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PARTICIPATORY RIGHTS OF WOMEN IN POVERTY REDUCTION PROCESSES

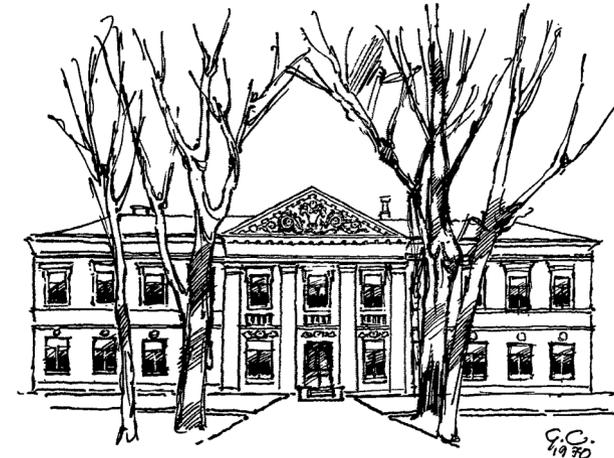
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OF WOMEN  
IN POVERTY REDUCTION PROCESSES**

**Karoline Klaus**



Åbo 2008

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by

Karoline Klaus

Åbo 2008



## **ABSTRACT**

Poverty and exclusion from decision-making processes are interconnected and mutually reinforcing, which becomes particularly apparent in connection with women. Women are the majority of the poor and the impact of poverty on their lives is more severe than on men's lives, a phenomenon that has been described as "feminisation of poverty". Equal participation of women in decision-making is a crucial factor in the fight against poverty. The subject of this paper is to determine whether international human rights law contains a right to participate in poverty reduction, generally and specifically with regard to women. These questions are approached from a legal point of view and the method used is a normative analysis of human rights treaties as well as non-binding instruments. The paper comes to the conclusion that there is a human right to participation in poverty reduction, both generally and of women, which varies from instrument to instrument, but covers a wide range of processes and entails extensive negative as well as positive state obligations. Women's claims to be included in decision-making on development are thus supported by human rights law. Finally, the implementation of the right to participate in poverty reduction processes is assessed in the context of two African countries, namely Kenya and Mauritius.



## **PREFACE**

This publication is the result of my interest in one of the most pressing structural human rights problems, namely the position of women in developing societies. It was written in 2007 under the supervision of Professor Markku Suksi and co-supervision of Alessandra Lundström and Kati Frostell at the Department of Law and Institute for Human Rights of Åbo Akademi University, Finland, and was originally presented and approved as a Thesis towards the European Master's Degree in Human Rights and Democratisation in September 2007. The text has since been updated as of April 2008.

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## 1. INTRODUCTION

### 1.1. Overview of the Problem

Poverty is a multi-faceted problem that is both the cause and the consequence of violations of human rights. The current understanding of poverty does not only cover low income, but also lack of access to education, health care, and other factors of human development. It is however not only characterised by deprivations of economic and social rights, but also civil and political rights.<sup>1</sup> The Committee on Economic, Social and Cultural Rights (CESCR Committee), in interpreting the Covenant on Economic, Social and Cultural Rights (CESCR) and taking into consideration the Covenant on Civil and Political Rights (CCPR) and the Universal Declaration of Human Rights (UDHR), adopts a particularly broad definition of poverty. It interprets the International Bill of Human Rights<sup>2</sup> to imply an understanding of poverty as “a human condition characterised by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights”.<sup>3</sup> According to this definition, lack of participation in public and political decision-making and poverty are interconnected. On the one hand, a deficiency in the enjoyment of political rights is a key element of poverty; on the other hand, the fair representation and broad participation in instrument processes of those affected by poverty is conceived as instrumental in reducing poverty.

The interplay between participation and poverty reduction is supported by several resolutions of the United Nations (UN) General Assembly in which states declare that the right of everyone to take part in the government of his or her country is a crucial factor in the fulfilment of all human rights, including economic and social rights.<sup>4</sup> Amartya Sen

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<sup>1</sup> See Nowak, 2005 (a), p. 23.

<sup>2</sup> The term “International Bill of Human Rights” is used to describe the norms enshrined in the UDHR, the CCPR and the CESCR.

<sup>3</sup> See CESCR, Statement on Poverty, para 8.

<sup>4</sup> The General Assembly began adopting these resolutions, titled “Strengthening the role of the United Nations in enhancing the effectiveness of the principle of genuine and periodic elections and the promotion

analyses this connection from an economist's point of view and comes to the same conclusion in the specific context of poverty, namely that political participation is an important key to the reduction of poverty.<sup>5</sup>

The interconnection between poverty and lack of participation becomes obvious in the context of women, who are both largely absent from decision-making processes on poverty reduction and more affected by poverty than men. Since the middle of the 1990s, a phenomenon described as "feminisation of poverty" has received increasing international attention.<sup>6</sup> Women represent the majority of the poor worldwide<sup>7</sup> and the impact of poverty on women tends to be greater than on men, owing to societal attitudes that give priority to satisfying men's needs over women's.<sup>8</sup> This has grave detrimental effects on women's lives, one of the most appalling results being the considerably higher mortality rate of female children in some countries.<sup>9</sup> Consequently, the feminisation of poverty and its effects are a violation of women's inherent dignity and their right to equality with men.<sup>10</sup> Despite the fact that women are therefore at least equally affected by poverty as men, they are severely underrepresented in decision-making positions relevant to poverty reduction, such as in governments, ministries and other public offices. In 2005, only 4.2% of heads of state or government were women, and women held 14.3% of ministerial positions worldwide.<sup>11</sup> The representation of women in local government appears to be better in many countries, although it is still far from being on an equal footing with

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of democratisation", in 1989 (see A/RES/44/146, A/RES/45/150, A/RES/46/137, A/RES/47/138, A/RES/48/131, A/RES/49/190, A/RES/50/185, A/RES/52/129, A/RES/54/173, A/RES/56/159, A/RES/58/180, A/RES/60/162). The same point is made in the context of the Organisation of American States (OAS) in the Inter-American Democratic Charter, which specifically recognises a right to democracy and stipulates that this right is interdependent and mutually reinforcing with social and economic development. See OAS Inter-American Democratic Charter, arts 1 and 11.

<sup>5</sup> See Sen, 2001, pp. 147 ff.

<sup>6</sup> See for example Beijing Platform for Action, paras 17 and 48. See also OHCHR, *The Fight Against Poverty and the Right to Participation: The Role of Women*, para 5 (consulted on 22 February 2007).

<sup>7</sup> It is estimated that women represent 55 to 60% of the poor worldwide. See OHCHR, *The Fight Against Poverty and the Right to Participation: The Role of Women*, para 12 (consulted on 22 February 2007).

<sup>8</sup> *Ibid.*

<sup>9</sup> See Sen, 2001, pp. 104-107.

<sup>10</sup> The dignity of all human beings, as affirmed in the UDHR, has a material element in the sense that the fulfilment of certain basic needs such as food, water and health care is essential for leading a life in dignity. Accordingly, if individuals are denied access to these basic facilities and necessities because of their poverty, their inherent dignity is violated. See in particular UDHR, art 22 ("everyone (...) has the right to social security and is entitled to realisation (...) of the economic, social and cultural rights indispensable for his dignity") and art 23 ("everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity").

<sup>11</sup> See UN DAW, *Enhancing Women's Participation in Development*, p. 9 (consulted on 22 February 2007).

men's.<sup>12</sup> The picture in other decision-making bodies is similar. For instance, the global average of women in parliaments was with 15.7% in 2005 only marginally higher than women's participation in governments.<sup>13</sup> The participation of women in these institutions is thus considerably lower than the 30% that were envisaged as a "critical mass" by the UN Economic and Social Council in 1990.<sup>14</sup> Women are often better represented in other domains of public life, for instance in non-governmental organisations (NGOs);<sup>15</sup> but also in these areas, influential positions are frequently held by men.<sup>16</sup>

In this situation, it becomes apparent that women's participation is of great importance for their enjoyment of human rights. This is confirmed by Sen, who sees the significance of women's equal participation in decision-making in two dimensions. Firstly, a decision made with participation of women will usually better represent women's interests and is therefore more likely to avoid further marginalisation and impoverishment of women.<sup>17</sup> Secondly, not only women, but also men and children can benefit from women's participation in poverty reduction.<sup>18</sup> This is also acknowledged in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which in its preamble stresses the importance of women's right to participate in decision-making at all levels for "the full and complete development of a country, the welfare of the world and the cause of peace". The quality and efficiency of decisions made by women as well as men is likely to be higher, as such decisions will not only reflect the experiences of the male part of the population, but also take into account the experiences and priorities of women.<sup>19</sup> For example, women's influence on decisions regarding development strategies tends to reduce mortality rates of children<sup>20</sup> and to improve family planning measures and facilities.<sup>21</sup> Moreover, increased participation of women has been associated with a

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<sup>12</sup> See Gopal Jayal, *From Representation to Participation*, pp. 4 f. (consulted on 12 March 2007). See also Drage, *Women in Local Government*, p. 3 (consulted on 12 March 2007).

<sup>13</sup> See IDEA, *Women in Parliament*, p. 25 (consulted on 28 April 2007).

<sup>14</sup> See Beijing Platform for Action, para 182.

<sup>15</sup> See UN SG, *Report of the SG on Equal Participation of Women and Men*, p. 11 (consulted on 22 February 2007).

<sup>16</sup> See CEDAW, *General Recommendation No. 23*, para 32.

<sup>17</sup> See Sen, 2001, pp. 190 ff. See also Grown et al., *Taking Action*, p. 104 f. (consulted on 22 February 2007) and CEDAW, *General Recommendation No. 23*, para 14.

<sup>18</sup> See Sen, 2001, pp. 190-192.

<sup>19</sup> See for example UN DAW, *Equal Participation of Women and Men*, p. 8 (consulted on 22 February 2007) and CEDAW, *General Recommendation No. 23*, para 13. See also Sen, 2001, pp. 193 ff.

<sup>20</sup> See Sen, 2001, p. 195.

<sup>21</sup> See Sen, 2001, p. 198.

change in political climate that is conducive to development, such as reduction of corruption.<sup>22</sup>

The causes for both “feminisation of poverty” and the prevalent exclusion of women from decision-making are the structural discrimination that women face in all parts of the world and its multiple consequences. Patriarchal ideology constructs work in the private sphere of household and family as women’s “natural duty” and defines the public sphere as inherently male. Even if it is accepted that women are active in the public sphere, it is usually assumed that they are primarily responsible for household and childcare, which in many cases leaves them no time to take part in political life.<sup>23</sup> Women’s work, be it inside or outside the household, is not valued to the same extent as men’s; if women are rewarded for their work at all, they frequently receive only a fractional amount of men’s remuneration. Furthermore, they are often denied access to income-generating resources such as land. Cultural and religious beliefs that view women as subordinate and inferior to men support this patriarchal ideology and result in violations of women’s rights to education, health, work and property, thereby producing conditions that make it difficult for women to obtain both influential positions in public decision-making and access to economic resources.<sup>24</sup>

The empowerment of women – a process by which women become aware of discriminatory structures and set out to change them<sup>25</sup> – therefore is an important step in achieving women’s full participation in public life.<sup>26</sup> If women’s social status and economic position are enhanced (for instance through access to education, the possibility to hold property and obtain credits, to work outside their homes and receive fair remuneration for their work), women will be able to influence decision-making within the family as well as in public and political life,<sup>27</sup> and thus to take direct control over their lives, which importantly includes participation in decisions on the reduction of poverty.<sup>28</sup> The CEDAW Committee has consistently stressed the crucial role of women’s empowerment in achieving full participation of women in public life and equality between women and men in all spheres of

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<sup>22</sup> See Dollar, Fisman & Gatti, *Are Women Really the “Fairer” Sex*, p. 6 (consulted on 2 June 2007).

<sup>23</sup> See for example CEDAW, General Recommendation No. 23, paras 8 ff.

<sup>24</sup> See Bari, *Women’s Political Participation*, p. 5 (consulted on 22 February 2007).

<sup>25</sup> See VeneKlasen et al., *Rights-Based Approaches and Beyond*, p. 9 (consulted on 22 February 2007).

<sup>26</sup> See for example UN Department of Social and Economic Affairs, 1998, p. 21.

<sup>27</sup> See Sen, 2001, p. 193.

<sup>28</sup> See OHCHR, *Human Rights and Poverty Reduction*, pp. 13 f. (consulted on 22 February 2007).

life,<sup>29</sup> and states have affirmed their commitment to empowering women in various non-binding instruments.<sup>30</sup>

Given the virtually universally recognised significance of women's empowerment, it is not only important that women are actually included in poverty reduction processes, but that they hold a right to this effect. Human rights are empowerment tools in the sense that they put the focus to the individual as a holder of rights against the state.<sup>31</sup> By linking women's claims to participation with international commitments of states, states can be held accountable for violations by resorting to the monitoring bodies and structures that are in place.<sup>32</sup> This perception is in line with a relatively new approach to development that has begun to replace the older charity- or needs-based approaches since the beginning of the 1990s, namely the human rights-based approach to development. This approach can be defined as a conceptual framework for development that aims at promoting and protecting human rights on the basis of international human rights norms and standards.<sup>33</sup> Both empowerment and participation of the poor are considered to be crucial points in the implementation of a human rights-based approach,<sup>34</sup> and – for the reasons given above – the importance of women's empowerment and their right to participation are particularly strongly emphasised by many international institutions and commentators.<sup>35</sup> Do the existing human rights norms contain a right to participate in poverty reduction processes? Are there specific rights of women to this effect? If these questions can be answered in the affirmative, what are states' corresponding obligations?

## 1.2. Method and Materials

This paper will explore the area of overlap between participation and poverty reduction processes. A legal study of human rights instruments will be conducted in order to assert the existence of a right to participation in poverty reduction, both generally and with regard to women. This study will only deal with individual rights; collective rights, such as the right to self-

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<sup>29</sup> See for example CEDAW, General Recommendation No. 23, para 17.

<sup>30</sup> See below Chapter 4.

<sup>31</sup> See CESCR, Statement on Poverty, paras 3 and 16.

<sup>32</sup> *Idem*, para 14. See also Nowak, 2005 (a), p. 27.

<sup>33</sup> See Mynnti, 2005, p. 228.

<sup>34</sup> See OHCHR, Human Rights and Poverty Reduction, p. 19 (consulted on 22 February 2007).

<sup>35</sup> See for example UNDP, Gender and Poverty Reduction (consulted on 19 June 2007) and World Bank, Gender Equality as Smart Economics, p. 2 (consulted on 19 June 2007). See also Sen, 2001, pp. 190-192.

determination in the two International Covenants and the rights of peoples in the African Charter on Human and Peoples' Rights (ACHPR), will not be examined.

The methodology of the study is based on a normative analysis of international human rights instruments. UN treaties that will be examined include the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of all Forms of Discrimination Against Women. The Convention on the Rights of the Child is not included in the analysis for lack of space and because it does not lie at the core of the issue. The African Charter on Human and Peoples' Rights will serve as an example for regional human rights norms on participation. Where treaty monitoring bodies are in place, the documents of these bodies addressing specific cases and countries, namely views on individual communications and concluding observations on state reports, will be used as primary sources in the interpretation of norms. General comments of these bodies will also be taken into account. Furthermore, a number of relevant non-binding instruments adopted by states within the framework of the UN will be examined. Sources that will be used to support this analysis include reports by UN organs and experts as well as legal, economic and sociological literature.

