

**Written contribution submitted by FIAN International
on Women's Access to Justice When Claiming the Right to Adequate Food
to the Committee on the Elimination of Discrimination against Women
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This contribution¹, whose purpose is to provide an overview of five sets of practical hurdles that women face as they seek access to justice when claiming the right to adequate food, was prepared by FoodFirst Information and Action Network (FIAN) International, an international and non-governmental human rights organization for the right to adequate food. FIAN International is represented in 20 countries around the world, and with individual members in more than 50 countries. FIAN's International Secretariat is located in Heidelberg, Germany and through its permanent representation in Geneva, Switzerland, FIAN exercises its consultative status with the Economic and Social Council.

The information contained in this contribution derives from case analysis and field experience. The analysis is based *inter alia* on information exchanged with affected communities during the process of documenting cases on the right to adequate food and elaborating case strategies, and on workshops and seminars with judges, lawyers and other judicial officers mainly at national level. Information was also obtained from seminars organized in Berlin by Brot für die Welt and Amnesty International in January 2010 and a series of seminars organized by FIAN International between 2007 and 2011 in Guatemala, Honduras and Bolivia and discussions with law clinics in Argentina, Colombia and Mexico.

1. Hurdles and challenges at rights-holders' personal or household level

- Rights-holders' lack of awareness
- Resignation to the injustice of the *status quo*
- Fear of reprisals against human rights defenders
- Mistrust of institutions in charge of appeal mechanisms
- Inability to claim rights while fighting for survival
- Lack of economic and physical accessibility to competent authorities
- Fear of reprisals at family level

One of the major obstacles that people have to overcome in order to claim their rights is the need to understand their position as rights-holders. This hurdle is especially present in the case of women and the right to food. In regards to the right to food, people hardly understand that situations of hunger and malnutrition very often do not derive from their conduct or inaction, but from socio-political and economic structures which cause them to lose their access to resources or their capacity to feed themselves and their families. In the case of women, structural violence and cultural beliefs exacerbate this situation. Women suffer discrimination at the hands of their families, communities or societies from birth, and are often not aware that they can call for change if this *status quo* of violence or discrimination prevents them from feeding themselves in dignity. While education of rights-holders is fundamental in order to overcome these obstacles, women are disproportionately affected by a lack of access to educational opportunities. Due to a general lack of access to education, women also often lack the capabilities required to read and understand information, particularly very complicated legal and procedural terminologies.²

¹ This contribution is largely based on the analysis presented in Ana María Suárez Franco, (2011, October), The Challenges in Accessing Justice When Claiming the Right to Adequate Food, *Right to Food and Nutrition Watch*, 39.

² O. De Schutter, *Women's rights and the right to food*, Report presented at the 22nd Session of the United Nations Human Rights Council, [A/HRC/22/50], 2012, (available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2250_English.PDF, last accessed on: January 31, 2013).

Language barriers, particularly for women members of minority groups, can be an additional struggle. In order to successfully reach and include women, creative participatory mechanisms that are gender sensitive and provide information on the gender dimension of the right to adequate food are necessary.

A further obstacle is, on the one hand, the fear of reprisals by authorities involved or third parties acting against human rights defenders, and on the other hand, mistrust of the institutions or authorities in charge of appeal mechanisms. In this context, it is important to recognize the gender-specific nature of violence against women human rights defenders, which often includes greater risk of being subject to sexual violence. Structural changes that acknowledge, document, and respond to the unique situation of women victims and the women human rights defenders supporting them are necessary. These changes must include the adequate provision of holistic protection and support that is gender sensitive in order to ensure that women can trust authorities and are capable to access justice.

Women's inability to claim their rights within the existing structures is also a challenge. Due to prevalent traditional norms, women are often the ones primarily responsible for feeding their families and caring for the children. Having these 'caring' responsibilities while simultaneously suffering from hunger, results in their reduced capability to think in terms of a legal strategy to defend their rights. A woman's capability to defend her rights is compromised when she simultaneously has to think of how to survive in conditions of scarcity and how to provide food, housing, or basic services for her family the next day. Freedom from basic material want is a condition for people to be able to make use of complaint mechanisms.³ Culturally and gender-sensitive social services and legal aid can be a way to overcome some of these obstacles.

