international institutions like the IMF and the World Bank would have difficulty denying. This position can be used to help bolster arguments made by developing states that they cannot agree to some of the policy prescriptions and conditionalities imposed by MLIs as these would put them in a position of violating their human rights obligations and would have the effect of severely undermining their national sovereignty over important matters of state.

The suggestion that the food sovereignty policy framework can revitalise the declining influence of the state, however, must be tempered by the comments of some of its critics who question use of the term 'sovereignty' in an era of globalisation?⁵⁰ 'Is it still useful to refer to the nation state as an agent for policy development, or is the nation state already becoming too weak?'⁵¹ Has the state irrevocably lost important elements of its sovereignty or can a food sovereignty framework help the state regain this loss when developing and enacting policies in the area of food rights?

These questions cannot yet be answered conclusively. However, as our earlier discussion points out, the state is still regarded under international human rights law as having the primary responsibility to ensure that the right to food of those who live under its jurisdiction is realised. As such, the food sovereignty approach suggests

alternative policies which may help the state meet these obligations. It also highlights the values on which the food rights edifice was built.

One must not, however, forget the centralising logic of the current international economic system and the influence of powerful non-state actors. This suggests the importance of examining how these other entities can be made to uphold to the rights and values traditionally ascribed to the state as discussed below.

4. Food Sovereignty and Non-state Actors

4.1. Introduction

The primary obligation imposed on states by the ICESCR 'to achieve progressively the full realization of the right to adequate food'⁵² has not yet succeeded in slowing down the alarming rate at which world hunger has continued to increase. Given the inability of the state to adequately tackle the problem of hunger on its own and the growing prominence of non-state actors within the food system, many international legal scholars now argue that human rights obligations must extend to non-state actors who have not traditionally been the subjects of international law.⁵³ International human rights law is now moving towards the recognition that these non-state actors have some human rights obligations. The degree and extent of these are not yet known. However, many factors can influence the outcome. Can food sovereignty play a role in this shift?

We will assess the extent to which the concept of food sovereignty can be used to make non-state actors more accountable for their actions which have an impact on the right to food. Can the concept of 'food sovereignty' help in shaping the emerging developments in human rights law which would recognize that TNCs and MLIs have human rights obligations? Can food sovereignty policy proposals influence non-state actors in other ways that could help alleviate hunger?

4.2. Impact of non-state actors

In order to answer these questions, we must first look at the impact which non-state actors have on the realisation of the right to food. As indicated earlier, increasing integration and interdependence of the economies of the world has led to an erosion of state sovereignty and therefore minimized the state's ability to act effectively. As one author put it '...the redistribution of structural decision-making power [has gone] away from the state and into global economic institutions, such as the World Bank and the IMF'.⁵⁴ This redistribution of power also affects the gender equality agenda creating a situation whereby 'accountability for women's rights and economic justice now lies with other agents such as corporations and rule-making institutions at the global, regional and sub-regional level.'⁵⁵ The decision-making powers exercised by non-state actors have, in some instances, been exercised in violation of the standards set out in international instruments protecting the right to food. This situation is aggravated by the fact that these institutions and corporations are not democratic in the full sense of that word and often accountable to much narrower constituencies such as powerful donor states or shareholders.

The non-state actors referred to above can be divided into two groupings: Multi-lateral Institutions (MLIs) and Transnational Corporations (TNCs).

4.2.1. Multi-lateral Institutions

The negative impact of some of the policies of the World Bank and the IMF have been well-documented.⁵⁶ One recent study found that after 15 years of agricultural reforms designed by the World Bank and the IMF, Malawi, Zambia and Mozambique continue to face chronic food insecurity.⁵⁷ Introduced as part of wider structural adjustment reforms, loan conditions were placed on these governments including: the abolition of state marketing boards; the removal of subsidies for agricultural inputs such as maize and fertilizer; and the removal of price controls on food.⁵⁸

Another important MLI, the WTO, has been criticized for establishing trading rules that harm developing countries, especially those who suffer most from hunger and poverty.

The WTO's Agreements on Agriculture (AOA) and Trade-related Intellectual Property Rights (TRIPs)...have had a great influence on farming around the world. Together these agreements have strengthened a global system of trade in food and agriculture that supports large-scale, export-oriented, industrial production at the expense of small-scale, sustainable farming.⁵⁹

Farmers in developing countries have been particularly affected by these policies and:

... frequently find themselves unable to compete with the prices of cheap imported agricultural products and food. Their situation is all the worse since the TRIPs Agreement also fails to recognise the traditional knowledge of farmers and indigenous groups and works against the transfer of technology that might assist farming and food security in the South.⁶⁰

In fact the TRIPs agreement has, according to Mulvany, many potentially dangerous consequences. It threatens the diversity upon which local food systems depend by requiring the privatization of genetic resources.⁶¹

Article 27.3(b) requires all members of the WTO to provide plant variety protection through patents or *sui generis* forms of monopoly rights. It imposes a system that weakens informal sector knowledge systems and thereby facilitates the concentration of knowledge and power.' [This] 'has led to increased concentration of ownership of genetic resources for food and agriculture with only ten corporations controlling more than 30 per cent of global seed sales.'⁶²

Despite the longstanding concerns expressed above with regard to current MLI policies, World Bank and International Monetary Fund representatives still insisted at a trade meeting in 2004, 'that trade liberalization was a necessary condition for food security...[and] suggested that attempts to circumscribe agricultural liberalization in developing countries would damage food security.'⁶³

In light of the failure of neo-liberal economic policy to effectively deal with the problem of hunger, such strong and unqualified statements demonstrate a doctrinaire and ideological approach to these issues.