If the existence of a right to participation in poverty reduction can be asserted, a study of two African countries will be conducted in order to analyse how this right has been implemented in national legal orders and poverty reduction processes. The Concluding Observations of the Human Rights Committee (HRC), the CESCR Committee and the CEDAW Committee will be used as the main reference point in assessing the performance of the selected countries with regard to participation of women in poverty reduction.

## **2. THE CONCEPTS OF PARTICIPATION AND POVERTY REDUCTION**

### **2.1. Participation**

“Participation” is a widely used term in development work and research; there are however various distinct meanings attached to it. The notion of participation frequently serves to describe the involvement of local communities in development projects, but the understandings of the intensity of this involvement vary greatly. They range from viewing participation as a dialogue between local communities and project staff, over the contribution to projects without any participation in decision-making, to autonomy of the local community over development projects.<sup>36</sup> A distinct understanding of participation, and the one this paper will draw on, is the understanding of participation as a human right, protected in several international treaties and other instruments.<sup>37</sup>

The content of the human right to participation differs from treaty to treaty and will be analysed in detail in Chapter 3. However, to give a general idea about the scope of participatory rights, two central provisions in the given context – Article 25 of the Covenant on Civil and Political Rights (CCPR) and Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – will be roughly outlined and compared at this point.

The right to participation in the CCPR and CEDAW covers participation in decision-making on “public affairs” (Article 25 CCPR) or “political and public life” (Article 7 CEDAW). Both concepts are broad and encompass the exercise of political power in the legislative, executive and administrative branch, that is to say “all aspects of public administration, and the formulation and implementation of policy” at all levels.<sup>38</sup> The CEDAW Committee’s interpretation of political and public life additionally includes “many aspects of civil society”.<sup>39</sup>

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<sup>36</sup> See Mikkelsen, 2005, pp. 53 f.

<sup>37</sup> See VeneKlasen et al., *Rights-Based Approaches and Beyond*, p. 14 (consulted on 22 February 2007).

<sup>38</sup> See HRC, General Comment No. 25, para 5 and CEDAW, General Recommendation No. 23, para 5.

<sup>39</sup> See CEDAW, General Recommendation No. 23, para 5.

According to both treaties, participation can be exercised either directly or through the election of representatives. While the latter is performed through taking part in voting processes,<sup>40</sup> direct participation can be exercised through membership in a legislative body or holding executive office.<sup>41</sup> In addition, CEDAW contains a right to participation “in non-governmental organisations and associations concerned with the public and political life of the country”.<sup>42</sup> In the interpretation of the CEDAW Committee, this includes for instance public boards and local councils, political parties, trade unions, professional associations, women’s organisations and community-based organisations.<sup>43</sup> There is no explicit mention of non-governmental organisations in the CCPR, but the HRC interprets Article 25 to confer on citizens a right to participate in the conduct of public affairs “by exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves”.<sup>44</sup> “Public debate and dialogue” cover for example lobbying and writing of petitions to government officials, whereas the “capacity of citizens to organise themselves” refers to the forming of associations.<sup>45</sup> Associations are not generally covered by Article 25 CCPR, but only to the extent that they exert influence on public affairs as described above.<sup>46</sup> If this is the case, it appears to be irrelevant for the HRC whether they are established according to public or private law.<sup>47</sup> Several of the categories of organisations listed by the CEDAW Committee will therefore also be covered by Article 25 CCPR: public boards, local councils and political parties as well as trade unions and professional associations, insofar as they engage in activities related to the exercise of political power, public administration and the formulation and implementation of public policy. Nonetheless, CEDAW’s concept of participation is wider as it also encompasses non-governmental organisations that do not work to influence political processes. To give examples from the area of poverty reduction, this could include women’s organisations and community-based organisations that provide services such as skills training and education to the poor.

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<sup>40</sup> See HRC, General Comment No. 25, para 21.

<sup>41</sup> *Idem*, para 6 and CEDAW, General Recommendation No. 23, paras 18 and 24.

<sup>42</sup> CEDAW art 7 lit c.

<sup>43</sup> See CEDAW, General Recommendation No. 23, para 5.

<sup>44</sup> HRC, General Comment No. 25, para 8.

<sup>45</sup> See HRC, *Brun v. France*, para 6.4 and *Beydon et al. v. France*, para 4.5.

<sup>46</sup> See HRC, *Karakurt v. Austria*, para 8.2.: “the rights protected by Article 25 are to participation in the political life of the nation”.

<sup>47</sup> See HRC, *Brun v. France*, para 6.4. and *Beydon et al. v. France*, para 4.5.

A final aspect of the right to participation is the right of equal access to public service, which grants certain procedural guarantees in the appointment, promotion and dismissal of public servants.<sup>48</sup>

## **2.2. Development and Poverty Reduction Processes**

The notion of development, as the notion of poverty, is subject to different interpretations that have changed greatly over the last decades and are still controversial. However, the differing understandings of development usually correspond in one point, namely that development includes the reduction of poverty as a fundamental goal.<sup>49</sup>

In the 1950s and early 1960s, development was equated with economic growth, which was believed to result automatically in enhanced living conditions for all individuals. Therefore the reduction of poverty was conceived to be a matter solely of economic measures, such as tariffs and trade restrictions, fiscal policies, and industrial regulations.<sup>50</sup> Towards the end of the 1960s, it became apparent that this view had been too optimistic. While economic growth led to the reduction of poverty in some instances, this effect failed to materialise in many other countries.<sup>51</sup> This realisation, together with the broadening in the understanding of poverty as a multiple human rights violation, led to the adoption of a wider concept of development and poverty reduction processes. Today it is acknowledged that economic measures alone are not enough to secure freedom from poverty: in the current understanding, poverty reduction also demands action in other areas, including the social and cultural domain.<sup>52</sup> For example, the World Bank's World Development Report 2000/2001 identifies three main areas of action for development: promoting the economic opportunities of poor individuals; facilitating their empowerment by making state institutions more accountable to them and removing discriminatory obstacles, for instance for women; and enhancing the security of poor individuals by reducing their vulnerability, for example to ill health and violence.<sup>53</sup>

For the purpose of this paper, poverty reduction processes are defined as structural and social policies and programmes to reduce poverty in this broad meaning. This definition covers measures to increase the income of

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<sup>48</sup> See below 3.2.1. and 3.5.1.

<sup>49</sup> See Thomas, 2000, p. 10.

<sup>50</sup> See Hewitt, 2000, p. 293.

<sup>51</sup> See UN Department of Economic and Social Affairs, 1998, pp. 51 f.

<sup>52</sup> See World Bank, World Development Report 2000/2001, p. 33 (consulted on 18 March 2007).

<sup>53</sup> See World Bank, World Development Report 2000/2001, pp. 6 f. (consulted on 18 March 2007).

the poor, for example land reforms, minimum wage legislation, policies facilitating entry into employment, support for the development of small and medium-sized enterprises, provision of micro-credits, and so forth.<sup>54</sup> It also includes measures to improve the access to goods and services to fulfil basic needs, such as food, water, health care and education, as well as “safety nets” (provision of subsidised goods and services, social security, and public employment schemes) for those who cannot take advantage of other measures.<sup>55</sup> A third group are policies and strategies with the objective of empowering the poor or certain groups of poor persons, for instance capacity building programmes for women and measures to raise awareness about women’s structural discrimination.<sup>56</sup> Finally, macroeconomic policies – that is, monetary and fiscal policies and exchange rate policies – will be taken into account, as they are an important factor in the reduction of poverty.<sup>57</sup>

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<sup>54</sup> See UN Department of Economic and Social Affairs, 1998, pp. 17 f.

<sup>55</sup> See Shaffer, *New Thinking on Poverty*, pp. 12-14 (consulted on 18 March 2007).

<sup>56</sup> *Idem*, pp. 18 f.

<sup>57</sup> See UN Department of Economic and Social Affairs, 1998, pp. 51 f.

### **3. WOMEN'S RIGHT TO PARTICIPATION IN POVERTY REDUCTION PROCESSES**

#### **3.1. Introductory Remarks**

Participatory rights have been an important part of international human rights law for many decades. Already the UDHR, adopted in 1948, contains in Article 21 a rather detailed provision on participation. It includes a right to take part in government directly or through freely chosen representatives, a right of equal access to public service, and demands free, genuine and periodic elections. The central legally binding provision in international human rights law is Article 25 CCPR; its main features have already been outlined above. Another important treaty in the context of poverty reduction is the CESCRC. Although it does not explicitly include a right to participation, the CESCRC Committee holds that a participatory approach is reflected in the Covenant and is necessary to ensure the full enjoyment of the economic, social and cultural rights protected therein.<sup>58</sup> All of the mentioned treaties contain a prohibition of discrimination on the basis of sex and emphasise the principle of equality between women and men.

In addition to these general treaties, there are specific instruments protecting rights of women. One of the first international treaties granting political rights specifically to women was the Convention on the Political Rights of Women, adopted in 1952, which prohibits discrimination against women with respect to the right to vote, be elected and hold public office.<sup>59</sup> In 1979 the most important document on women's rights, the CEDAW, was adopted and introduced a broader concept of participation as well as additional obligations of states. Progress in the codification of women's political rights has also been made on a regional level; an example is the Protocol to the ACHPR on the Rights of Women in Africa, which entered into force in 2005.

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<sup>58</sup> See CESCRC, Statement on Poverty, para 12.

<sup>59</sup> See Convention on the Political Rights of Women, arts 1-3.

In the following chapter these human rights treaties will be analysed in order to determine whether they contain a right to participation in poverty reduction processes, both generally and specifically regarding women.

## **3.2. Participation in Political Processes: International Covenant on Civil and Political Rights**

### *3.2.1. Content of the right to participate in poverty reduction*

The CCPR, which was adopted in 1966 and entered into force on 23 March 1976, contains in Article 25 an extensive right to participate “in the conduct of public affairs”.<sup>60</sup> As already mentioned above, the HRC – the monitoring body of the CCPR – adopts a broad definition of this term and interprets it so as to cover the exercise of all political powers, that is to say “all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels”.<sup>61</sup> In contrast to the other rights protected in the CCPR, Article 25 grants rights only to citizens.<sup>62</sup>

Does Article 25 cover participation in poverty reduction processes? In Chapter 2.2., poverty reduction processes have been defined as structural and social policies and programmes to reduce poverty in a broad sense, including such diverse measures as land reforms, employment legislation, infrastructure development, social security, educational programmes and macroeconomic policies. Most of these measures are within the wide concept of public affairs adopted by the HRC, as they concern the formulation and implementation of policy or public administration. However, a number of these processes may fall outside the scope of Article 25, namely those that take place outside the realm of political life. An example could be skills training and awareness-raising programmes for poor persons that are provided by non-governmental organisations.

According to Article 25, citizens must be granted the right and opportunity to participate in the conduct of public affairs directly or through freely chosen representatives. The inclusion of the term “opportunity”, which is unique in international human rights law,<sup>63</sup> implies that the rights

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<sup>60</sup> CCPR, art 25 lit a.

<sup>61</sup> HRC, General Comment No. 25, para 5. See also above 2.1.

<sup>62</sup> This requirement can pose problems for women, who are sometimes discriminated against in acquiring citizenship. See Centre for Development and Human Rights, 2004, p. 109.

<sup>63</sup> The term also appears in Article 8 CEDAW, which provides that governments must ensure to women the opportunity to represent their governments at the international level. However, as this provision only refers

contained in Article 25 have to be provided both *de jure* and *de facto*.<sup>64</sup> Article 25 lit b specifies that every citizen shall have the right to vote and be elected. While it does not call for a specific democratic model, it sets up some conditions for elections: they have to be genuine, periodic and secret with universal and equal suffrage and must “(guarantee) the free expression of the will of the electors”.<sup>65</sup> The term “genuine” demands that voters have at least a certain “minimum amount of political influence” and implies, in connection with the requirement of free elections, that there must be various alternatives for voters to choose from.<sup>66</sup> Although Article 25 was originally intended to allow also for one-party systems, this is at least questionable today.<sup>67</sup> The HRC has not explicitly stated that a one-party system is incompatible with the CCPR, but it noted in General Comment No. 25 that the right to stand for election “should not be limited unreasonably by requiring candidates to be members of parties or of specific parties”.<sup>68</sup> Direct participation in public affairs, on the other hand, is exercised through membership in a legislative body or through holding executive office.<sup>69</sup> In addition, the HRC interprets Article 25 lit a to confer on citizens a right to participate through public debate and dialogue with their representatives or through their capacity to organise themselves, that is to say the forming of political parties and other associations with the objective of exerting influence on political processes.<sup>70</sup> Finally, Article 25 lit c contains the right “to have access, on general terms of equality, to public service”. The last provision is somewhat weaker in formulation than the other rights in Article 25; it does not imply that citizens have a right to enter public service, but that their application has to be given an “institutional form” as well as certain procedural guarantees in order to ensure equal chances of access.<sup>71</sup> “Public service” includes all positions in the executive, legislative and judicial field that are connected with the exercise of official power and, if the national legal system provides for it, positions in schools and universities and in other public ventures.<sup>72</sup> According to the HRC, lit c covers not only

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to the opportunity and not to the right to participation, its meaning appears to be similar to Article 25 lit c CCPR – that is to say, it does not give a right of access, but to certain procedural guarantees.

<sup>64</sup> See HRC, *Mauritian Women v. Mauritius*, para 9.2.

<sup>65</sup> CCPR, art 25 lit b.

<sup>66</sup> Nowak, 2005 (b), p. 575.

<sup>67</sup> *Ibid.*

<sup>68</sup> HRC, General Comment No. 25, para 17. See also HRC, *Bwalya v. Zambia*, para 6.6. (“restrictions on political activity outside the only recognised political party amount to an unreasonable restriction on the right to participate in the conduct of public affairs”) and Nowak, 2005 (b), p. 573.

<sup>69</sup> See HRC, General Comment No. 25, para 6.

<sup>70</sup> See above 2.1.

<sup>71</sup> Nowak, 2005 (b), p. 587.

<sup>72</sup> See Nowak, 2005 (b), p. 586.

the access (and thereby appointment) to public service, but also the promotion, suspension and dismissal from public service positions.<sup>73</sup>

### 3.2.2. *General state obligations*

To the extent that participation in poverty reduction processes is covered by Article 25, several obligations of states ensue. Today it is almost universally accepted that human rights treaties impose both negative and positive obligations on states.<sup>74</sup> The negative obligation (“obligation to respect”) implies that states must not interfere with rights unless such interference is expressly permitted.<sup>75</sup> Positive obligations (in the terminology of the CCPR “obligations to ensure”) can be divided into two categories: the obligation to protect individuals from violation of their rights by private parties; and the obligation to fulfil rights by facilitating their enjoyment through enactment of laws and provision of services and goods.<sup>76</sup>

The obligation to respect the right to participation requires states to refrain from interfering with both the right and the opportunity of citizens to participate in the conduct of public affairs. Article 25 specifically provides that states must not impose discriminatory and unreasonable restrictions on the right to participation. As only citizens are subject to Article 25, states are allowed to discriminate on the basis of nationality, but discrimination between citizens on the grounds listed in Article 2 para 1 is prohibited.<sup>77</sup> With regard to the right to vote, only a few limited restrictions – namely on minors, mentally ill persons and persons convicted of certain criminal offences – have been deemed reasonable by the HRC;<sup>78</sup> other restrictions will usually violate the Covenant. In particular, the HRC holds that it is unreasonable to impose literacy, educational and property requirements on the right to vote<sup>79</sup> as well as residence requirements that would lead to an exclusion of homeless persons.<sup>80</sup> This interpretation by the HRC is of great significance for poor individuals, and especially poor women, as the structural discrimination that they often suffer in the access to education and property will mean that such conditions have the greatest impact on them. The range of permissible conditions regarding the right to stand for elections

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<sup>73</sup> See HRC, General Comment No. 25, para 23.