Economic and physical accessibility to judicial bodies can be very difficult for marginalized populations, including women, who often lack mobility and access to basic transportation because of patriarchal cultural norms, cost or distance. This situation is further aggravated when judicial procedures or access to a lawyer implies a cost. Moreover, in many cases, women are afraid to use remedy mechanisms to defend their rights for fear of stigmatization and violence at the extended family and intra-household level. This is particularly the case when their right to adequate food is being violated precisely because of inequality in the intra-household allocation of food or because of women's weak bargaining position within the household that impedes them from managing the resources necessary to ensure their access to food. Pro bono or attorney mechanisms dealing with strategic litigation that are mobile, can adapt to cultural needs and are gender sensitive should be supported, notably by the State. Similarly, the existence of geographically-accessible quasi-judicial or judicial institutions is necessary in order to guarantee women's access to justice.

2. Obstacles at the organizational and community level

- Difficulties in decision making
- Disruption in community unity
- Difficult relations between lawyers and community representatives

Although seeking justice can be easier for an organized community than for a single person or family, because it can create synergies to cover costs and to pay lawyers, or some family members can take care of children and older persons in the family while community representatives take care of procedural aspects, this type of organization can also imply challenges, particularly for women. Due to prevailing patriarchal gender norms, decision making

³ R. Alexy, *Theorie der Grundrechte*, Baden-Baden, 1985, p. 466; A. Sen, *Development as Freedom*, New York, 1999.

is often the responsibility of the men in the community, which results in women's priorities and views being ignored or downplayed during these processes. Women's situations are further aggravated by difficulties in decision-making, disruptions in community unity or difficult relations between the lawyers and community representatives due to the disempowerment that results from relegating women's perspectives to the margins. Case strategy should not just consider the legal dimensions of a situation; it should just as importantly focus on strengthening the community, with a particular emphasis on strengthening women's participation and leadership, informing the development of the process, and on the risks and the added value of an eventual judicial decision. These measures are essential to avoid organizational obstacles until a judicial decision is implemented. In most cases, the presence of mediators, particularly women mediators, who know the community well (anthropologists, social workers, etc.) can be an excellent support.

3. Obstacles and challenges at the level of the legal framework, the structure of the administration of justice and legal practices

- Lack of implementation of the rule of law and the primacy of human rights
- Weakness of institutions in charge of protecting human rights
- Lack of coherence between the national legal framework and international human rights, specifically women rights standards
- Lack of adequate and gender-sensitive remedies
- Lack of suitable accountability mechanisms for extraterritorial obligations
- Legal culture which stigmatizes or neglects human rights, especially women's rights
- Limited application of human rights law, including women's rights, to certain geographical or judicial competency areas

It is only within the broader framework of the rule of law that access to justice for victims of violations of the right to adequate food can really make sense. This framework should guarantee, *inter alia*, that there are strong institutions at the service of the protection of human rights, ensuring accountability and fighting against impunity. In the absence of these conditions, the judicial system can become just another empty promise generating mistrust and disappointment, creating further rifts between women and access to justice.

Although the right to food has been included in the Constitutions of at least 24 countries⁴, national legal frameworks are often not in line with these internationally-acquired obligations and in some cases, this lack of legal coherence becomes a structural cause of systematic violations. In fact, state authorities tend to use domestic law to defend non-compliance with their international human rights obligations on economic, social and cultural rights, including the right to adequate food. Although in the current constitutional systems, or at least in the regional systems, mechanisms have increasingly been put in place to allow victims, including women, to bring their complaints to judicial or quasi-judicial bodies, there are still some situations in many countries and at international level in which impunity persists. A first example is the fact that the Optional Protocol to the ICESCR, adopted by the UN General Assembly in 2008, is still not in force. Other cases are the violations of extraterritorial obligations of states, understood as the human rights obligations that states have beyond their borders⁵ and/or violations caused by

⁴ For a full list of countries, see FAO, *The Right to Food Guidelines: Information Papers and Case Studies*, 2006, or <http://www.fao.org/docrep/meeting/007/j0574e.htm>. The last inclusions were in the constitutions of Ecuador, 2008; Bolivia, 2009; Brazil and Ghana, 2010. At the time of writing of this article, the incorporation of the right to food in the Mexican Constitution was in its final phase.