4.2.2. Transnational Corporations

The other group of non-state actors considered in this article, TNCs, have an important impact on the realisation of the right to food given their dominant position in the global economy. Fifty of the world's hundred largest economic entities are corporations⁶⁴ and 'the top 200 corporations control around a quarter of the World's total productive assets'.⁶⁵ This general trend also holds true for the TNCs involved in the food system.

Agriculture constitutes 65 percent of the global economy, and corporate centralization is unsurprising: 'the top ten agrochemical companies control 81 percent of the \$29 billion global agrochemical market. Ten life science companies control 37 percent of the \$15 billion per year global seed market. The world's ten major pharmaceutical companies control 47 percent of the \$197 billion pharmaceutical market. Ten global firms now control 43 percent of the \$15 billion veterinary pharmaceutical trade' and 10 transnational food and beverage companies' combined sales exceeded \$211 billion in 1995 (Rifkin, 1998: 68).⁶⁶

Some have argued that this position of dominance fosters a dependency on their products which further consolidates their dominance. According to Kneen, the food system is being restructured by corporations such as Cargill and Monsanto to create dependency and ensure corporate profits.⁶⁷ He cites the example of the food giant Monsanto who is attempting 'to shape the character of agriculture, seed by seed and farm by farm, so as to create global dependency on its genetic technologies. It is doing so by installing its agenda, through genetic engineering, into the seed of the world's major commercial crops'.⁶⁸

The above example is one of many which illustrate the important influence of TNCs over the food system – in this case food production. This influence has rapidly increased in the past decades and continues unabated.

4.3. Human Rights Obligations of Non-State Actors

Given the enormous power and influence wielded by the non-state actors and the impact they can have on the enjoyment of the right food, it is important to examine the existing mechanisms of accountability which protects against violations of this right. One such mechanism is the international human rights regime which, until recently, was considered as only regulating state action. However, a shift in this thinking is currently underway.

This view has been expressed forcefully by the UN Special Rapporteur for Food Jean Ziegler.

In a context of globalization, when national Governments no longer enjoy a full monopoly on power, it is also essential to extend human rights obligations to other powerful actors, such as international organizations and private transnational corporations.'⁶⁹

In his 2006 Report, Ziegler summarises the current debates regarding the responsibilities of international organisations and transnational corporations with regard to food and concludes that both of these non-state actors do indeed have international human rights obligations.⁷⁰ While his views do not yet represent a consensus among international lawyers, they do demonstrate a growing interest in using human rights law to make non-state actors accountable. An important discussion is now taking place about how to make human rights law relevant in an era of diminishing state sovereignty.

This report highlights a growing body of opinion that international organizations 'are bound by the international law with regard to the human right to food'⁷¹. Citing recent scholarship in the area, he outlines a legal framework based on the same three levels of obligations ascribed to states.

Firstly, the obligation to respect the right to food,

requires international organizations to ensure that their advice, policies and practices do not lead to violations of the right to food. ... This means that these organizations should not promote 'development' projects that would result in forced displacement or the destruction of sources of livelihood... It also means that actions and decisions of the World Bank, IMF and WTO should not increase people's food insecurity in a given country, including the poorest people. Adjustment measures should not be implemented without carrying out impact studies on vulnerable groups, and putting in place necessary safety nets in advance to ensure that they will not result in starvation or chronic malnutrition. The WTO would also have to take due account of the human rights obligations of its members and should advise against the adoption of trade policies that may have negative impacts on the right to food.⁷²

Secondly, the obligation to protect the right to food,

... requires international organizations to ensure that their partners, whether States or private actors, including transnational corporations, do not violate the right to food, ... WTO organs with decision-making power, such as the Dispute Settlement Body (DSB), should protect the right to food in judicial decisions and should ensure that interpretations of WTO law are compatible with the human rights obligations of its member States regarding the right to food.⁷³

Thirdly, the obligation to support the fulfilment of the right to food,

... requires international organizations to facilitate the realization of the right to food and to provide necessary assistance when required for all people, indigenous, minorities and vulnerable groups. This should include facilitating the capacity of all people to feed themselves, as well as helping to ensure emergency support when they cannot feed themselves for reasons beyond their control. In developing countries, where up to 80 per cent of the population may depend on agriculture, small-scale agriculture should form the basis of food security strategies, as non-agricultural employment is often inadequate to absorb all those forced out of agriculture. The WTO should also ensure that the trade rules adopted are raising the standard of living worldwide, and should not allow the persistence of current inequities in rules on agricultural trade.⁷⁴

It is interesting to note that many of the ideas of food sovereignty are reflected in Ziegler's observations. For example, his emphasis on protecting small-scale agriculture and his concern with the impact of inequitable trade rules and structural adjustment programs are shaped by advocates of food sovereignty. It is likely that Ziegler's observations regarding food sovereignty have been influenced by the current debate and proposals put forward by its advocates.