<sup>74</sup> See Steiner & Alston, 2000, p. 247.

<sup>75</sup> See Nowak, 2005 (b), p. 37.

<sup>76</sup> *Idem*, pp. 37 f.

<sup>77</sup> See HRC, General Comment No. 25, para 3.

<sup>78</sup> See Nowak, 2005 (b), p. 578.

<sup>79</sup> See HRC, General Comment No. 25, para 10.

<sup>80</sup> See HRC, General Comment No. 25, para 11.

is somewhat wider, including for instance a higher minimum age<sup>81</sup> as well as requirements of a certain number of supporters and payment of deposits or fees, as long as they are not excessive or discriminatory.<sup>82</sup> Further-going conditions, such as a certain level of education, will frequently be in violation of Article 25.<sup>83</sup> Discriminatory or unreasonable restrictions on other forms of direct participation are also prohibited; this applies for instance to citizens' capacity to organise themselves through the forming of associations. In its Concluding Observations, the HRC frequently urges states to abolish laws that impose unreasonable restrictions on the registration of civil society organisations and especially political parties, as it considers them to be an important component of democracy.<sup>84</sup> The right of equal access to public service allows for wider restrictions by states, such as the requirement of a certain level of education.<sup>85</sup> This is problematic, because, for the reasons laid down above, such conditions will often result in a low level of women's participation. Lastly, states are obliged to refrain from interfering with political rights through undue influence or coercion (such as violence, threat of violence or manipulation),<sup>86</sup> arbitrary interference with the voting process,<sup>87</sup> and the persecution of candidates and members of political parties of the opposition.<sup>88</sup>

The obligation to fulfil is of particular importance in the context of Article 25, as political rights require the establishment of a system to regulate the allocation of political powers and means of participation of the individual citizens in order to be operable. According to the HRC, such a system should be established "by the constitution and other laws"<sup>89</sup> and must be in conformity with the conditions in Article 25 lit b. By virtue of Article 25 lit c, states must provide certain procedural guarantees in the appointment, promotion, suspension and dismissal of public servants.<sup>90</sup> To comply with the obligation to provide the *opportunity* to participate, states have to take effective measures to ensure that citizens can take advantage of the rights in Article 25.<sup>91</sup> Regarding the right to vote, such measures should

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<sup>81</sup> See Nowak, 2005 (b), pp. 578 f.

<sup>82</sup> See HRC, General Comment No. 25, paras 16 and 17.

<sup>83</sup> *Idem*, para 15.

<sup>84</sup> See for example HRC, A/55/40 (Kuwait, 2000), para 494. See also HRC, A/48/40 (Bulgaria, 1993), para 754; A/57/40 (Republic of Moldova, 2002), para 16; A/57/40 (Azerbaijan, 2002), para 23.

<sup>85</sup> See Nowak, 2005 (b), p. 585.

<sup>86</sup> See HRC, General Comment No. 25, para 19.

<sup>87</sup> *Idem*, para 20.

<sup>88</sup> See for example HRC, *Bwalya v. Zambia*, para 6.6.

<sup>89</sup> See HRC, General Comment No. 25, para 5.

<sup>90</sup> See also above 2.1. and 3.2.1.

<sup>91</sup> See Nowak, 2005 (b), p. 569.

for instance include campaigns of voter registration and voter education.<sup>92</sup> Again, this is particularly relevant for poor women, whose frequently limited access to information about elections and candidates might prevent them from exercising their rights under Article 25. Moreover, the HRC stipulates in its General Comment on Article 25 that specific obstacles to the full enjoyment of political rights, “such as illiteracy (and) poverty”, should be addressed and overcome through positive measures<sup>93</sup> in order to provide all citizens with the opportunity to participate in the conduct of public affairs.

While the CCPR does not impose obligations on non-state actors,<sup>94</sup> it obliges states to protect individuals (in the case of Article 25 citizens) from infringement of their rights by private parties. This means for instance that penal laws against the interference with electoral processes and the intimidation and coercion of voters must be enacted and strictly enforced.<sup>95</sup> The HRC acknowledges that political parties are particularly important among non-state actors, as they “play a significant role in the conduct of public affairs and the election process”.<sup>96</sup> It therefore specifically requests states to take positive measures to ensure that political parties “respect the applicable provisions of Article 25 in their internal management”.<sup>97</sup>

### *3.2.3. Specific state obligations regarding participation of women*

The CCPR thus provides for a comprehensive – although not all-embracing – right to take part in poverty reduction processes and imposes a wide range of obligations on states, including positive obligations such as voter education that have the potential to enhance women’s participation. Does it also entail specific state obligations with regard to women’s participation? Several provisions of the Covenant guarantee the principles of non-discrimination and equality with respect to the rights protected therein. Article 25 itself refers to Article 2, which provides that the rights contained in the Covenant have to be respected and ensured to all individuals without discrimination. Sex is mentioned explicitly as a prohibited ground for distinction. There is no provision in the CCPR that states in a general manner which distinctions are justified and which constitute discrimination. According to Article 25, restrictions on the right to participation must not be

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<sup>92</sup> See HRC, General Comment No. 25, para 11.

<sup>93</sup> *Idem*, para 12.

<sup>94</sup> The HRC emphasises this point in a General Comment on the nature of state obligations. See HRC, General Comment No. 31, para 8.

<sup>95</sup> See HRC, General Comment No. 25, para 11.

<sup>96</sup> *Idem*, para 26. See also above in the context of the obligation to respect.

<sup>97</sup> See HRC, General Comment No. 25, para 26.

unreasonable.<sup>98</sup> More generally, the HRC has defined discrimination as “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”.<sup>99</sup> This definition covers direct as well as indirect discrimination.<sup>100</sup> Article 3 stipulates that states have to ensure the “equal right of men and women to the enjoyment of all civil and political rights” in the CCPR. Moreover, Article 26 contains a general prohibition of discrimination (*inter alia* on the ground of sex) that is independent of the rights protected in the Covenant.

By virtue of Article 2 para 1 and Article 3, a distinction in participatory rights that is based on sex violates Article 25. The general prohibition of discrimination in Article 26 implies that states must also refrain from discriminating against women in areas of participation that are not covered by Article 25 and indeed the CCPR.<sup>101</sup>

Regarding positive obligations, it has been demonstrated above that the HRC interprets Article 25 to entail various positive state obligations that could be beneficial to women – but does it also confer specific obligations to increase the participation of women? One prominent type of measures to improve women’s participation are affirmative action measures (or, in the wording of CEDAW, “temporary special measures”),<sup>102</sup> which provide for preferential treatment of disadvantaged groups until equal opportunity and treatment have been achieved.<sup>103</sup> In its General Comment on Article 25, the HRC mentions the adoption of affirmative measures only in connection with public service and specifies that they *may* be taken in appropriate cases.<sup>104</sup> However, in General Comment No. 28 on Article 3, the Committee clarifies that states are not only under an obligation to adopt measures to protect women from discrimination, but also to “take effective and positive measures to promote and ensure women’s participation in the conduct of public affairs and in public office, including appropriate affirmative action”,

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<sup>98</sup> See also above 3.2.2.

<sup>99</sup> HRC, General Comment No. 18, para 7. The HRC draws here on the definitions of discrimination in CEDAW and the International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>100</sup> See Sepúlveda et al., 2004, p. 145 f. “Direct discrimination” refers to a distinction made on the basis of sex, whereas “indirect discrimination” concerns measures which are seemingly gender-neutral, but in practice have a disproportionate detrimental effect on women. See CEDAW, General Recommendation No. 25, para 7.

<sup>101</sup> See HRC, General Comment No. 28, para 31.

<sup>102</sup> See CEDAW, art 4 para 1.

<sup>103</sup> See CEDAW, General Recommendation No. 25, paras 18-24.

<sup>104</sup> See HRC, General Comment No. 25, para 23.

with a view to the empowerment of women.<sup>105</sup> Moreover, it can be argued that Article 25 itself, in referring to the opportunity to participate, requires affirmative action in favour of women in order to provide them with an equal opportunity. This conclusion is all the more compelling because Article 25 is the only specific norm in an international human rights treaty that contains a reference to the opportunity (that is, *de facto* possibility) to exercise a right.<sup>106</sup> In General Comment No. 28 the HRC also reaffirms – specifically in the context of women’s rights – the state obligation to protect from discrimination,<sup>107</sup> including discrimination that arises from cultural and societal attitudes.<sup>108</sup> Again, Article 26 obliges states to guarantee protection against discrimination beyond the rights contained in the CCPR; therefore states also have to take measures to eliminate discrimination against women in poverty reduction processes falling outside the scope of “public affairs”.<sup>109</sup>

In conclusion, the CCPR contains a right of citizens to participate, through various means, in decision-making on poverty reduction processes insofar as it takes place within the realm of political life, and imposes a wide range of both negative and positive obligations on states. States are prohibited from discriminating against women with respect to the rights conferred by Article 25 and, on the basis of Article 26, in areas of poverty reduction falling outside the scope of Article 25. In addition, states are under an obligation to promote the participation of women in the conduct of public affairs through affirmative measures.

### **3.3. Participation in the Context of Civil Society and the Community: International Covenant on Economic, Social and Cultural Rights**

#### *3.3.1. Content of the right to participate in poverty reduction*

The CESCR was adopted together with the CCPR in 1966 and entered into force on 3 January 1976. The monitoring through a reporting mechanism was originally conducted by the UN Economic and Social Council until a

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<sup>105</sup> See HRC, General Comment No. 28, paras 3 and 29.

<sup>106</sup> See also above 3.2.1.

<sup>107</sup> See HRC, General Comment No. 28, para 4.

<sup>108</sup> *Idem*, para 5. See below 3.5.2. and 3.3.3. for similar obligations, namely to modify social and cultural patterns of conduct that are detrimental to women, under CEDAW and the CESCR.

<sup>109</sup> In its Concluding Observations, the HRC – in referring to Article 26 – has for instance occasionally expressed concern about the limited contribution of women to civil society. See for example HRC, A/56/40 (Uzbekistan, 2001), para 20.

Committee on Economic, Social and Cultural Rights was established in 1985. The CESCR does not contain a right to participation, nor is the term poverty mentioned in the text of the treaty. Nevertheless, the CESCR Committee deduces both participatory rights and a state obligation to eradicate poverty from the Covenant.

The CESCR Committee views poverty as “one of the recurrent themes in the Covenant”, visible for example in the right to an adequate standard of living, the right to work, housing, food, health and education.<sup>110</sup> Its broad definition of poverty has already been cited in Chapter 1.1. and it has been pointed out that violations of civil and political rights, and in particular the right to participation, are a central element of this definition. The Committee therefore recommends a human rights-based approach to the reduction of poverty, including participatory rights of those affected by it. This right is deduced by the Committee from the UDHR, the CCPR and the Declaration on the Right to Development, but also from the CESCR itself in Article 13 para 1 on the right to education.<sup>111</sup> Article 13 is the only provision of the Covenant that explicitly mentions participation. It highlights the special role of education in facilitating participation by stipulating that education, among other objectives, “shall enable all persons to participate effectively in a free society”.<sup>112</sup> The Committee also reads a participatory element into many other rights, for example the right to work, to the highest attainable standard of health and to an adequate standard of living, reasoning that without broad participation, programmes and policies in these areas are unlikely to be effective.<sup>113</sup> In the Committee’s words, “those affected” have a right to participate in key decisions that are related to the realisation of economic, social and cultural rights.<sup>114</sup> From the poverty reduction processes described in Chapter 2.2., the first three categories – measures to generate income, to improve access to goods and services, and to empower poor individuals – will certainly fall within the scope of the CESCR, as they are directed towards the realisation of economic, social and cultural rights. Macroeconomic policies, although targeted at economic growth and not as such at the realisation of economic and social rights, will usually also be

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<sup>110</sup> See CESCR, Statement on Poverty, para 1.

<sup>111</sup> See CESCR, Statement on Poverty, para 12.

<sup>112</sup> Thus, the right to education is, apart from being a human right in itself, an empowerment right to realise other rights – economic and social rights as well as civil and political rights. See CESCR, General Comment No. 13, para 1.

<sup>113</sup> See CESCR, Statement on Poverty, paras 12 f. See also CESCR, General Comment No. 14, para 54.

<sup>114</sup> See CESCR, Statement on Poverty, para 12. In contrast to the CCPR, there is no limitation to citizens. Art 2 para 3 CESCR provides that developing countries may restrict the guarantee of economic rights in regard to non-nationals; however, this does not apply to participatory rights as they are not economic rights.

covered by the CESCR, as they are an important factor in poverty reduction.<sup>115</sup>

Which participatory rights does the CESCR Committee derive from the Covenant? In its General Comments on single rights contained in the CESCR, the Committee asserts that all individuals and groups have a right to participate in decision-making processes that may affect their development,<sup>116</sup> be it on the community, national or international level.<sup>117</sup> This participation must be active and informed,<sup>118</sup> as well as genuine,<sup>119</sup> which implies that it must have the potential to have a real influence on decision-making.<sup>120</sup> The Committee is not very clear on the forms of participatory rights under the CESCR. One important element is the holding of free and fair elections, which the Committee deems indispensable for the realisation of economic, social and cultural rights.<sup>121</sup> This corresponds with the right to participation through freely chosen representatives in the CCPR.<sup>122</sup> According to the Committee, elections alone are however not enough to ensure effective participation in all key decisions;<sup>123</sup> it thus interprets the Covenant to convey also rights to direct participation. Forms of direct participation include the holding of positions in parliament, government and other public functions<sup>124</sup> as well as participation of civil society in processes related to the realisation of economic, social and cultural rights. With regard to civil society participation, the Committee interprets the CESCR to require the “extensive genuine consultation with, and participation by, all those affected” in the development of policies and programmes to promote the rights in the Covenant.<sup>125</sup> The CESCR thus confers on affected individuals and communities, as well as relevant associations, a right to participate in “setting priorities, making decisions,

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<sup>115</sup> In particular, macroeconomic policies are an important determinant of the income of poor individuals. See UN Department of Economic and Social Affairs, 1998, pp. 51 ff. See also above 2.2.

<sup>116</sup> See CESCR, General Comment No. 14, para 54.

<sup>117</sup> See CESCR, General Comment No. 14, para 11.

<sup>118</sup> The Committee does not elaborate on the meaning of the term “active”; it could be interpreted to emphasise direct participation. See CESCR, Statement on Poverty, para 12 (“active and informed participation”). See also CESCR, General Comment No. 15, para 48 (“access to information”).

<sup>119</sup> See CESCR, General Comment No. 15, para 24.

<sup>120</sup> See also above 3.2.1.

<sup>121</sup> See CESCR, Statement on Poverty, para 12.

<sup>122</sup> See above 3.2.1.

<sup>123</sup> See CESCR, Statement on Poverty, para 12.

<sup>124</sup> See CESCR, E/2000/22 (Solomon Islands, 1999), para 199. See also CESCR, E/2001/22 (Georgia, 2000), para 87 and E/2001/22 (Mongolia, 2002), para 270.