⁵ The term of Extra Territorial Obligations of states refers to the binding duty that states have to protect, respect and fulfill human rights beyond their borders. For more information, see: M. Gibney, S. Skogly (eds.), *Universal Human Rights and Extraterritorial Obligations*, Pennsylvania, 2010; M. Gondek, *The Reach of Human Rights in a*

abuses incurred by transnational companies. Another obstacle we must consider is the more general legal culture,⁶ which in many countries tends to place procedural law above substantive rights. In this case, even in a situation where a violation can be clearly identified and the liability of the competent authorities is established, judicial authorities tend to raise obstacles grounded in procedural rules, such as terms or formalities. An additional structural obstacle, which can be observed in the Latin American context, is that progressive jurisprudence remains confined to the constitutional jurisdiction or to the high courts, and human rights are not applied by judges of lower hierarchies, judges in different jurisdictions, or do not permeate the system to the judges working in remote areas. All of these obstacles at the legal framework level contribute to women's mistrust in and lack of access to the judicial system. Considering all of the obstacles that many of the most marginalized women will have to endure to even arrive at this stage of judicial access, not resolving these hurdles could result in a very severe setback of women's access to justice overall.

4. Judicial officers and lawyers as individuals

- Lack of knowledge
- Lack interest in changing social inequalities or patterns of injustice
- Unavailability of adequate legal material
- Lack of time
- Lack of a balanced representation of women in judicial bodies

Together with the general legal culture, including the understanding thereof adopted by academia, the position taken by individual lawyers and judges regarding justiciability can also negatively influence the access to justice of victims of violations of the right to adequate food. This position can either be influenced by lack of knowledge or by lack of interest in changing social inequalities or patterns of injustice, including discrimination against women. This is particularly problematic in the case of women victims of violations of the right to adequate food in places where patriarchal norms and structural violence against women are ingrained and it might not be politically popular to rule on behalf of women's rights. In this context, capacity building of judges and lawyers on gender sensitivity and on how to apply international human rights standards, including women's rights, in their work can be a relevant measure. Similarly, working towards ensuring that women judges, who are in a unique position to advance women's rights, are appointed to higher courts would also be an important step. However, this is a process which needs persistence, and if possible also the engagement of diverse actors, as well as enough resources (institutional and financial) to ensure an effective follow-up.

5. Implementation of judicial decisions

Even in cases in which a judicial decision is available, a better enjoyment of rights is still not guaranteed for the people concerned. Reality has shown that quasi-judicial or judicial channels and judicial strategies alone are not enough to achieve real justice for women.

Legal, political and media strategies, which put pressure on the responsible authorities for the implementation of protective judicial decisions throughout the entire quasi-judicial or judicial

Globalizing World: Extraterritorial Application of Human Rights Treaties, Antwerp, Oxford, Portland, 2009.

⁶ Legal views in national contexts can be strongly conditioned by traditional conservative doctrine and scholars, which substantively influence the evolution of interpretation of the law. Universities are the "nests" where jurists can be taught to interpret law in a progressive manner, towards human rights protection. But they can also constitute a hurdle in the evolution of the understanding of law, maintaining lawyers very close to extreme procedural views and protecting the interests of specific elites, while important questions of justice and human dignity are forgotten or neglected.

process, are a crucial aspect of strategic litigation. In many cases, remedies are not implemented in a gender-sensitive manner and women do not profit from those to the same extent that men do. Monitoring mechanisms for the implementation of judicial decisions should ensure that remedies are implemented in a gender-sensitive manner and take into account women's rights. Both national and international pressure can be a helpful tool in order to make responsible authorities accountable to the women and comply with remedies that are adequate and acceptable to the victims, including restitution, reparation, compensation, satisfaction and/or assurance of non-repetition.