In his 2006 report, Ziegler expressed similar views with regard to TNC obligations supported by the view expressed by the Secretary-General that 'the global reach of TNCs is not matched by a coherent global system of accountability'.⁷⁵ However, he then goes on to explain that corporations can be made to respect human rights in two ways:

[Firstly, they] can be held to account indirectly by Governments which have a duty to protect their people and people living in other countries against negative impacts on the right to food of third parties... [Secondly,] there is a growing perception that corporations can also be held to account for human rights directly, through the development of direct human rights obligations, intergovernmental instruments and voluntary codes of conduct.⁷⁶

The developments described above demonstrate that the traditional state-centric system of human rights accountability is currently in flux in an attempt to cope with the new realities of globalisation and the emergence of new and powerful non-state actors in the global food system. The weakening of the state and the emergence of these new actors has challenged the relevance of the existing legal and policy framework currently governing food rights. The worsening food crisis is making it abundantly clear that the powerful and influential are not sufficiently accountable for their policies and actions.

What the above discussion has shown is that there is a need to regulate non-state actors more effectively in order to match the power and influence they exercise with a more coherent and effective global system of accountability. In endeavouring to make non-state actor more accountable and to regulate their activities more effectively, proponents of food sovereignty can make the following contributions.

Firstly, as supporters of a rights-based approach, they can become more involved in the discussions and debates to argue that existing international human rights law should apply to non-state actors. The emphasis on sovereignty and the recapturing of it in the area of food rights helps to extend traditional state-centric notions of human rights to include other actors. If states have lost or relinquished some of the sovereignty they had exercised in the past, it follows that the notion of the exclusivity of state human rights obligations should also be re-examined in light of this shift.

Secondly, criticisms of the current food system and its imposition of a single model of food production and agriculture on the world by advocates for food sovereignty is based on an intimate understanding of local agricultural and production and food systems. In this manner, the food sovereignty perspective can contribute to the discussion and a better understanding of the complexity and multi-faceted nature of food production which can help to counter the neo-liberal arguments based on efficiency alone.

Thirdly, concepts of food sovereignty can also influence discussion and debate in the non-legal forums where TNCs are attempting to self-regulate in order to avoid the imposition of any legal regulatory schemes either at the national or international levels. Food sovereignty advocates must lay claim to these policy spaces and participate in an attempt to influence the debate and eventual outcomes. The UN's Global Compact, an international learning forum whose members include some of the most powerful TNCs involved in the food system, is a good example of where policies are discussed and from which actions eventually arise. It is important to throw the ideas of food sovereignty on the discussion tables so that they may be considered and have an impact on the future actions of TNCs and governments.

Despite the fact that food sovereignty is currently being advocated primarily by NGOs/CSOs, one should not underestimate the usefulness of this discourse and the influence it can have on state and non-state actors when this concept becomes part of the public debate.

In his analysis on nation states that come under pressure for human rights violations, Risse (1999: 551) shows the 'civilizing effect of public deliberation'. In his view, those oppressive states start a process of 'argumentative self-entrapment'. When reacting to critics, those states might have started 'talking the talk for purely instrumental reasons but then are increasingly forced to justify their behavior in front of international and domestic audiences until they are engaged in a true dialogue with their critics. (Risse, 1999: 531).'⁷⁷

Finally, the ideas proposed by the food sovereignty framework can be utilised by activists and human rights groups to mobilise public opinion, influence policy, deepen our understanding and challenge existing notions about the right to food, and to set the standards or values by which the actions of non-state actors will be judged. However, the process of stimulating debate and generating new ideas must not overlook gender as an important dimension of the problem.

5. Food Sovereignty and Gender

5.1. Introduction

As indicated earlier, it is important to adopt a gender perspective when looking at the problem of hunger. In what follows, we will examine whether the concept of food sovereignty has sufficiently addressed the gendered dimensions of hunger. Can food sovereignty be further developed to bring a gender perspective to our understanding and interpretation of the right to food.

5.2. What is a Gender Perspective?

A gender perspective is one which recognizes that a fundamental inequality exists in all societies between men and women in most if not all spheres of life and that this inequality is 'the product of socially constructed power relations, norms and practices'.⁷⁸ Furthermore, these inequalities 'are reproduced through a variety of practices and institutions, including policy interventions'.⁷⁹

To take a gender perspective is to adopt an analytical approach which 'assumes that societies, their social relations, economies and power structures contain deeply etched gender divisions'.⁸⁰ Such an approach critically looks at the institutions that are produced in order to reveal the gender inequities that exist and to find ways in which these inequalities can be addressed. Finally, it seeks to discover the silences that exist with regard to issues of importance to women and attempt to explain why they exist.

The importance of adopting a gender analysis is well summarized in a 2005 report issued by the United Nations Research Institute for Social Development (UNRISD). The report concludes that:

While there is increasing concern with gender inequalities in some arenas...the attention paid in public policy is often selective. The resulting silences and omissions are revealing: for example, markets and macroeconomic flows (trade, capital) are not always subjected to gender analysis, the implicit assumption being that they are essentially benign and gender-neutral. However, the report finds that this is true neither of the economy nor of the family; nor do states, communities, political parties or 'progressive' social movements necessarily operate in gender-neutral ways.⁸¹

5.3. The Importance of Adopting a Gender Perspective

In our view the existence of gender bias requires that we bring a gender perspective to the issue of hunger and food security for the reasons elaborated below.