<sup>125</sup> See CESCR, General Comment No. 4, para 12. See also CESCR, General Comment No. 14, paras 11 and 54 and General Comment No. 15, para 48.

planning, implementing and evaluating” such measures.<sup>126</sup> This concept of civil society participation differs from the one under the CCPR by placing special emphasis on participation in the context of the community and other groups, whereas the HRC (in connection with Article 25 CCPR) only refers to individuals. Moreover, the CESCR Committee, in contrast to the HRC, does not restrict civil society participation to particular modes.<sup>127</sup> Finally, the CESCR Committee’s concept appears at first sight to be broader than that of the CCPR as it does not only cover the implementation and formulation of poverty reduction policies, but also includes other stages of these processes. However, at a closer look all of these stages will be covered by the “formulation and implementation of public policy” as used by the HRC, possibly with the exception of evaluation.<sup>128</sup>

### 3.3.2. *General state obligations*

State obligations under the CESCR are in principle of the same nature as those under the CCPR, namely obligations to respect, protect and fulfil. This has been, and still is, disputed by some states, which hold that economic and social rights are not justiciable rights but mere state objectives, usually in order to undermine the importance of these rights.<sup>129</sup> Despite the prevalence of these contestations, it is increasingly acknowledged today that the rights contained in the CESCR are justiciable and entail in principle the same obligations as civil and political rights.<sup>130</sup> Nevertheless, there are some differences between state obligations under the CCPR and the CESCR. Firstly, with civil and political rights the emphasis is usually placed on negative obligations, while in the context of economic and social rights the most significant obligations are of a positive nature.<sup>131</sup> This distinction is however not very prominent with regard to participatory rights, as they entail many positive obligations also under the CCPR.<sup>132</sup> A second distinctive feature is that state obligations under the CESCR are subject to some qualifications that do not apply under the CCPR. While the CCPR imposes on states an immediate obligation to respect and ensure rights, the

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<sup>126</sup> See CESCR, General Comment No. 14, para 54. See also CESCR, General Comment No. 18, paras 38 and 42 and below 3.3.2.

<sup>127</sup> The HRC limits civil society participation in the context of Article 25 CCPR to public debate and dialogue with representatives and forming of associations. See above 3.2.1.

<sup>128</sup> It could however be argued that evaluation is a part of the implementation process and an important tool for future decision-making.

<sup>129</sup> See Steiner & Alston, 2000, pp. 237 f.

<sup>130</sup> See Sepúlveda, 2003, pp. 123 ff.

<sup>131</sup> See CESCR, General Comment No. 3, para 4.

<sup>132</sup> See above 3.2.2.

CESCR requires states to “take steps (...) to the maximum of (their) available resources, with a view to achieving progressively the full realisation of the rights recognised” in the CESCR.<sup>133</sup> However, these qualifications are interpreted narrowly by the CESCR Committee. Notwithstanding the term “progressively”, the Committee holds that some obligations under the Covenant are immediate, for example the obligation to take steps<sup>134</sup> and the prohibition of discrimination.<sup>135</sup> It also considers this term to imply that deliberately retrogressive measures will require a compelling justification.<sup>136</sup> Even if a state does not have adequate resources to guarantee all the rights provided in the CESCR, it has a “core obligation” to ensure that at least minimum essential levels of each right are satisfied; if this not the case, there is a presumption of a violation of the Covenant that will be difficult to rebut for the state.<sup>137</sup> The Committee has not explicitly commented on the significance of these qualifications for participatory rights, but it has pointed out that a functioning democracy<sup>138</sup> and other forms of participation are preconditions for the realisation of economic, social and cultural rights.<sup>139</sup> Thus it is implied that the guarantee of these rights is an immediate obligation and not dependent on the availability of resources.

The obligation to respect, as in the CCPR, amounts to a prohibition of interference with the rights protected in the CESCR.<sup>140</sup> With regard to participatory rights, the arising state obligations will correspond to those arising under the CCPR; for instance, states must refrain from imposing discriminatory restrictions on and interfering arbitrarily with the right to participation.

Like the CCPR, the CESCR in principle does not impose any obligations on individuals or entities other than states parties. The CESCR Committee has however proven to be more open than the HRC to assuming “responsibilities” of non-state actors, which has an effect on the scope of the states parties’ responsibility to protect. Aside from taking measures to prevent third parties from interfering with the rights provided in the Covenant, states are held to “provide an environment that facilitates implementation of these responsibilities (of private actors)”.<sup>141</sup> In the

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<sup>133</sup> See CESCR, art 2 para 1.

<sup>134</sup> See CESCR, General Comment No. 3, para 9.

<sup>135</sup> See CESCR, General Comment No. 16, para 16.

<sup>136</sup> See CESCR, General Comment No. 3, para 9.

<sup>137</sup> *Idem*, para 10.

<sup>138</sup> See CESCR, E/1999/22 (Nigeria, 1998), para 128.

<sup>139</sup> See CESCR, Statement on Poverty, para 12.

<sup>140</sup> See CESCR, General Comment No. 14, para 34.

<sup>141</sup> See Clapham, 2006, pp. 325 f.

context of participation in poverty reduction, this could for instance mean that states, when privatising public services, are under an obligation to ensure that the private service provider involves affected individuals and groups in the development of programmes and policies that are connected to economic and social rights.

Finally, the obligation to fulfil requires the enactment of laws and provision of services and goods with a view to facilitating participation and fair representation of those affected by poverty in the development process. Article 13 para 1, as mentioned above the only provision that explicitly refers to participation, demands that states set up a system of education that is directed towards the effective participation of all individuals in a free society in order to empower marginalised adults and children, and in particular women and girls.<sup>142</sup> In its General Comments and Concluding Observations, the CESCR Committee elaborates on further-going state obligations to fulfil participatory rights. Regarding participation through the election of representatives, the Committee holds that the CESCR does not require a particular system of government, provided that the system is democratic and all human rights are respected. This implies that the interdependence and indivisibility of economic, social and cultural rights on the one hand and civil and political rights on the other hand must be reflected in the political system.<sup>143</sup> An authoritarian regime, that is to say the lack of an independent parliament and judiciary, is not consistent with the Covenant.<sup>144</sup> Additionally, other principles of “good governance” must be guaranteed, including accountability of state organs, transparency and decentralisation of state actions.<sup>145</sup> National strategies for the promotion of economic, social and cultural rights (and thus the reduction of poverty) must be developed under consultation with and participation by affected individuals and groups.<sup>146</sup> This appears to go further than state obligations under the CCPR: The HRC asserts that citizens must be granted the right and opportunity to participate through public debate and dialogue and the forming of associations.<sup>147</sup> The fact that the CESCR Committee additionally uses the term “consultation” suggests that states have to take the initiative to seek the opinion of individuals and groups affected by poverty reduction

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<sup>142</sup> See CESCR, General Comment No. 13, para 1.

<sup>143</sup> See CESCR, General Comment No. 3, para 8.

<sup>144</sup> See CESCR, E/1997/22 (Belarus, 1996), para 279. See also CESCR, E/1999/22 (Nigeria, 1998), para 128 (“rule of law”).

<sup>145</sup> See CESCR, General Comment No. 12, para 23.

<sup>146</sup> See CESCR, General Comment No. 11, para 8; General Comment No. 4, para 12; General Comment No. 12, para 23; General Comment No. 14, para 54; General Comment No. 18, para 42.

<sup>147</sup> See above 3.2.1.

processes. Finally, interested individuals and groups must be granted access to relevant information, even if it is held by third parties, in order to facilitate their participation.<sup>148</sup>

### 3.3.3. *Specific state obligations regarding participation of women*

Does the CESCRC contain specific rights of women to participate in poverty reduction processes? In the Committee's opinion, non-discrimination and equality are particularly important in the context of anti-poverty strategies, as poverty may be caused by discrimination as well as result in discrimination.<sup>149</sup> The CESCRC contains both a prohibition of discrimination in Article 2 para 2, which corresponds to Article 2 para 1 CCPR, and the principle of equal rights of women and men in Article 3, which is identical to the same article of the CCPR. There is however no "stand-alone" provision similar to Article 26 CCPR, which means that discrimination is only prohibited with respect to the rights contained in the CESCRC. It is important to note that the prohibition of discrimination is one of the state obligations in the CESCRC that has immediate effect with regard to all Covenant rights.<sup>150</sup> Similarly to the HRC, the CESCRC Committee adopts CEDAW's definition of discrimination against women, which covers both direct and indirect discrimination.<sup>151</sup> The Committee interprets the concept of equality underlying Article 3 to carry a substantive meaning – that is, covering both formal (*de jure*) equality and equal enjoyment of rights (*de facto* equality).<sup>152</sup> State obligations arising under Article 2 para 2 and Article 3 are elaborated in the Committee's General Comment No. 16 on gender equality; additionally, the Committee has commented on obligations regarding women's participation in some Concluding Observations on state reports.

It follows from the above that the obligation to respect women's participatory rights under the CESCRC demands that states refrain from actions that constitute direct or indirect discrimination against women. The Committee specifies that, for instance, laws and policies discriminating directly or indirectly against women must be repealed.<sup>153</sup>

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<sup>148</sup> See CESCRC, General Comment No. 15, para 48. This is particularly important in connection with privatisation of public services; see also above (obligation to protect).

<sup>149</sup> See CESCRC, Statement on Poverty, para 11. See also above 1.1.

<sup>150</sup> See CESCRC, General Comment No. 16, para 16.

<sup>151</sup> *Idem*, paras 11 and 13.

<sup>152</sup> *Idem*, para 6. This appears to be equivalent to the HRC's interpretation of "right and opportunity" in Article 25 CCPR; see above 3.2.1.

<sup>153</sup> See CESCRC, General Comment No. 16, paras 13 and 18.

The CESCR Committee interprets the Covenant to impose on states extensive positive obligations to ensure women's rights. Firstly, the obligation to protect entails that states must prevent third actors from interfering with women's rights, for example by taking "steps aimed directly at the elimination of prejudices, customary and other practices that perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women".<sup>154</sup> In connection with women's participation, it is particularly important to eradicate negative stereotypes about women who are active in the public sphere, for instance through awareness-raising programmes and campaigns.<sup>155</sup> States also have to address the causes of women's low participation in public life by combating "discrimination in the education of the girl-child, in access to employment, equal pay, access to land and credit services".<sup>156</sup> Secondly, the obligation to fulfil requires states to take steps with a view to achieving equality of rights of women and men in practice. The CESCR Committee acknowledges that gender-neutral measures are not enough to reach this objective; therefore states must adopt measures that take into account the structural discrimination and practical difficulties that women face.<sup>157</sup> Such measures should include the promotion of women's participation in public life, for example through temporary special measures such as quotas,<sup>158</sup> and (specifically in the context of poverty reduction) the promotion of equal participation of women "in development planning, decision-making and in the benefits of development and all programmes related to the realisation of economic, social and cultural rights".<sup>159</sup> When adopting new laws, states should integrate a gender perspective in decision-making in order to avoid negative consequences for women's equal enjoyment of rights.<sup>160</sup> Finally, the Committee has urged states to adopt measures to reconcile family and professional life, such as increasing the capacity of childcare facilities, in order to ensure that women can devote time to activities in public life.<sup>161</sup>

In conclusion, the CESCR requires a democratic system with free and fair elections and includes a right to participation in poverty reduction processes of all those affected by these processes. The CESCR Committee, in

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<sup>154</sup> *Idem*, para 19. The CESCR Committee draws here on Article 5 CEDAW; see below 3.5.2.

<sup>155</sup> See CESCR, E/C.12/UZB/CO/1 (Uzbekistan, 2006), para 43.

<sup>156</sup> CESCR, E/C.12/1/Add.93 (Guatemala, 2003), para 30.

<sup>157</sup> See CESCR, General Comment No. 16, paras 8 and 15.

<sup>158</sup> *Idem*, para 15.

<sup>159</sup> *Idem*, para 21.

<sup>160</sup> *Ibid.* See also CESCR, E/2002/22 (Honduras, 2001), para 120.

<sup>161</sup> See CESCR, E/C.12/1/Add.102 (Denmark, 2004), para 26; E/C.12/AUT/CO/3 (Austria, 2006), para 26.

interpreting the Covenant, places special emphasis on participation in the context of civil society and communities. Non-state actors are considered to have “responsibilities” in connection with economic, social and cultural rights, and states are obliged to provide an environment conducive to the implementation of these responsibilities. In addition, the CESCR imposes on states a wide range of positive obligations to facilitate and enhance the participation of women. The exact scope of the participatory rights in the CESCR and the forms that participation should take are not clearly defined by the Committee. It could be argued that this can be an advantage in the context of women’s participation,<sup>162</sup> as the broad and unspecific language of the Committee does not confine the right to participation to the traditional political processes of Article 25 CCPR. Owing to the fact that the traditional forms of participation have been and still are dominated by men, the chances for women to take part in development processes through the forms of civil society participation emphasised by the CESCR Committee might be more favourable.

### **3.4. Prohibition of Discrimination Against Women in Political Processes: Convention on the Political Rights of Women**

The Convention on the Political Rights of Women, which was adopted in 1952 and entered into force on 7 July 1954, refers in its preamble to the concept of participation enshrined in the UDHR and defines as its objective to “equalise the status of men and women in the enjoyment and exercise of political rights”. It stipulates that women shall be entitled to vote, be eligible for election to all publicly elected bodies, hold public office and exercise all public functions “on equal terms with men (and) without any discrimination”.<sup>163</sup> Women’s participation in poverty reduction processes will thus be covered by the Convention to the same extent as by the CCPR, excluding processes that take place outside the political sphere.

The Convention places a negative obligation on states to refrain from discriminating against women in political processes. According to the preamble, its aim is to provide women with equal enjoyment of political rights, but it appears to assume that the prohibition of discrimination is sufficient to achieve this goal. Therefore it does not impose positive obligations on states to promote women’s political rights.<sup>164</sup> The

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<sup>162</sup> See Stark, 2000, p. 233.

<sup>163</sup> See Convention on the Political Rights of Women, arts 1-3.

<sup>164</sup> See Kaufman, 2000, p. 384.

Convention's value in improving women's situation is accordingly rather low, as the social and cultural obstacles to women's participation necessitate positive state action to advance women's enjoyment of political rights.<sup>165</sup>

### **3.5. Equal Participation of Women in All Spheres of Public Life: Convention on the Elimination of All Forms of Discrimination Against Women**

#### *3.5.1. Content of the right to participate in poverty reduction*

The CEDAW, which was adopted in 1979 and entered into force on 3 September 1981, is the most important human rights treaty on women's rights. Its definition of discrimination is wide<sup>166</sup> and does not concern discrimination on the basis of sex, but specifically refers to discrimination against women. Therefore CEDAW only grants rights to women.<sup>167</sup> As the public sphere is one of the areas where women are traditionally most disadvantaged, participatory rights have a prominent place in CEDAW. Article 7 grants general rights to participation in the "political and public life of the country". In addition, there are provisions concerning participation at the international level (Article 8) and participation of rural women in development planning and community activities (Article 14). These rights to equal participation apply in principle to all women. It is important to note in this context that CEDAW explicitly prohibits discrimination against women in the acquirement, change or retention of nationality,<sup>168</sup> as citizenship has a direct effect on most participatory rights.<sup>169</sup>

The CEDAW Committee's interpretation of the scope of "political and public life" in Article 7 resembles the HRC's understanding of "public affairs" in Article 25 CCPR. The Committee takes up the definition of public affairs by the HRC insofar as it interprets Article 7 to cover "all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels".<sup>170</sup> However, as Article

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<sup>165</sup> See above 1.1.

<sup>166</sup> CEDAW, art 1: "(...) 'Discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

<sup>167</sup> See CEDAW, General Recommendation No. 25, para 5.

<sup>168</sup> See CEDAW, art 9.

<sup>169</sup> See CEDAW, General Recommendation No. 21, para 6.

<sup>170</sup> See CEDAW, General Recommendation No. 23, para 5.