Firstly, women play an important role as main food producers in the rural areas of developing countries where hunger is most prevalent. Nobel Prize laureate Wangari Maathai has described African women as 'the primary caretakers, holding significant responsibility for tilling the land and feeding their families'.⁸² According to Women's Environmental and Development Organization, '[w]omen are responsible for 70-80 percent of household food production in Sub Saharan Africa, 65 percent in Asia, and 45 percent in Latin America and the Caribbean'.⁸³

As a result of these responsibilities, women suffer most from the increase in large-scale industrial agriculture which has a negative impact on small producers:

Women are the main food producers and processors in most of the rural areas of the Third World, and they must have access to clean water and firewood for fuel. As their land is lost to corporate farms and as water sources are polluted by agricultural runoff from fertilizer and pesticides, rural women are forced to travel farther and farther in search of clean water, sometimes as far as twenty kilometers from their home. Because the amount they can carry is limited, they may have to fetch water several times a day, adding more hours to their hard labor to sustain the meager diets of their families.⁸⁴

Despite this critical role, women lack access to productive assets such as land, credit and education and, as in other areas, women's work in food production is undervalued.⁸⁵ 'In Sub Saharan Africa, women produce 80 per cent of the crops, but own only one per cent of the land. When a woman does own her land, her holdings tend to be smaller and less fertile than those of men'.⁸⁶

Land reform schemes have not improved this situation as new land titles are usually registered under the name of the male household head.⁸⁷ Furthermore, 'African women receive less than ten per cent of the credit [given] to small farmers and one per cent of the total credit to agriculture'.⁸⁸

Secondly, women have the most at stake with regard to the food policies but are hardly consulted and have little say over food policies that are largely made by men. This is a terrible loss as women farmers are the most reliable natural resources managers and have significant knowledge about ecosystems, land-use patterns, plants with highest nutritional and medicinal value, and ecologically sound farming practices.⁸⁹

Women best understand hunger because of their role in feeding their families and because they are the most vulnerable to malnourishment often eating least and eating last.⁹⁰

Vulnerability to malnutrition is greater to girls and women who may be discriminated against in access to food and health care, experience rape or early and closely-spaced pregnancies, and whose nutritional needs are higher during pregnancy and lactation.⁹¹

Esterik argues that 'food security cannot be realized until women are centrally included in the policy discussions about food as a human right and until food issues are analyzed from a gender perspective'.⁹² The paradox is that '[w]omen are *most likely* to be feeding their families on a daily basis, and *least likely* to be involved in shaping the policies that determine the food system they must access'.⁹³ The movement of food is male controlled at the regional, national and international levels 'but the mediators of food at the individual, household and community levels are usually women'.⁹⁴ As hunger felt by individuals and not states, Esterik argues for the importance of including women in policy planning:

It is thus critical that women's role in alleviating hunger be more fully recognized and integrated into policy planning. Policies must include consideration of such labor intensive practices as breastfeeding infants, feeding toddlers, supervising child feeding, coaxing sick and elderly to eat, as well as producing, processing, preparing, marketing and trading food.⁹⁵

Proposed policy frameworks such as food sovereignty must incorporate policies which address the important roles uniquely played by women if they wish to provide truly effective policy alternatives to current policies which do not account for this reality. Without this perspective, the right to food, as elaborated in international human rights law, can never be fully realized. None of the food sovereignty materials consulted in our research adequately address these issues.

Thirdly, some authors have argued that women not only have a right to be fed but also a right to feed.⁹⁶ In many parts of the world a woman's 'sense of self is based on her ability and her right to feed her family'.⁹⁷ As providers of food to her family women gain a source of power which 'is lost when others take over the right to feed and when efficiency is privileged over empowerment'.⁹⁸ Furthermore, 'the experience of being unable to feed their children is tantamount to torture (direct food deprivation is part of the definition of torture)'.⁹⁹

These important insights deepen our understanding of hunger and its gendered dimensions. The food sovereignty framework must integrate these insights in order to be a truly innovative and transformative concept. This is certainly possible as one of its essential values is to privilege empowerment over efficiency.

5.4. Gender and food sovereignty

Having established the importance of adopting a gender perspective in addressing food issues, we will now evaluate the concept of food sovereignty with regard to this concept. As indicated in the UNRISD report cited above, 'progressive' social movements do not necessarily operate in gender-neutral ways. It is therefore important to examine whether the concept of food sovereignty, as currently elaborated, has sufficiently focused on the issues that affect most women. Does it fully embrace a gender perspective? How it can be further developed in order to incorporate a gender perspective?

There is no doubt that the definitions of food sovereignty outlined above address issues which are relevant to both men and women. But is the overall framework gender neutral? Of the ten common elements characterising food sovereignty, cited earlier, only one speaks directly to issues unique to women: 'the recognition of the rights of women farmers who play a major role in agricultural production in general and in food production in particular'. Given what was stated earlier, this element only recognizes what is obvious in fact - women do play a major if not a primary role. It does not, however, recognize the uniqueness of this role and the appropriate policy prescriptions that should follow. Furthermore, this statement lacks the specifics of other elements such as access to productive resources such as land, water and seeds; the right of smallholders to produce food; the right of consumers to decide what they consume; the right of countries to protect themselves from under-priced agricultural and food imports, etc.

As women play a primary role in the production of food and in feeding their families, one would expect their needs to be more prominently reflected in the food sovereignty approach. Of the four priority areas for action articulated by the International NGO/CSO Planning Committee for Food Sovereignty (IPC) in 2002, only one specifically mentions women.¹⁰⁰ Priority one seeks to promote the adoption of a rights-based approach to food and agricultural policies but does not mention women or gender. A recognition of the gender dimensions to the problem and of the international human rights instruments which prohibit gender discrimination would have better focused this priority to meet the crucial gender dimension of the problem. The second priority seeks to expand access to productive resources does mention the needs of women but only in the context of agrarian reform.

The third priority seeks to 'promote family and community-based agroecological models of food production'.¹⁰¹ The use of 'family' is problematic, as feminist critiques have pointed out, because it assumes that the 'family' or 'household' are unbiased or gender-neutral institutions in which women enjoy the same allocation of food and decision-making powers. This is not the case especially in the rural areas of developing states where patriarchy is firmly entrenched.

Priority four seeks to 'promote equitable trade policies which enable communities and countries vulnerable to hunger and malnutrition to produce sufficient quantities of safe and secure food supplies and which militate against the negative effects of subsidized exports, food dumping, artificially low prices and other similar elements characterizing the current model of agricultural trade'.¹⁰² Again there is no mention of the gender dimension to trade. How does one achieve 'equitable trade policies'. From a gender perspective, the empowerment of women and their inclusion in the decision-making processes is an important omission to this last priority.

Earlier, we described some of the main policy proposals being put forward to achieve food sovereignty. What is common to all these proposals is that they seek solutions at the international level that involve the development of international legal instruments or codes or on the actions of international organisations.

From a gender perspective, some observations should be made with regard to these proposals. Feminist scholars have long argued that international legal instruments have a gender bias and often do not adequately protect the rights and interests of women. In their view the 'international legal order reflects a male perspective and ensures its continued dominance'.¹⁰³ In both state structures and international bodies women are either 'unrepresented or underrepresented in the national and global decision-making processes'¹⁰⁴ including in UN human rights bodies.¹⁰⁵

Secondly, the view that the norms of international law are neutral 'has allowed issues of particular concern to women to be ignored or undermined'¹⁰⁶. The exclusion of domestic or private sphere from the ambit of the law is problematic as it prevents the law from considering the unequal distribution of power and resources within the household. This reality has an important impact on a woman's enjoyment of her right to food in the ways discussed above.

Finally it should be pointed out that without explicit language to address women's issues and without their involvement, gender concerns will fall by the wayside. A recent paper prepared and presented to the UN by a number of international women's groups¹⁰⁷ criticized the UN's efforts at gender mainstreaming. It has too often become a policy of 'add women and stir' without questioning basic assumptions, or ways of working.¹⁰⁸ Food sovereignty proposals for reinvigorating the UN will not necessarily advance the cause of gender equality with regard to food.

To conclude, this section has shown is that women experience hunger in different ways than men and play a different and primary role as food providers and food producers in the global food system. For these and other reasons, it is important to have a gender perspective in order to fully realise the right to food.

In evaluating the concept food sovereignty in relation to women, we must conclude that, despite a general recognition of their rights within the food system, it has not yet proven to be a useful framework for understanding the gendered dimensions of hunger and poverty and for articulating the crucial importance of including women's voices in this discussion. As vital stakeholders in the food system, women must be involved in the process of policy development and decision-making to ensure that their essential insights can influence how policy must develop in order to ensure that their right to food is fully realised.

6. Conclusion

This paper has set out to assess the usefulness of a new concept, food sovereignty, which was described as a 'new and positive development'¹⁰⁹ in approaching the right to food. How useful is it in bringing about new solutions to problem of hunger and to make the main players in the food system more accountable to those who suffer from hunger?

Under international human rights law the state has primary obligation to ensure the realisation of the right to food. However, this important role is becoming more difficult to fulfill given the changing global economic environment and the emergence of powerful non-state actors such as multilateral institutions whose policies limit the state's ability undertake policy to deal with the issue of poverty and hunger. Food Sovereignty, in our view,

holds the promise of revitalising the state by providing the necessary policy space to challenge the existing neo-liberal orthodoxy and by reintroducing some of the values which underpin the right to food. Furthermore, the democratic discourse of food sovereignty can be used by the state to gain more leverage in its discussions with the other powerful actors by reclaiming sovereignty over important national concerns such as food security and democratic participation and decision-making with regard to issues as vital as food.