7 lit c also refers to participation in “non-governmental organisations and associations concerned with the public and political life of the country”, the CEDAW Committee additionally includes “many aspects of civil society, including (...) the activities of organisations such as (...) trade unions, professional or industry associations, women’s organisations, community-based organisations and other organisations concerned with public and political life”,<sup>171</sup> which are not necessarily covered by Article 25 CCPR.<sup>172</sup> Article 14 on the rights of rural women explicitly confers a right to participation in development planning. Moreover, in its Concluding Observations the Committee has referred to the connection between lack of women’s participation and poverty<sup>173</sup> and emphasised that women must be seen as “agents of change” in the development process.<sup>174</sup> It follows that all of the poverty reduction processes outlined in Chapter 2.2. will be within the scope of Article 7 CEDAW, including those that are not subject to Article 25 CCPR.

The content of the right to participation in CEDAW is similar to that in the CCPR. In some areas there are however differences between the two treaties. Article 7 lit a refers to the right to vote and stand for elections, which corresponds to Article 25 lit b CCPR. In contrast to the CCPR, CEDAW does not contain any conditions for elections. Nevertheless, the CEDAW Committee holds that equality of women can only be achieved if there is universal and equal suffrage in genuine and periodic elections<sup>175</sup> as well as secrecy of the vote,<sup>176</sup> thus repeating the conditions laid down in the CCPR. Article 7 lit b confers a right to participation “in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government”. Although this provision is more elaborate than the CCPR’s references to direct participation and public service, its substance appears to be the same: The CEDAW Committee interprets it to encompass all positions connected with public functions, whether elected or appointed, such as in government at policy level,<sup>177</sup> in cabinets, civil service, all parts of public administration,

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<sup>171</sup> Ibid.

<sup>172</sup> See above 2.1.

<sup>173</sup> See for example CEDAW, A/57/38 (Yemen, 2002), para 404 and A/51/38 (Ethiopia, 1996), para 150.

<sup>174</sup> See CEDAW, A/57/38 (Mexico, 2002), para 434. The CEDAW Committee has also commented on the specific importance of women’s participation in budgetary decision-making and in macroeconomic policy. See CEDAW, A/49/38 (Zambia, 1994), para 366 and A/56/38 (Viet Nam, 2001), para 253.

<sup>175</sup> See CEDAW, General Recommendation No. 23, para 6.

<sup>176</sup> See CEDAW, CEDAW/C/TJK/CO/3 (Tajikistan, 2007), para 26. In this Concluding Observation, the Committee expresses its concern about the practice of “family voting”, whereby one (usually male) family member votes for the entire family.

<sup>177</sup> See CEDAW, General Recommendation No. 23, para 24.

the judiciary and the military.<sup>178</sup> As mentioned above, Article 7 lit c explicitly confers a right to civil society participation by referring to non-governmental and other public and political organisations, which, according to the Committee, *inter alia* includes activities of women’s organisations and community-based organisations.<sup>179</sup> Article 8 obliges states to grant women equal “opportunity to represent their governments at the international level and to participate in the work of international organisations”. The Committee interprets this provision to refer to “all levels and (...) all areas of international affairs”, including all forms of diplomacy, delegations to international conferences, positions in foreign service, permanent missions to the UN and expert meetings and bodies.<sup>180</sup> Similarly to Article 25 lit c CCPR, this provision entails not a right of access, but a right to procedural guarantees, namely “objective criteria and processes for appointment and promotion to all relevant positions.”<sup>181</sup> Participation in the international sphere is of great significance in the context of poverty reduction, as decision-making on development processes is increasingly taking place on the global level.<sup>182</sup> Finally, Article 14 confers on rural women the right to participate in the “elaboration and implementation of development planning at all levels” and in “all community activities”. The CEDAW Committee has not yet elaborated on the content of this provision, except for a reference to participation in rural and village committees.<sup>183</sup>

### 3.5.2. State obligations

The state obligations arising under CEDAW, which are laid down in a general manner in Part I of the Convention, correspond in principle to those under the CCPR and the CESC. According to Article 2 lit d, states are obliged to refrain from engaging in discriminatory acts and practices.<sup>184</sup> As with the CCPR and the CESC, this applies both to direct and indirect discrimination.<sup>185</sup> Positive state obligations, which are crucial in the context of women’s rights, have a particularly prominent place in CEDAW. Article 2 lit e refers to the obligation to protect by obliging states to “eliminate

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<sup>178</sup> *Idem*, paras 30 f.

<sup>179</sup> *Idem*, para 5. The Committee deems such organisations very important for women’s participation, as they provide a “valuable training ground for women to develop political skills”. See CEDAW, General Recommendation No. 23, para 34.

<sup>180</sup> *Idem*, paras 35 and 49.

<sup>181</sup> See CEDAW, General Recommendation No. 23, para 38 and para 50 lit b.

<sup>182</sup> *Idem*, para 39.

<sup>183</sup> See CEDAW, A/54/38 (China/Hong Kong, 1999), para 293 and 320.

<sup>184</sup> See CEDAW, art 2 lit d.

<sup>185</sup> See CEDAW, General Recommendation No. 25, para 7.

discrimination against women by any person, organisation or enterprise”, thus taking into account that women’s rights are often violated by private actors. Moreover, CEDAW explicitly acknowledges that women might have to be treated differently to achieve substantive equality. Article 4 para 1 allows for the adoption of temporary special measures aiming at accelerating equality of women in all spheres of life. The CEDAW Committee interprets the Convention to impose an obligation on states to adopt such measures where they are necessary and appropriate.<sup>186</sup> In addition, states are under an obligation to “modify social and cultural patterns of conduct between men and women” in order to achieve the elimination of prejudices and practices that are “based on the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.<sup>187</sup>

The formulation of CEDAW’s provisions on participatory rights underlines the existence of both negative and positive state obligations. Article 7 requires states to “take all appropriate measures to eliminate discrimination against women (...) and, in particular, (to) ensure to women, on equal terms with men” the rights provided therein. The wording of Article 14 is almost identical.<sup>188</sup> Article 8 obliges states to “ensure to women (...) the opportunity” to participate on the international level.

In line with the obligation to respect, states are prohibited from imposing any restrictions or conditions on women’s right to participation that do not apply to men or have a disproportionate impact on women.<sup>189</sup> The latter category includes for example – like under the CCPR – educational, property and literacy conditions on the right to vote.<sup>190</sup>

State obligations to fulfil under CEDAW can be broadly divided into two categories: measures to improve the *de facto* situation of women and measures to modify societal attitudes.<sup>191</sup> In order to improve women’s *de facto* participation, despite the fact that CEDAW does not demand a specific democratic system, the Committee has asked states to assess their electoral system and – if necessary – amend it with a view to increasing women’s participation.<sup>192</sup> Additionally, the Committee has requested states to provide an “open and enabling environment” for women to take part in political

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<sup>186</sup> *Idem*, para 24.

<sup>187</sup> CEDAW, art 5. Article 5 is the only provision of CEDAW which arguably confers rights to men as well as women.

<sup>188</sup> See CEDAW, art 14 para 2.

<sup>189</sup> See CEDAW, art 7. This refers to direct and indirect discrimination; see also above.

<sup>190</sup> See CEDAW, General Recommendation No. 23, para 23.

<sup>191</sup> *Idem*, para 7. See also above.

<sup>192</sup> See CEDAW, A/53/38 (New Zealand, 1998), para 283. See also CEDAW, A/59/38 (Bangladesh, 2004), para 256.

processes and non-governmental organisations.<sup>193</sup> More concretely, obligations with respect to the right to participation encompass the provision of voter education for women, the assistance of women facing obstacles such as poverty and illiteracy in exercising their participatory rights, and – in the long run – overcoming such obstacles.<sup>194</sup> Legal safeguards to ensure the secrecy of the vote must be created.<sup>195</sup> Furthermore, states are held to “consult and incorporate the advice of groups which are broadly representative of women’s views and interests” in the formulation and implementation of government policy<sup>196</sup> and to cooperate with non-governmental organisations and women’s associations.<sup>197</sup> In the context of participation in the political sphere, temporary special measures will be necessary in most states to enhance women’s participation. Measures that have been recommended by the CEDAW Committee include for instance the recruitment and financial assistance of women candidates;<sup>198</sup> capacity building and training for women to develop political and leadership skills;<sup>199</sup> and setting up numerical goals and quotas targeting women for appointment to public positions.<sup>200</sup> The second category of obligations, namely to modify social and cultural patterns that disadvantage women, is also very important in connection with women’s participatory rights, as the social role of women traditionally was, and to a large extent still is, seen to be confined to the private sphere. Therefore the Committee, in its Concluding Observations, regularly requests states to conduct educational and awareness-raising programmes to redress cultural stereotypes and disseminate information about the importance of women’s participation in development,<sup>201</sup> for instance with involvement of the mass media,<sup>202</sup> with a view to encouraging

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<sup>193</sup> See CEDAW, A/55/38 (Belarus, 2000), paras 355 f. and A/59/38 (Belarus, 2004), paras 343 f.

<sup>194</sup> See CEDAW, General Recommendation No. 23, para 45 lits c and d. See above 3.2.2. for identical obligations under the CCPR.

<sup>195</sup> See CEDAW/C/TJK/CO/3 (Tajikistan, 2007), para 26, in connection with the practice of “family voting”. See also above 3.5.1.

<sup>196</sup> See CEDAW, General Recommendation No. 23, para 26. This corresponds to the obligation under the CESCRC to consult affected communities and associations in processes related to the realisation of economic, social and cultural rights. See above 3.3.2.

<sup>197</sup> See CEDAW, A/59/38 (Belarus, 2004), paras 344.

<sup>198</sup> See CEDAW, General Recommendation No. 23, para 15.

<sup>199</sup> See CEDAW, A/52/38 (Bangladesh, 1997), para 463; A/57/38 (Hungary, 2002), para 326; CEDAW/C/KHM/CO/3 (Cambodia, 2006), para 24. See also CEDAW, CEDAW/C/TJK/CO/3 (Tajikistan, 2007), para 26.

<sup>200</sup> See CEDAW, General Recommendation No. 23, para 15. See for example also CEDAW, A/52/38 (Italy, 1997), para 355; A/53/38 (Croatia, 1998), para 110; A/55/38 (Jordan, 2000), para 183; A/60/38 (Benin, 2005), para 154.

<sup>201</sup> See CEDAW, A/54/38 (Ireland, 1999), para 190; A/56/38 (Kazakhstan, 2001), para 90; A/57/38 (Hungary, 2002), para 326.

<sup>202</sup> See CEDAW, A/55/38 (Lithuania, 2000), para 157.

women to participate in political activities,<sup>203</sup> advancing women's networking and mentoring,<sup>204</sup> and increasing men's sharing of domestic responsibilities.<sup>205</sup>

As laid down above, the obligation to protect has special significance with regard to women's rights and is explicitly mentioned in Article 2 lit e of CEDAW. In its General Recommendation No. 23 on women in political and public life, the CEDAW Committee specifies this obligation in connection with participatory rights as follows: "States parties are under an obligation to take all appropriate measures (...) to ensure that organisations such as political parties and trade unions, which may not be subject directly to obligations under the Convention, do not discriminate against women and respect the principles contained in Article 7 and 8."<sup>206</sup> The conduct of political parties is crucial in this context as they are "an important vehicle in decision-making roles".<sup>207</sup> Therefore states should adopt measures to encourage political parties to adopt "effective measures (...) to overcome obstacles to women's full participation and representation and ensure that women have an equal opportunity in practice to serve as party officials and to be nominated as candidates for election".<sup>208</sup> Such "encouragement" by the state could for instance include the use of funding as an incentive to nominate more female candidates.<sup>209</sup> While the Committee at this point cautiously states that non-state actors "may not" have direct obligations under CEDAW, it has addressed such actors, and in particular political parties, more directly on other occasions. In the same General Recommendation, for example, the Committee holds that political parties "have a responsibility to ensure that women are included in party lists and nominated for election in areas where they have a likelihood of electoral success".<sup>210</sup> Moreover, the Committee considers that non-state organisations have the responsibility to guarantee the principle of gender equality in their constitutions and in the composition of their memberships.<sup>211</sup>

Concludingly, CEDAW grants women a comprehensive right to participate in all poverty reduction processes on an equal basis with men. In order to guarantee the enjoyment of this right, states have extensive positive

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<sup>203</sup> See CEDAW, A/51/39 (Ethiopia, 1996), para 157 and A/56/38 (The Netherlands, 2001), para 218.

<sup>204</sup> See CEDAW, A/54/38 (Ireland, 1999), para 190.

<sup>205</sup> *Ibid.* and CEDAW/C/CPV/CO/6 (Cap Verde, 2006), para 24.

<sup>206</sup> CEDAW, General Recommendation No. 23, para 42.

<sup>207</sup> *Idem*, para 32.

<sup>208</sup> *Ibid.*

<sup>209</sup> See CEDAW, A/55/38 (Austria, 2000), para 238.

<sup>210</sup> CEDAW, General Recommendation No. 23, paras 28 and 22.

<sup>211</sup> *Idem*, para 34.

obligations, including the adoption of affirmative action measures and the modification of societal attitudes that hinder women from the full enjoyment of their participatory rights. The obligation to respect women's right to participation is particularly emphasised by the CEDAW Committee in connection with political parties, as they have a direct influence on the participation of women in the electoral process.

### **3.6. Obstacles and Opportunities for Women's Participation in Africa: African Charter on Human and Peoples' Rights and Protocol on the Rights of Women in Africa**

#### *3.6.1. Content of the right to participate in poverty reduction*

The African Charter on Human and Peoples' Rights was adopted in 1981 within the framework of the Organisation of African Unity (OAU), which was renamed into African Union (AU) in 2001. The Charter entered into force on 21 October 1986 and, being the AU's main human rights instrument, all African states except Morocco are party to it.<sup>212</sup> Its main monitoring body, the African Commission, is an independent expert body similar to the HRC.<sup>213</sup> The African Charter contains civil and political rights as well as economic, social and cultural rights and underlines in its preamble the interdependence of both sets of rights. It is worth mentioning that it also contains a (collective) right to development.<sup>214</sup> In Article 13 the Charter contains a right to participation that is based on Article 25 CCPR and applies only to citizens. Article 13 refers not to participation in the conduct of public affairs, but "in the government of (one's) country". In contrast to Article 25 CCPR, this definition thus indicates a certain institutional form instead of a subject matter. Participation in poverty reduction processes will therefore be covered by Article 13 as long as these processes are adopted by governmental authorities. Nevertheless, the result will be the same as under the CCPR, namely that poverty reduction measures are within the scope of the right to participation to the extent that they take place in political processes.<sup>215</sup>

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<sup>212</sup> See Heyns & Killander, 2006, pp. 524 f.

<sup>213</sup> In 1998, a Protocol on the Establishment of the African Court on Human and Peoples' Rights was adopted. The Protocol entered into force on January 2004, but the Court is not yet operating. See Heyns & Killander, 2006, p. 512.

<sup>214</sup> See ACHPR, art 22.

<sup>215</sup> The African Commission also derives participatory rights from certain economic and social rights; see below.