The global system of accountability has been well developed for the state but still does not match the power wielded by MLIs and the global reach of TNCs. This situation is changing as human rights law and other mechanisms, such as voluntary codes of conduct, are evolving to meet these new challenges. The need for the regulation of non-state actors, in order to match their power and influence, has created a momentum and opportunities for proponents of food sovereignty to put forward their ideas and influence future regulation and public opinion. As Risse pointed out, public debate and deliberation can have the beneficial effect of creating a true dialogue in which proponents of food sovereignty can use their deep understanding of the complexities of the food system to counter existing orthodoxies which have failed to effectively tackle the scourge of hunger.

One important constituency, women, has been systematically ignored in past and current approaches to the right to food. The last section has shown that a gender perspective is essential for the full realization of the right to food of all humans. This approach is necessary as women play a unique role in the food system and are most affected by hunger yet their interests have not been adequately considered and they are excluded from decision-making. As a nascent concept, food sovereignty has not yet demonstrated that it has adequately considered and integrated the important insights that a gender perspective brings to the discussion. It must do so in order to be a truly effective alternative policy framework to the ideas which currently grip the global food system.

In our view, food sovereignty provides a policy framework which can help a rights-based approach to food expand its reach to include both the powerful non-state actors, who have traditionally been excluded from the purview of human rights scrutiny, and women, a neglected constituency who have been ignored or made invisible by the male-centered human rights discourse. A paradigm shift in human rights law is needed to include both these important groups in order to make non-state actors accountable for their decisions and to allow the perspectives of women to inform our understanding of the right to food and the way in which it is to be realised.

Endnotes :

¹ Ziegler (2005a), para. 3.

² FAO (2008) *The State of Food Insecurity in the World 2008*
<http://ftp.fao.org/docrep/fao/011/i0291e/i0291e00a.pdf> 16 March 2009.

³ <http://www.worldhunger.org/articles/Learn/world%20hunger%20facts%202002.htm>; see also Mowbray, J. (2007) at p. 547.

⁴ Ziegler (2006), para. 8.

⁵ Estimated population in 2000 taken from the Population Resource Centre,
<http://www.prcdc.org/summaries/worldpop/worldpop.html> 11 May 2007.

⁶ Windfuhr, M. and Jonsen, J. (2005) at p. 3.

⁷ FAO (2005) *The State of Food Insecurity in the World 2005*
<http://ftp.fao.org/docrep/fao/008/a0200e/a0200e.pdf> 10 July 2006.

⁸ United Nations Research Institute for Social Development (UNRISD) (2005) at p. 6.

⁹ Mowbray, J. (2007) at p. 556.

¹⁰ Ibid.

¹¹ Ibid. at p. 557.

¹² Windfuhr, M. and Jonsen, J. (2005), pp. 3-9.

¹³ Hauter, W. (2007), p. 1082.

¹⁴ Ibid., pp. 6-7

¹⁵ McMichael, P. (2000), p. 23.

¹⁶ Windfuhr, M. and Jonsen, J. (2005), p. 8

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ McMichael, P. (2000), p. 21.

²² Stanford Encyclopedia of Philosophy.

²³ See Mowbray, J. (2007), p. 567.

- ²⁴ See Windfuhr, M. and Jonsen, J. (2005), pp. 11-13.
- ²⁵ An NGO representing peasant and farm families.
- ²⁶ Ziegler, J. (2004).
- ²⁷ <http://www.foodsovereignty.org/public/index/indexeng2.php> 28 August 2006.
- ²⁸ Windfuhr, M. and Jonsen, J. (2005), p. 12.
- ²⁹ Ibid. see p. 13.
- ³⁰ Ibid. see pp. 15-16.
- ³¹ Weissbrodt, D. and Kruger, M. (2005), p. 234.
- ³² Ibid.
- ³³ These include the UNDHR, already mentioned above and the articles 24 and 27 of the Convention on the Rights of the Child (CRC). It is interesting to note that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not deal with this important issue except for a passing mention in its preamble which expresses concern 'that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs' and the obligation found in article 12 for states to ensure that pregnant women have the appropriate services in connection with pregnancy, including 'adequate nutrition during pregnancy and lactation'.
- ³⁴ Marcus, David (2003), p. 249.
- ³⁵ Ibid.
- ³⁶ See Ziegler, J. (2006).
- ³⁷ Committee on Economic, Social and Cultural Rights (2003), para 6.; see also Ziegler, J. (2006).
- ³⁸ Committee on Economic, Social and Cultural Rights (2003).
- ³⁹ Committee on Economic, Social and Cultural Rights (2003), para 15.
- ⁴⁰ Ziegler, J. (2006), para 34.
- ⁴¹ Hauter, W. (2007), p. 1088.
- ⁴² Mowbray, J. (2007), p. 546.
- ⁴³ Ibid, p. 557.
- ⁴⁴ Ibid, p. 558.
- ⁴⁵ Ibid.
- ⁴⁶ Mechlem, K., (2004), p. 646.
- ⁴⁷ Ibid.
- ⁴⁸ See Sen, A. (1982)
- ⁴⁹ Windfuhr, M. and Jonsen, J. (2005), p. 29.
- ⁵⁰ Ibid.
- ⁵¹ Ibid. pp. 32-33.
- ⁵² Committee on Economic, Social and Cultural Rights (2003), para 14 regarding article 11 of the ICESCR.
- ⁵³ These new legal developments are summarized in the recent reports (2004-2006) of the UN's Special Rapporteur on the right to food to the Commission on Human Rights and to the General Assembly; also see Clapham, A. (2005) *Human Rights Obligations of Non-State Actors* (Oxford University Press: Oxford and New York).
- ⁵⁴ Evans, T. (2002), p. 210.
- ⁵⁵ Randriamaro, Z. (2004), p. 8.
- ⁵⁶ See Murphy, S. (2005) 'Securing Enough to Eat'.
- ⁵⁷ Lawson, M. (2002), p.1.
- ⁵⁸ Ibid, pp. 3-4.
- ⁵⁹ Friends of the Earth International (2001) *Sale of the Century? Peoples' Food Sovereignty: Part I - the Implications of Current Trade Negotiations*, p. 1, also see Murphy, S. (2005), pp. 11-14.
- ⁶⁰ Ibid.
- ⁶¹ Mulvany, P. (2005), p. 68.
- ⁶² Ibid.
- ⁶³ Murphy, S. (2005), p. 14.
- ⁶⁴ <http://www.corporations.org/system/top100.html>, compiled by Sarah Anderson and John Cavanagh of the of the Institute for Policy Studies in their Report on the Top 200 corporations released in December 2000, 3 September 2006.
- ⁶⁵ Ziegler, J. (2006), para. 47.
- ⁶⁶ McMichael, P. (2000), p. 25.
- ⁶⁷ Kneen, B. (1999), p. 161.
- ⁶⁸ Ibid., p. 163.
- ⁶⁹ Ziegler (2006), para. 18.
- ⁷⁰ Ziegler (2006).

- ⁷¹ Ibid., para 41.
⁷² Ziegler (2006), para 43.
⁷³ Ibid. para 44.
⁷⁴ Ibid. para 45.
⁷⁵ Ibid. para 46.
⁷⁶ Ibid. para 48
⁷⁷ Scherer, A., Palazzo, G. and Baumann, D. (2004), p. 24.
⁷⁸ United Nations Research Institute for Social Development (UNRISD) (2005), p. xx.
⁷⁹ Ibid., p. xix.
⁸⁰ Ibid. p. xx.
⁸¹ Ibid. p. xx.
⁸² Working Group on Climate Change and Development (2005), p. 29.
⁸³ Women's Environment and Development Organization (WEDO).
⁸⁴ Peterson and Runyan (1999), pp. 148-149.
⁸⁵ Working Group on Climate Change and Development (2005), p. 29.
⁸⁶ Ibid.
⁸⁷ Ibid.
⁸⁸ Ibid.
⁸⁹ Ibid. pp. 149-151.
⁹⁰ Ibid. p. 228.
⁹¹ Van Esterik, P. (1999), p. 228.
⁹² Ibid, p. 225.
⁹³ Ibid. p. 231.
⁹⁴ Ibid.
⁹⁵ Ibid. p. 231.
⁹⁶ See Van Esterik, P. (1999).
⁹⁷ Van Esterik, P. (1999), p. 229.
⁹⁸ Ibid.
⁹⁹ Ibid.
¹⁰⁰ See Windfuhr, M. and Jonsen, J. (2005), p. 14.
¹⁰¹ Ibid. p. 14.
¹⁰² Ibid. pp. 14-15.
¹⁰³ Charlesworth, H., Chinkin, C. and Wright, S. (1991), p. 621.
¹⁰⁴ Ibid., p. 622.
¹⁰⁵ Ibid, p. 624.
¹⁰⁶ Ibid.
¹⁰⁷ Rao, A. (2006) 'Gender Equality Architecture and UN Reforms'.
¹⁰⁸ Ibid, p. 2.
¹⁰⁹ Ziegler, J. (2004).

References:

Charlesworth, H., Chinkin, C. and Wright, S. (1991) 'Feminist Approaches to International Law', *American Journal of International Law* 85, pp. 613 - 645.

Clapham, A. (2005) *Human Rights Obligations of Non-State Actors* (Oxford University Press: Oxford and New York).

Committee on Economic, Social and Cultural Rights (2003) *General Comment no. 12, The Right to Adequate Food (Art. 11)* (E/C.12/1999/5).

Evans, T. (2002) 'A Human Right to Health?', *Third World Quarterly* 23(2), pp. 197 - 215.

FAO (2005) *The State of Food Insecurity in the World 2005*
<http://ftp.fao.org/docrep/fao/008/a0200e/a0200e.pdf> 10 July 2006.

FAO (2008) *The State of Food Insecurity in the World 2008*
<http://ftp.fao.org/docrep/fao/011/i0291e/i0291e00a.pdf> 16 March 2009.

Friends of the Earth International (2001) *Sale of the Century? Peoples' Food Sovereignty: Part 1 - the Implications of Current Trade Negotiations* <http://www.fao.org/righttofood/kc/downloads/vl/docs/AH283.pdf> 23 March 2009.

Hauter, W. (2007) 'The Limits of International Human Right Law and the Role of Food Sovereignty in Protecting People from Further Trade Liberalization under the Doha Round Negotiations', *Vanderbilt Journal of Transitional Law* 40, pp. 1071-1098.