Article 13 mirrors Article 25 CCPR to a certain extent by referring to the “right to participate freely in the government (...), either directly or through freely chosen representatives”, but it is not as broad. Firstly, there is no provision comparable to Article 25 lit b CCPR, which refers to the right to vote and stand for elections and lays down conditions for elections. However, according to the African Commission, the right to take part in government “through freely chosen representatives” in Article 13 para 1 demands the holding of elections<sup>216</sup> and implies the right to vote.<sup>217</sup> The Charter does not require states to adopt any particular democratic system,<sup>218</sup> as long as the results of the free expression of the voters’ will are respected.<sup>219</sup> The Commission has not yet elaborated on the content of the right to direct participation. As this formulation is based on Article 25 lit a CCPR, the HRC’s interpretation of this provision should be taken into consideration when interpreting Article 13 para 1. As shown above, the HRC understands direct participation to encompass the holding of executive office and membership in legislative bodies, which will also apply under the African Charter. Additionally, the HRC includes into its concept of direct participation the exertion of influence on political processes through public debate and dialogue with representatives or the forming of associations. In this area however, the difference in wording between the two provisions might be relevant: While such forms of civil society participation can be subsumed under participation in the conduct of public affairs, they are not as easily interpreted into direct participation “in (...) government”, which refers to an institutional structure. On the other hand, the African Commission (similarly to the CESCRC Committee) seems to derive certain

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In the context of participation in poverty reduction, it should be mentioned that an African Charter on Democracy, Elections and Governance was adopted within the framework of the African Union on 30 January 2007. This charter acknowledges the interconnection between participation and development: It stipulates that states shall promote participation in the development process and demands the alleviation of poverty as a means to institutionalise good governance. See African Charter on Democracy, Elections and Governance, arts 30 and 33 para 7.

<sup>216</sup> See African Commission, Resolution on Electoral Process and Participatory Governance, art 1: “Elections are the only means by which the people can elect democratically the government of their choice in conformity with the African Charter.”

<sup>217</sup> See African Commission, *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria*, para 50.

<sup>218</sup> See Ouguergouz, 2003, p. 177.

<sup>219</sup> See African Commission, *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria*, para 50.

In this context, it should also be noted that the African Commission stated in a resolution of 1994 that the military coup in the Gambia was “a flagrant and grave violation of the right of the Gambian people to freely choose their government”. As the right to participation is corollary to the (collective) right of peoples to freely choose their government, a military coup will also violate Article 13. This is of significance for women’s participation, as it is usually particularly low under military rule. See African Commission, Resolution on The Gambia, art 1.

rights to direct participation of civil society from economic and social rights. In the well-known *SERAC* case, the Commission held that the state obligation to ensure the protection of the right to health demands the provision of “meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities”<sup>220</sup> as well as “meaningful access to (...) decision-making bodies to communities likely to be affected” by operations which have an impact on this right.<sup>221</sup> Finally, Article 13 para 2 grants a “right of equal access to public service”. Although the formulation of this provision is stronger than its counterpart in the CCPR, which refers to access “on general terms of equality”,<sup>222</sup> its substance will be the same, conferring not a right to access, but to procedural guarantees.<sup>223</sup>

### 3.6.2. *General state obligations*

As under the UN human rights treaties examined above, state obligations under the African Charter are threefold: to respect, protect and fulfil.<sup>224</sup>

The obligation to respect implies that states must not interfere with or restrict the Charter rights unless it is explicitly permitted. Article 13 para 1 provides that the right to participation must be granted “in accordance with the provisions of the law”. This is one of the so-called “clawback clauses” that can be found in some of the Charter’s articles on civil and political rights. If these clauses were interpreted to refer to domestic law, it would follow that states could impose any restriction as long as it was enacted in the form of law; this would threaten to deprive the rights in question of any value. The African Commission has however interpreted these clauses to refer also to international law.<sup>225</sup> In the context of the right to participation, this will mean in particular that states have to take into account Article 25 CCPR, and are thus prohibited from imposing discriminatory or unreasonable restrictions on the right to participation.

The African Commission has not commented on state obligations to fulfil in connection with Article 13, except for the reference to the holding of

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<sup>220</sup> African Commission, *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, para 53.

<sup>221</sup> *Idem*, recommendations.

<sup>222</sup> CCPR, art 25 lit c.

<sup>223</sup> See Ouguergouz, 2003, p. 178.

<sup>224</sup> See for example African Commission, *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, paras 45-47.

<sup>225</sup> See Heyns, 2002, p. 139 ff.

elections.<sup>226</sup> To make the right to participation operable, states will have to set up a system to regulate the allocation of political powers and means of participation, as under the CCPR.<sup>227</sup> The question is whether states are additionally under an obligation to provide citizens with the *de facto* possibility of exercising their participatory rights, for instance through voter education. Unlike the CCPR, the African Charter only refers to the right, not to the opportunity to participation. Article 1 however, which lays down general state obligations, stipulates that states must not only recognise the Charter rights, but also adopt “legislative or other measures to give effect” to them. The African Commission has interpreted this provision to impose positive obligations on states to ensure the rights in the Charter.<sup>228</sup> This conclusion is supported by Articles 60 and 61 ACHPR, which provide that the Commission shall “draw inspiration from international law”,<sup>229</sup> including the UN human rights treaties, when interpreting the Charter provisions. Consequently, states are under an obligation to secure the *de facto* enjoyment of participatory rights, for example by providing voter education and assisting poor and illiterate persons in exercising their rights under Article 13.

The African Charter, in contrast to the UN human rights treaties, imposes obligations not only on states, but also on non-state actors: in Chapter II of Part I the Charter lists several duties of individuals. This has been criticised as being reactionary and contrary to the spirit of human rights. However, these provisions could also be seen as a reinforcement of human rights: They put the focus not only on violations of states, but also non-state actors, and thus emphasise the state obligation to protect individuals from infringement of their participatory rights by other individuals.<sup>230</sup>

### 3.6.3. *Specific state obligations regarding participation of women*

The African Charter contains in Article 2 a non-discrimination clause that mirrors Article 2 para 1 CCPR and includes sex as a prohibited ground of

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<sup>226</sup> See African Commission, *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria*, para 50. See also above 3.6.1.

<sup>227</sup> See above 3.2.2.

<sup>228</sup> See for example African Commission, *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, para 47: The obligation to fulfil is “more of a positive expectation on the part of the State to move its machinery towards the actual realisation of the rights”. See also Heyns, 2002, p. 138 and Clapham, 2006, p. 433.

<sup>229</sup> ACHPR, art 60.

<sup>230</sup> See Clapham, 2006, pp. 432 f.

distinction. In Article 3 the Charter provides for equality before the law and equal protection of the law. The latter provision corresponds to Article 26 of the CCPR, in that it extends the principle of equality to areas not covered by the treaty.<sup>231</sup> The principle of equality between women and men is not explicitly included in the Charter. There is however a separate prohibition of discrimination against women in Article 18 para 3, which provides that states “shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions”. This article is problematic for two reasons. Firstly, it is not very clear on the meaning of the term discrimination and on the nature of the corresponding state obligations.<sup>232</sup> Secondly, the fact that the prohibition of discrimination against women is included in Article 18, which is essentially concerned with the protection of the family, and in one breath with the protection of children indicates that the drafters had in mind that women’s role was mainly in the private sphere.<sup>233</sup> In this context, it should also be mentioned that several articles of the Charter contain references to cultural and traditional values<sup>234</sup> that could be used to undermine women’s rights.<sup>235</sup> Despite these weaknesses, Article 18 para 3 also holds some potential for women. Firstly, it requires states to eliminate “every discrimination” against women and does not provide for any exceptions.<sup>236</sup> Even more importantly, in referring to “international declarations and conventions” protecting women’s rights, it incorporates these standards into the African Charter, irrespective of whether they have been ratified by the states parties.<sup>237</sup> Accordingly, in particular CEDAW will have to be taken into account when determining the meaning of discrimination against women and the ensuing state obligations. This is very significant, as a number of African states have not ratified CEDAW or have only done so with substantial reservations.<sup>238</sup>

Negative state obligations will thus correspond with those imposed by CEDAW, which means that both direct and indirect discrimination are prohibited. In terms of positive obligations, the African Charter mentions affirmative action (“special measures of protection”) only in connection with

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<sup>231</sup> It differs from Article 26 by not listing any prohibited grounds for discrimination.

<sup>232</sup> See Kaufman, 2000, p. 390 and Ouguergouz, 2003, p. 192.

<sup>233</sup> See Harrington, 2000, pp. 458 f. In this context, it might be more than a linguistic negligence that Article 13 speaks of every citizen’s right to participate in the government of *his* country.

<sup>234</sup> See in particular ACHPR, art 17 para 3 and art 18 paras 1 and 2.

<sup>235</sup> See Kaufman, 2000, p. 390.

<sup>236</sup> See Harrington, 2000, p. 459.

<sup>237</sup> See Ouguergouz, 2003, p. 193 and Harrington, 2000, p. 459.

<sup>238</sup> See Harrington, 2000, p. 459.

aged and disabled persons.<sup>239</sup> However, Article 1 with its implication of positive obligations – together with the reference to international declarations and conventions in Article 18 para 3 – will mean that states, where necessary, have to adopt affirmative measures to ensure to women equal enjoyment of participatory rights.<sup>240</sup> With regard to the obligation to protect, Article 2 lit e CEDAW must be taken into account.<sup>241</sup> Moreover, this obligation has a prominent role in the African Charter itself, as has already been mentioned above.<sup>242</sup>

From these observations it follows that the Charter has some potential, but also significant shortcomings regarding women's right to participation. These and other shortcomings of the ACHPR were the reason for the adoption of a Protocol on the Rights of Women in Africa in 2003, which entered into force on 25 November 2005. The Protocol, like CEDAW, specifically prohibits discrimination against women, which it defines as “any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women (...) of human rights and fundamental freedoms in all spheres of life”.<sup>243</sup>

The Protocol acknowledges the special importance of the right to participation for women's advancement. Article 9 grants women the right to participate in political life and at all levels of decision-making. In addition, participatory rights are mentioned in the context of the promotion and maintenance of peace (Article 10), cultural policies (Article 17), environmental matters and the sustainable use of natural resources (Article 18) and development policies and programmes (Article 19). Moreover, the importance of women's participation in development is highlighted in the preamble to the Protocol.<sup>244</sup> It is therefore evident that the wide concept of participation in the Protocol covers participation in decision-making on all of the poverty reduction processes outlined in Chapter 2.2.

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<sup>239</sup> See ACHPR, art 18 para 4. See also Heyns, 2002, p. 146.

<sup>240</sup> See also Ouguergouz, 2003, pp. 83 f.

<sup>241</sup> See above 3.5.2.

<sup>242</sup> See above 3.6.2. In connection with women's rights, Article 28 ACHPR, which prohibits discrimination between individuals, is particularly important, as it could be used by women to protect themselves against discrimination by men. See also Harrington, 2000, pp. 459 f.

<sup>243</sup> Protocol, art 1 lit f. This definition is based on and corresponds, in spite of minor differences, in substance with CEDAW's definition of discrimination.

<sup>244</sup> *Idem*, preamble para 6: “Noting that women's rights and women's essential role in development have been reaffirmed in the United Nations Plans of Action (...)” and para 8: “Reaffirming (...) the commitment of the African states to ensure the full participation of African women as equal partners in Africa's development”.

The forms of participation envisaged in the Protocol are participation “in all elections” without any discrimination<sup>245</sup> as well as equal representation with men “in all electoral processes”,<sup>246</sup> which will cover the right to vote and stand for elections as in CEDAW and the CCPR. Additionally, women have the right to be “equal partners with men at all levels of development and implementation of state policies and development programmes”.<sup>247</sup> This right corresponds to Article 7 lit b CEDAW, but is even stronger in formulation as it does not only refer to equal participation of women, but emphasises that women’s voice must be given the same weight as men’s. Finally, women are granted the right to participate and be represented at all levels of decision-making,<sup>248</sup> which is so broad as to encompass all other forms of participation explicitly mentioned in CEDAW, such as holding public office and performing all public functions (Article 7 lit b CEDAW) and participation in non-governmental, public and political organisations (Article 7 lit c CEDAW).

The Protocol imposes on states a wide range of detailed positive obligations to promote women’s rights. Among the general state obligations outlined in Article 2 are the obligation to integrate a gender perspective into all policies and development programmes<sup>249</sup> (which will require the participation of women in decision-making), to take corrective and positive action to eliminate *de jure* and *de facto* discrimination against women,<sup>250</sup> and to modify social and cultural patterns of conduct that are harmful to women.<sup>251</sup> In the specific context of participatory rights, the formulation of Article 9 strongly underlines these positive obligations of states. In particular, Article 9 para 1 obliges states to take “specific positive action” to advance women’s participation “through affirmative action”.

In conclusion, the concept of the right to participation in the African Charter resembles that of the CCPR, but is more restrictive.<sup>252</sup> The Charter prohibits discrimination against women, and while it does not explicitly mention positive state obligations to promote women’s participation in poverty reduction, such obligations can be derived from the African

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<sup>245</sup> Idem, art 9 para 1 lit a.

<sup>246</sup> Idem, art 9 para 1 lit b.

<sup>247</sup> Idem, art 9 para 1 lit c.

<sup>248</sup> Idem, art 9 para 2.

<sup>249</sup> See Protocol, art 2 para 1 lit c.

<sup>250</sup> Idem, art 2 para 1 lit d.

<sup>251</sup> Idem, art 2 para 2. This provision is almost identical to Article 5 CEDAW, except for a reference to the means of achieving this objective, namely public education, information and education and communication strategies.

<sup>252</sup> On the other hand, Articles 60 and 61 of the Charter can be used by the African Commission to broaden the scope of these rights in accordance with other international human rights treaties.

Commission's interpretation of the Charter and from international human rights instruments to which the Charter itself refers. Nevertheless, the African Charter can be criticised for being based on the idea that women's main role is in the private sphere of the family. The Protocol on the Rights of Women in Africa remedies these shortcomings of the Charter by granting women a comprehensive right to participation in all poverty reduction processes and providing an extensive list of state obligations to promote women's participation. These obligations correspond in substance to those under CEDAW, but are elaborated in more detail.

## **4. NON-BINDING INSTRUMENTS SUPPORTING WOMEN'S RIGHT TO PARTICIPATION IN POVERTY REDUCTION**

### **4.1. Introductory Remarks**

States have affirmed their commitment to equal participation of women in development in numerous international declarations. In particular the UN Decade for Women (1976-1985) – with its three goals equality, development and peace – drew the international community's attention to the empowerment and human rights of women, including their participation in the public sphere. International documents stressing the importance of women's participation, both as an end in itself and as a means of achieving sustainable development, include the Nairobi Forward-Looking Strategies<sup>253</sup> (1985), the Rio Declaration on Environment and Development and Agenda 21<sup>254</sup> (1992), and the Cairo Declaration and Plan of Action on Population and Development<sup>255</sup> (1994). The UN Declaration on the Right to Development of 1986 provides that women should have an active role in the development process.<sup>256</sup> In the following chapter, the Declaration on the Right to Development as well as four other non-binding instruments will be more closely examined: the Vienna Declaration on Human Rights (1993), the Copenhagen Declaration on Social Development (1995), the Beijing Declaration on Women (1995), and the Millennium Declaration (2000).

These documents do not impose legally binding obligations on states, but this does not mean that they are devoid of value. Firstly, declarations can serve to concretise and substantiate state obligations under international treaties, which are usually formulated in a rather abstract way. Secondly, the recommendations laid down in declarations and plans of action can be taken up by state authorities for the development of "best practices". Thirdly, these

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<sup>253</sup> See World Conference to Review and Appraise the Achievements of the UN Decade for Women, Report of the World Conference: Equality, Development and Peace, paras 12 and 86-92.

<sup>254</sup> See UN Conference on Environment and Development (A/CONF.151/26), Rio Declaration, para 10 and Agenda 21, Chapter 24 (Global Action for Women Towards Sustainable and Equitable Development).

<sup>255</sup> See UN Conference on Population and Development (A/CONF.171/13), Cairo Declaration, para 7 and Cairo Plan of Action, Chapter 4 (Gender Equality, Equity and Empowerment).