Kneen, B. (1999) 'Restructuring food for corporate profit: The corporate genetics of Cargill and Monsanto', *Agriculture and Human Values* 16, pp. 161-167.

Lawson, M. (2002) 'Death at the Doorstep of the Summit', Oxfam briefing paper no. 29, Oxfam International http://www.oxfam.org.uk/what_we_do/issues/debt_aid/downloads/bp29_death.pdf 2 September 2006.

Marcus, David (2003), "Famine Crimes in International Law", 97 *The American Journal of International Law* 245-281.

Mechlem, K., (2004) 'Food Security and the Right to Food in the Discourse of the United Nations', *European Law Journal* 10(5) pp. 631-648.

McMichael, P. (2000) 'The Power of Food' *Agriculture and Human Values* 17(1) pp. 21 - 33.

Mowbray, J. (2007) 'The Right to Food and the International Economic System: An Assessment of the Rights-Based Approach to the Problem of World Hunger', *Leiden Journal of International Law* 20, pp. 545 - 569.

Mulvany, P. (2005) 'Corporate Control Over Seeds: Limiting Access and Farmer's Rights', *IDS Bulletin* 36(2), pp. 68 - 73.

Murphy, S. (2005) 'Securing Enough to Eat', International Institute for Sustainable Development, Winnipeg, Canada, http://www.iisd.org/pdf/2005/trade_securing_enough_to_eat.pdf 16 February 2006.

Peterson, V. Spjke and Runyan, Anne Sisson (1999) *Global Gender Issues* (2nd Edition), Westview Press, Boulder Colorado.

Randriamaro, Z. (2004) "'We, the Women': The United Nations, Feminism and Economic Justice", www.awid.org 2 September 2006.

Rao, A. (2006) 'Gender Equality Architecture and UN Reforms' Paper for submission to the UN Secretary-General's High Level Panel on System-wide Coherence by the Center for Women's Global Leadership (CWGL) and the Women's Environment and Development Organization (WEDO) <http://www.wedo.org/files/Gender%20Equality%20Architecture%20and%20UN%20Reform0606.pdf> 30 August 2006.

Scherer, A., Palazzo, G. and Baumann, D. (2004) 'Global Rules And Private Actors – Towards A New Role Of The TNC In The Global Governance', Unpublished Paper presented at the International Conference on 'Voluntary Codes of Conduct for Multinational Corporations: Promises and Challenges', NYU, New York City, May. 12-15, 2004 <http://www.iou.unizh.ch/bwl/downloads/1106844930Scherer%20Palazzo%20Baumann%20final%20ex.pdf#search=%22scherer%20palazzo%22> 2 September 2004.

Sen, A. (1982) *Poverty and Famines: an Essay on Entitlement and Deprivation* (Oxford University Press: New York).

Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/sovereignty/> 16 July 2006.

United Nations Research Institute for Social Development (UNRISD) (2005) *Gender Equality: Striving for Justice in an Unequal World* (Geneva: UNRISD/UN Publications).

Van Esterik, P. (1999) 'Right to food; Right to Feed; Right to be Fed: The Intersection of Women's Rights and the Right to Food', *Agriculture and Human Values* 16(2), pp. 225-232.

Weissbrodt, D. and Kruger, M. (2005) 'Human Rights Responsibilities of Businesses as Non-State Actors', in Alston, P. (ed.) *Non-State Actors and Human Rights* (Oxford University Press: New York).

Windfuhr, M. and Jonsen, J. (2005) *Food Sovereignty: Towards Democracy in Localized Food Systems* (Rugby: ITDG Publishing)

http://www.ukabc.org/foodsovereignty_itdg_fian_print.pdf#search=%22Windfuhr%20Food%20Sovereignty%20democracy%22 21st May 2006.

Working Group on Climate Change and Development (2005) 'Africa – Up in Smoke?: The Second Report from the Working Group on Climate Change and Development',

http://www.oxfam.org.uk/what_we_do/issues/climate_change/downloads/africa_up_in_smoke.pdf?m=234&url=http://www.oxfam.org.uk/what_we_do/issues/conflict_disasters/downloads/asylum_wpaper.pdf 3 February 2006.

Ziegler, J. (2006) 'Economic, Social and Cultural Rights: The Right to Food', Report submitted by the Special Rapporteur on the Right to Food, Jean Ziegler, to the Commission on Human Rights (E/CN.4/2006/44).

_____ (2005a) 'Economic, Social and Cultural Rights: The Right to Food', Report submitted by the Special Rapporteur on the Right to Food, Jean Ziegler, to the Commission on Human Rights (E/CN.4/2005/47).

_____ (2005b) 'The Right to Food', Interim Report of the Special Rapporteur of the Commission on Human Rights on the Right to Food, Jean Ziegler, to the General Assembly (A/60/350).

_____ (2004) 'Economic, Social and Cultural Rights: The Right To Food', Report submitted by the Special Rapporteur on the Right to Food, Jean Ziegler, to the Commission on Human Rights (E/CN.4/2004/10).

_____ (2001) 'Economic, Social and Cultural Rights: The Right To Food', Report submitted by the Special Rapporteur on the Right to Food, Jean Ziegler, to the Commission on Human Rights (E/CN.4/2001/53).