<sup>256</sup> See Declaration on the Right to Development, art 8 para 1.

standards can prepare the way for new legally binding instruments.<sup>257</sup> Finally, they are sometimes formulated in a flexible way so as to provide guidance not only to governments, but also relevant non-state actors.<sup>258</sup>

#### **4.2. The Human Person as Central Subject of Development and an Active Role for Women: Declaration on the Right to Development**

On 4 December 1986, the Declaration on the Right to Development was adopted in the General Assembly with a large majority.<sup>259</sup> As a General Assembly Resolution, the Declaration is recommendatory in nature and does not impose legally binding obligations on states.<sup>260</sup> The term development is not defined in the main text of the Declaration, but the preamble refers to development as “a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”. The Declaration thus goes beyond the aspect of improved economy by conceptualising development as a process with many dimensions.<sup>261</sup> In this spirit, it emphasises the importance of civil and political rights, as well as economic, social and cultural rights, for the promotion of development and stipulates that none of these rights can be used to justify violations of other rights.<sup>262</sup>

In Article 1, the right to development is described as a human right “by virtue of which every person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development”.<sup>263</sup> It is clear from this definition that the right has a strong participatory element, which is further underlined by other provisions of the Declaration. By virtue of Article 2 para 1, the human person is the central subject of development and should be the active participant of the right to

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<sup>257</sup> See Clapham, 2006, pp. 99 f.

<sup>258</sup> *Ibid.*

<sup>259</sup> GA Resolution A/RES/41/128 (4 December 1986). 146 states voted in favour of the Resolution, the USA opposed it and eight other Western states abstained from voting. See De Feyter, 2001, p. 22.

<sup>260</sup> However, it can be argued that a legally binding right to development can be deduced from Articles 55 and 56 of the UN Charter. See Lindroos, 1999, p. 11.

<sup>261</sup> See De Feyter, 2001, p. 20. This is in accordance with the current understanding of development; see above 2.2.

<sup>262</sup> See Declaration on the Right to Development, preamble and art 6 para 2. This is important in the context of participation, as it has sometimes been argued that human rights, and in particular civil and political rights, can be violated in order to achieve the goal of economic development. See De Feyter, 2001, p. 21.

<sup>263</sup> The holders of the right to development are thus individuals as well as peoples. In this paper only the individual right to development will be examined.

development. Women's right to participation is implied in Article 8 para 1, which provides that women should have "an active role in the development process". The importance of women's participation and a gender perspective in development processes is also underlined in subsequent General Assembly Resolutions reaffirming the right to development.<sup>264</sup>

The primary responsibility for guaranteeing the right to development lies with states.<sup>265</sup> They have the duty to create, at the national and international level, conditions that are favourable to the implementation of the right to development.<sup>266</sup> This includes the formulation of international<sup>267</sup> as well as national development policies on the basis of broad participation,<sup>268</sup> protection of all human rights without distinction as to (among other grounds) sex,<sup>269</sup> social and economic reforms in order to overcome social injustices,<sup>270</sup> maintenance of international peace,<sup>271</sup> and cooperation with other states to achieve these objectives.<sup>272</sup> Specifically regarding participation, states are held to encourage popular participation in all spheres of development and to take "effective measures" to ensure that women have an active role in the development process, which implies a duty to take positive measures.<sup>273</sup>

According to the Declaration not only states, but also "all human beings (...), individually and collectively," have a responsibility for development.<sup>274</sup> However, it is not clear what this provision should entail in practice.<sup>275</sup>

The Declaration has been criticised for using very general and vague formulations. While it lays down some elements of the right to development, the specific rights and duties, as well as the ways in which the Declaration should be implemented, are not clearly defined. This applies also to the meaning of the term participation in the context of the Declaration. It is mentioned that participation should be "free and meaningful" as well as

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<sup>264</sup> See GA Resolution 52/136 (12 December 1997), preamble and GA Resolution 53/155 (25 February 1999), para 11.

<sup>265</sup> See Declaration on the Right to Development, art 2 para 3 and arts 3-8. See also De Feyter, 2001, p. 23.

<sup>266</sup> See Declaration on the Right to Development, art 3 para 1.

<sup>267</sup> *Idem*, art 4 para 1.

<sup>268</sup> *Idem*, art 2 para 3.

<sup>269</sup> *Idem*, art 6 paras 1 and 2.

<sup>270</sup> *Idem*, art 8 para 1.

<sup>271</sup> *Idem*, art 7.

<sup>272</sup> *Idem*, art 3 para 3, art 4 para 2, art 6 para 1.

<sup>273</sup> *Idem*, art 8 paras 1 and 2.

<sup>274</sup> *Idem*, art 2 para 2.

<sup>275</sup> A UN Individual Expert on the Right to Development has argued that only individuals can realise the right to development, whereas states have to provide the conditions to enable them to do so. See De Feyter, 2001, p. 23 (fn 86).

active,<sup>276</sup> which suggests that the holding of elections will not be sufficient and that direct participation, in particular in the context of civil society, should be ensured.<sup>277</sup>

### **4.3. The Indivisibility of All Human Rights and Women's Rights as Human Rights: Vienna Declaration and Programme of Action on Human Rights**

The Vienna Declaration on Human Rights and its Programme of Action<sup>278</sup> were adopted by consensus within the framework of the World Conference on Human Rights held in Vienna in 1993. They do not impose legally binding obligations,<sup>279</sup> but issue guidelines for states as well as UN organs.<sup>280</sup>

The Vienna Declaration contains several significant provisions in connection with human rights and development. Firstly, the universality of human rights and interdependence and indivisibility of civil and political rights on the one hand and economic, social and cultural rights on the other hand are acknowledged.<sup>281</sup> The right to development is reaffirmed as a “universal and inalienable right and an integral part of fundamental human rights”.<sup>282</sup> As in the Declaration on the Right to Development, the human person is identified as the central subject of development.<sup>283</sup> Democracy, development and human rights are described as “interdependent and mutually reinforcing”,<sup>284</sup> and poverty and social exclusion are defined as violations of human dignity and thus human rights.<sup>285</sup> However, while the alleviation and eventual eradication of poverty are identified as high

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<sup>276</sup> Declaration on the Right to Development, art 2 para 3.

<sup>277</sup> See also Lindroos, 1999, p. 46.

<sup>278</sup> UN Conference on Human Rights, A/CONF.157/23 (12 July 1993).

<sup>279</sup> However, its adoption by consensus, together with the fact that the General Assembly has adopted a Resolution affirming the Declaration and Programme of Action, gives it a special force. See GA Resolution A/RES/48/121 (14 February 1994), endorsing the Vienna Declaration and Programme of Action.

<sup>280</sup> See Amitsis, 2006, p. 221.

<sup>281</sup> See Vienna Declaration (Part I), para 5. This statement is however weakened by a reference to national and regional peculiarities and different historical and cultural backgrounds in the following sentence. See Gómez Isa, 2006, pp. 39 f.

<sup>282</sup> See Vienna Declaration (Part I), para 10.

<sup>283</sup> See Vienna Declaration (Part I), para 10.

<sup>284</sup> Vienna Declaration (Part I), para 8.

<sup>285</sup> *Idem*, paras 14 and 25.

priorities for the international community,<sup>286</sup> the Programme of Action does not contain any specific guidelines for poverty reduction.<sup>287</sup>

With respect to participation in poverty reduction, states commit themselves to “(fostering) participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty”.<sup>288</sup> Another main issue in the Vienna Declaration is the strong affirmation of human rights of women and especially women’s right to participation.<sup>289</sup> The full and equal participation of women in all spheres of life and at all levels is recognised as a priority objective for the international community,<sup>290</sup> and governments as well as international organisations are urged “to facilitate the access of women to decision-making posts and their greater participation in the decision-making process”.<sup>291</sup> Moreover, the importance of participation of women “as both agents and beneficiaries in the development process” is specifically highlighted.<sup>292</sup>

The Vienna documents are in several ways of relevance to participation in poverty reduction. A crucial point is the acknowledgement that political rights cannot be separated from other human rights, such as economic and social rights. More specifically, in recognising the interrelation between development and poverty reduction on the one hand and human rights – including the right to participation – on the other hand, the Declaration supports human rights-based approaches to poverty reduction, and in doing so places particular emphasis on women’s rights.

#### **4.4. Participation and Empowerment of the Poor in the Development Process: Copenhagen Declaration and Programme of Action on Social Development**

The Copenhagen Declaration and Programme of Action on Social Development were adopted at the World Summit for Social Development in Copenhagen in 1995.<sup>293</sup> Like the Vienna Declaration, they contain political

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<sup>286</sup> *Idem*, para 14.

<sup>287</sup> See also Amitsis, 2006, p. 221.

<sup>288</sup> Vienna Declaration (Part I), para 25.

<sup>289</sup> *Idem*, para 18.

<sup>290</sup> *Ibid.*

<sup>291</sup> Vienna Programme of Action (Part II), para 43.

<sup>292</sup> *Idem*, para 36.

<sup>293</sup> UN Conference on Social Development, A/CONF.166/9 (19 April 1995). The Declaration and Programme of Action were endorsed by the General Assembly in Resolution A/RES/50/161 (22 December 1995).

commitments of and guidelines for states as well as UN organs. The Copenhagen Declaration addresses both the causes and consequences of social problems, including poverty, unemployment and social exclusion, and states commit themselves to overcoming these problems through a variety of measures.<sup>294</sup> The Declaration's approach to poverty reduction builds on and elaborates the relevant provisions of the Vienna Declaration, in that it defines poverty as a violation of human dignity<sup>295</sup> and affirms that social development should be based upon respect for democracy and all human rights.<sup>296</sup>

The Copenhagen documents strongly underline the significance of empowerment and participation of all individuals in poverty reduction processes, both as an objective and as a means of achieving sustainable development.<sup>297</sup> The Programme of Action acknowledges that poverty cannot be eradicated through anti-poverty strategies (in a narrow sense) alone; the achievement of this goal will also require "democratic participation and changes in economic structures in order to ensure access for all to resources, opportunities and public services, (...) policies geared to more equitable distribution of wealth and income, (and provision of) social protection for those who cannot support themselves (...)".<sup>298</sup> According to the Declaration, democracy is indispensable for development.<sup>299</sup> It goes however beyond requiring a democratic system by calling for the empowerment and "full participation of people in the formulation, implementation and evaluation of decisions determining the functioning and well-being of our societies",<sup>300</sup> which includes poverty reduction strategies.<sup>301</sup> To this end, states are held to promote an enabling environment for social development by establishing a political and legal framework that allows for broad-based participation.<sup>302</sup> Such an environment should include the encouragement of decentralisation and strengthening of local participation, promotion of political processes that are inclusive of all members of society, and the involvement of civil society in decision-making

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<sup>294</sup> See Copenhagen Declaration, para 2.

<sup>295</sup> *Idem*, para 23.

<sup>296</sup> *Idem*, para 25.

<sup>297</sup> *Idem*, paras 6 f. and 25 lit o. This is consistent with the CESCR Committee's and Sen's view on the interrelation between participation and poverty reduction; see above 1.1.

<sup>298</sup> See Copenhagen Programme of Action, para 23.

<sup>299</sup> See Copenhagen Declaration, paras 4 and 26 lit f.

<sup>300</sup> See Copenhagen Declaration, para 26 lit o. This corresponds largely with the forms of participation in the context of civil society and the community that the CESCR Committee deduces from the CESCR; see above 3.3.1. and 3.3.2.

<sup>301</sup> See Copenhagen Programme of Action, para 28 lit a.

<sup>302</sup> *Idem*, paras 7 f.

on development programmes.<sup>303</sup> Furthermore, states commit themselves to formulating integrated poverty eradication strategies, again with full participation by those concerned,<sup>304</sup> and promoting social integration by supporting civil society and community organisations and by empowering individuals through strengthening their capacities and opportunities.<sup>305</sup>

Women's participation and empowerment are recurrent themes throughout the Copenhagen documents with a view to combating the feminisation of poverty<sup>306</sup> and to securing the development of society as a whole.<sup>307</sup> One of the ten commitments undertaken by states in the Declaration is dedicated to the equality between women and men and the enhancement of women's participation in all spheres of life.<sup>308</sup> To achieve these goals, states should promote changes in laws, societal structures and attitudes that form obstacles to women's equality and full participation, and empower women by promoting equal access to education and productive resources.<sup>309</sup> In addition, they are held to establish policies "to ensure gender balance and equity in decision-making processes at all levels (...), and support the empowerment of women", for instance through the support of women's organisations and, where necessary, affirmative action.<sup>310</sup>

In conclusion, the Copenhagen Declaration requires an integrated approach to poverty reduction, comprising not only economic measures, but also measures to empower individuals and prevent social exclusion.<sup>311</sup> This approach is consistent with the wide definition of poverty reduction processes outlined in Chapter 2.2. Aside from demanding a democratic system, the Declaration also calls for decentralisation and emphasises direct forms of participation, in particular in the local community and through civil society organisations. More vehemently than in earlier declarations, women's empowerment and participation are recognised as crucial factors in achieving sustainable development.

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<sup>303</sup> *Idem*, paras 14 f. This corresponds with similar obligations under the CESCRC; see above 3.3.2.

<sup>304</sup> *Idem*, paras 26 lit c and 28 lit a.

<sup>305</sup> *Idem*, para 72 lits a-d.

<sup>306</sup> The Declaration recognises the feminisation of poverty as a serious problem. See Copenhagen Declaration, para 16.

<sup>307</sup> *Idem*, paras 7 and 26 lit o.

<sup>308</sup> *Idem*, Commitment No. 5.

<sup>309</sup> *Idem*, Commitment No. 5, lits a and c.

<sup>310</sup> See Copenhagen Declaration, Commitment No. 5, lit b.

<sup>311</sup> See Amitsis, 2006, p. 223.

#### **4.5. Women’s Empowerment as a Means and Objective of Development: Beijing Declaration and Platform for Action on Women**

The Beijing Declaration and its Platform for Action<sup>312</sup> were adopted within the framework of the Fourth World Conference on Women in 1995 and later endorsed by the General Assembly.<sup>313</sup> In reference to the UN Decade for Women, the main topics of the Conference were equality, development and peace,<sup>314</sup> and women’s empowerment and participation were identified as essential factors in the achievement of these goals.<sup>315</sup>

Two of the “critical areas of concern” addressed in the Beijing documents are poverty of women and their lack of participation in decision-making.<sup>316</sup> The Declaration highlights the connection between these two issues by recognising that women’s access to power and their participation in decision-making are necessary to overcome poverty.<sup>317</sup> States commit themselves to adopting – with full participation of women – gender-sensitive policies to foster women’s empowerment and advancement, including development programmes.<sup>318</sup> The Declaration also acknowledges that the participation of civil society, and in particular of women’s organisations and networks, is crucial in achieving equality and development of women.<sup>319</sup>

The Beijing Platform for Action, “an agenda for women’s empowerment”,<sup>320</sup> provides detailed guidelines for the improvement of women’s situation in all spheres of life, which are addressed not only to governments and international organisations, but also to a wide range of non-state actors. Poverty eradication measures by governments, financial and development institutions should include the review and adoption, under equal participation of women, of development strategies to address the needs of women.<sup>321</sup> Non-governmental institutions are called upon to engage in lobbying and mobilise all parties in the development process with a view to ensuring that women’s interests are taken into account in policy-making.<sup>322</sup> With respect to the economic empowerment of women, governments are

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<sup>312</sup> UN Conference on Women, A/CONF.177/20 (15 September 1995).

<sup>313</sup> See GA Resolution A/RES/50/203 (3 February 1996).

<sup>314</sup> See Beijing Declaration, para 3.

<sup>315</sup> *Idem*, para 13.

<sup>316</sup> See Beijing Platform for Action, para 44.

<sup>317</sup> See Beijing Declaration, para 13 and Platform for Action, para 47.

<sup>318</sup> See Beijing Declaration, para 19.

<sup>319</sup> See Beijing Declaration, para 20.

<sup>320</sup> See Beijing Platform for Action, para 1.

<sup>321</sup> *Idem*, paras 58 lit a and 59 lit b.

<sup>322</sup> *Idem*, para 60.

held to revise laws and administrative practices to secure women's equal access to economic resources,<sup>323</sup> and, together with commercial banks and financial institutions,<sup>324</sup> to provide women with access to saving and credit mechanisms.<sup>325</sup> In the area of women in power and decision-making, the Platform acknowledges that the enhancement of women's participation calls for various positive measures by governments, international organisations and a number of non-state actors. Governments commit themselves to establishing gender balance in all governmental bodies, in public administration and in the judiciary, *inter alia* by setting specific targets<sup>326</sup> in line with affirmative action, by reviewing their electoral systems,<sup>327</sup> encouraging political parties to fully integrate women,<sup>328</sup> and adopting measures to reconcile family and professional life.<sup>329</sup> Political parties, the private sector, trade unions and employers' organisations and other relevant institutions are called upon to take measures to ensure equal participation of women in their internal structures and to encourage women's access to other decision-making and leadership positions.<sup>330</sup> Non-governmental organisations are requested to work toward strengthening solidarity between women and to seek accountability from elected representatives regarding their commitment to gender concerns.<sup>331</sup> Finally, women's capacity to participate in decision-making should be increased through training and mentoring measures provided by governments, the private sector and non-governmental organisations.<sup>332</sup>

In conclusion, the Beijing Declaration and Platform for Action provide a very elaborate list of guidelines for the enhancement of women's participation and empowerment. In contrast to other non-binding instruments, these guidelines are addressed not only to governments and international governmental organisations, but to all relevant actors. The Beijing documents therefore constitute a comprehensive framework for action to combat women's poverty and improve their participation in decision-making.

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<sup>323</sup> *Idem*, para 61 lit b.

<sup>324</sup> *Idem*, para 63.

<sup>325</sup> *Idem*, para 62.

<sup>326</sup> *Idem*, para 190 lit a.

<sup>327</sup> *Idem*, para 190 lit d.

<sup>328</sup> *Idem*, para 190 lit b.

<sup>329</sup> *Idem*, para 190 lit i.

<sup>330</sup> See Beijing Platform for Action, paras 191 f.

<sup>331</sup> *Idem*, para 194 lits a and b.

<sup>332</sup> *Idem*, para 195.

#### 4.6. A Global Agenda for the Reduction of Poverty: Millennium Declaration and Millennium Development Goals

The Millennium Declaration was adopted by the General Assembly on 8 September 2000<sup>333</sup> and lays down common fundamental values and key objectives of the international community with respect to the reduction of poverty. Among these fundamental values are freedom, which includes democratic and participatory governance, and equality, in particular the equality between women and men.<sup>334</sup> The issues of participation and empowerment are mentioned in the context of two key objectives. Firstly, gender equality and the empowerment of women are addressed as being instrumental in achieving development and poverty reduction.<sup>335</sup> Secondly, the objective of respect for human rights, democracy and good governance demands, aside from the promotion of democracy<sup>336</sup>, “more inclusive political processes, allowing genuine participation by all citizens in all (...) countries”,<sup>337</sup> and the implementation of CEDAW.<sup>338</sup>

A report of the UN Secretary-General, published a year after the adoption of the Millennium Declaration, outlines eight “Millennium Development Goals” (MDGs),<sup>339</sup> together with eighteen targets and a number of indicators, to lead the way to the implementation of the Millennium Declaration.<sup>340</sup> The content of the MDGs is derived from commitments made by states within the framework of the UN Conferences in the 1990s and from other international standards; what is innovative is the comprehensive way in which these commitments are summarised and substantiated through combination with time-bound targets.<sup>341</sup> The MDGs do not as such impose legally binding obligations on states, but the point has been made that at least the first six MDGs (including the promotion of

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<sup>333</sup> GA Resolution A/RES/55/2 (8 September 2000).

<sup>334</sup> See Millennium Declaration, para 6.

<sup>335</sup> *Idem*, para 20.

<sup>336</sup> Millennium Declaration, para 24.

<sup>337</sup> *Idem*, para 25.

<sup>338</sup> *Ibid.* As shown above, CEDAW grants women a comprehensive right to participation, including participation in all poverty reduction processes. See above 3.5.

<sup>339</sup> No. 1: Eradicate extreme poverty and hunger; No. 2: Achieve universal primary education; No. 3: Promote gender equality and empower women; No. 4: Reduce child mortality; No. 5: Improve maternal health; No. 6: Combat HIV/AIDS, malaria and other diseases; No. 7: Ensure environmental sustainability; No. 8: Develop a global partnership for development.

<sup>340</sup> UN SG, Road Map Towards the Implementation of the UN Millennium Declaration (consulted on 14 May 2007).

<sup>341</sup> See Timothy, *The MDGs: Gendered Pathways/Dimensions*, p. 3 (consulted on 14 May 2007).

gender equality and empowerment of women) could be considered to “reflect norms of customary international law”.<sup>342</sup>

The MDGs themselves do not explicitly address the right to participation. Goal No. 3 however, which is dedicated to the promotion of gender equality and the empowerment of women, contains as one indicator the proportion of seats held by women in parliaments. Moreover, it is clear from the above-mentioned provisions of the Millennium Declaration that political rights are “present in the larger context” of the MDGs.<sup>343</sup> In particular, the report by the Secretary-General acknowledges that in order to achieve Goal No. 1, the eradication of extreme poverty and hunger, the “full and equal participation of women and men” will be required.<sup>344</sup> Other goals that will specifically demand the participation of women are Goals No. 4 (the reduction of child mortality),<sup>345</sup> No. 6 (combating diseases such as HIV/AIDS),<sup>346</sup> and No. 7 (ensuring environmental sustainability).<sup>347</sup> On the other hand, Goal No. 2 on the achievement of universal primary education, and to a certain extent also Goal No. 5 on the improvement of maternal health, are important steps towards the empowerment of women and will therefore contribute to enhancing women’s participation in decision-making.<sup>348</sup>

In summary, the Millennium Declaration and MDGs provide a concrete framework for achieving sustainable development and poverty reduction. Although the Declaration contains some references to participation and political rights are implicit in the MDGs, the failure to address these rights explicitly is one of the weaknesses of the Millennium

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<sup>342</sup> Alston, A Human Rights Perspective on the MDGs, para 42 (consulted on 14 May 2007).

<sup>343</sup> *Idem*, para 51.

<sup>344</sup> UN SG, Road Map Towards the Implementation of the UN Millennium Declaration, para 89 (consulted on 14 May 2007).

<sup>345</sup> See Timothy, The MDGs: Gendered Pathways/Dimensions, pp. 14 f. (consulted on 14 May 2007).

<sup>346</sup> *Idem*, pp. 17 f.

<sup>347</sup> *Idem*, pp. 18 f.

<sup>348</sup> *Idem*, p. 4.

documents.<sup>349</sup> Moreover, while one MDG refers to women's equality and empowerment, the gender dimensions of the other goals are not made explicit in a coherent way.<sup>350</sup>

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<sup>349</sup> See Alston, A Human Rights Perspective on the MDGs, p. 51 (consulted on 14 May 2007).

<sup>350</sup> See Timothy, The MDGs: Gendered Pathways/Dimensions, p. 4 (consulted on 14 May 2007).

## **5. CASE STUDIES: THE IMPLEMENTATION OF WOMEN'S RIGHT TO PARTICIPATION IN POVERTY REDUCTION IN KENYA AND MAURITIUS**

### **5.1. Introductory Remarks**

In the following chapter, the implementation of the right to participation in poverty reduction – both generally and with regard to women – will be assessed, using the examples of Kenya and Mauritius. The case studies are set in sub-Saharan Africa because the issue of poverty reduction is most urgent in this region of the world. Kenya and Mauritius have been chosen because English is an official language in both countries and they have ratified the CCPR, CESCRC and CEDAW.<sup>351</sup> As the case studies are primarily based on the documents produced in the context of the UN treaty body reporting procedures, the decisive factor was that both are among the few African countries that have reported at least once to all of the monitoring bodies of the aforementioned treaties. Complementary sources include the Human Development Reports published by the United Nations Development Programme (UNDP), literature, and information provided by NGOs.

### **5.2. Kenya**

#### *5.2.1. General participation in poverty reduction*

##### 5.2.1.1. The one-party state (1969-1992)

In the first years after independence from Great Britain in 1963, Kenya was a multi-party democracy.<sup>352</sup> In 1969, a one-party system was introduced under the ruling party Kenya African National Union (KANU).<sup>353</sup> The HRC, in its first Concluding Observations on Kenya in 1981, did not state

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<sup>351</sup> Both countries have ratified the CCPR and CESCRC in 1976 and CEDAW in 1984.

<sup>352</sup> See UNDP, Kenya HDR 1999, p. 11 (consulted on 5 June 2007).

<sup>353</sup> See UNDP, Kenya HDR 1999, p. 11 (consulted on 5 June 2007).

explicitly that the Kenyan system was in violation of Article 25 CCPR,<sup>354</sup> but it asked how the one-party system was affecting the freedom of expression, assembly and association in Kenya.<sup>355</sup> Specifically in the context of Article 25, the HRC observed that Kenya's political system was a "strong executive presidency within a democracy" and asked which checks and balances were in place to restrain executive power.<sup>356</sup> The two issues were however not addressed by the state representative before the HRC.<sup>357</sup> Accompanying violations of the right to participation in the one-party state included the failure to ensure security during voting and campaigning and lack of impartiality in the management of the voting process.<sup>358</sup> In the 1988 elections, the secrecy of the vote was abandoned for a "queuing system" whereby voters lined up behind their favoured candidate.<sup>359</sup> Moreover, other civil and political rights important to the exercise of the right to participation, in particular the freedom of expression, were restricted.<sup>360</sup>

Decisions on poverty reduction in the one-party state were taken almost exclusively by the central government.<sup>361</sup> The parliament was subjugated by the executive and the public service was characterised by political patronage and corruption, and therefore not accessible for, and accountable to, the majority of the population.<sup>362</sup> Local government and civil society were virtually excluded from the development process.<sup>363</sup> In 1983, the government introduced the District Focus for Rural Development Strategy, which aimed at shifting the responsibility for development processes from the centre to the districts through the establishment of District Development Committees, and thus could have facilitated broader participation in poverty reduction. However, the Strategy was not successful on account of the government's failure to change the structures of decision-making. In fact, personnel were simply transferred from the central

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<sup>354</sup> For the compatibility of a one-party system with the CCPR see also above 3.2.1.

<sup>355</sup> See HRC, A/36/40 (1981), para 195.

<sup>356</sup> *Idem*, para 198. Kenya did not issue another report to the HRC until 2004, when multi-party democracy had already been re-established.

<sup>357</sup> The HRC, noting that Kenya's initial report was too brief and incomplete, requested another report within six months. However, Kenya's next state report to the Committee was only filed in 2004. See HRC, A/36/40 (1981), para 200.

<sup>358</sup> See UNDP, Kenya HDR 1999, p. 11 (consulted on 5 June 2007).

<sup>359</sup> See UNDP, Kenya HDR 2003, p. 21 (consulted on 5 June 2007).

<sup>360</sup> See UNDP, Kenya HDR 1999, p. 11 (consulted on 5 June 2007).

<sup>361</sup> See UNDP, Kenya HDR 2003, p. 21 (consulted on 5 June 2007).

<sup>362</sup> *Ibid.*

<sup>363</sup> See UNDP, Kenya HDR 2003, p. 21 (consulted on 5 June 2007).

government to the district committees, resulting in the identity of decision-makers before and after the reform.<sup>364</sup>

The fight against “poverty, ignorance and disease” was formulated as a development objective in Kenya as early as 1965.<sup>365</sup> From 1969 on, the KANU government adopted periodic development plans as well as a number of special programmes to combat poverty, such as land resettlement schemes.<sup>366</sup> Most of these plans and programmes failed to improve the living conditions of the vast majority of the population. While the development plans were largely left unimplemented due to a lack of political commitment, the special poverty reduction programmes suffered from failure to involve the poor and insufficient coordination between different measures.<sup>367</sup> In addition to these state-led development processes, some NGOs were active in poverty reduction by providing basic services and capacity building to the poor since the 1970s. While achieving some good results, the success of these programmes was necessarily limited because of the restricted capacities of NGOs.<sup>368</sup>

During the period of the one-party system, the Kenyan economy was growing steadily. However, owing to the failure of the state’s poverty reduction processes and the concentration of power in the hands of the central government, it was for the most part only the political elite who benefited from this growth.<sup>369</sup> From the mid-1980s the situation began to deteriorate for the majority of the population. Structural adjustment programmes and the subsequent decline in the access to social services, as well as the beginning of the HIV/AIDS pandemic, resulted in a persistent increase of poverty especially in the rural areas of Kenya.<sup>370</sup>

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<sup>364</sup> The Kenya Human Development Report of 2003 argues that this strategy gave even more power to the government by providing it with a tool to control the districts. See UNDP, Kenya HDR 2003, p. 5 (consulted on 5 June 2007).

<sup>365</sup> See UNDP, Kenya HDR 2005, p. 2 (consulted on 5 June 2007).

<sup>366</sup> See UNDP, Kenya HDR 2001, pp. 72 f. and 74 (consulted on 5 June 2007).

<sup>367</sup> *Idem*, p. 74 f.

<sup>368</sup> *Idem*, p. 25 and Kenya HDR 2003, pp. 46 ff. (consulted on 5 June 2007).

<sup>369</sup> See UNDP, Kenya HDR 1999, p. xix (consulted on 5 June 2007).

<sup>370</sup> See UNDP, Kenya HDR 2001, pp. 6 and 14 (consulted on 5 June 2007).

### 5.2.1.2. The first transition<sup>371</sup> and the multi-party system under the KANU government (1992-2002)

Increasing internal and external tensions led to the formal re-introduction of multi-party elections in Kenya in 1992. The elections were however won by KANU and hence there was no change in government.<sup>372</sup> Nevertheless, the new system allowed for more political space to participate in public affairs, including poverty reduction processes, through the establishment of opposition parties and engagement in civil society. The number of civil society organisations increased rapidly in the years after 1992. Most of these organisations were working in the welfare sector, but also a number of advocacy and human rights groups aiming to influence government decision-making were established.<sup>373</sup> Despite these developments, the overall situation with respect to participation in poverty reduction did not change for several reasons: the constitutional framework was not amended to allow for a true multi-party democracy; the provinces continued to be administrated centrally; corruption in public institutions did not cease and in fact deepened; and the KANU government attempted to restrain the opposition and civil society.<sup>374</sup> For these reasons the central government continued to be the predominant actor in development and poverty reduction processes.

The CESCR Committee assessed the implementation of the CESCR in Kenya in 1993, after Kenya had failed to file a report since the ratification of the Covenant in 1976.<sup>375</sup> The Committee noted that some aspects of economic and social rights, such as access to education and health care, were more highly developed in Kenya than in neighbouring countries. However, it was concerned that the economic and political turbulences at that time (in particular those connected with structural adjustment) were threatening these achievements,<sup>376</sup> as the economic situation of the majority of the population and the enjoyment of many economic and social rights were deteriorating

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<sup>371</sup> The Kenya Human Development Report 2003 distinguishes between two phases in the transition from one-party to multi-party state, the first being the formal opening of the political system in 1992, the second the defeat of KANU and subsequent change of government in 2002. See UNDP, Kenya HDR 2003, p. 23 (consulted on 5 June 2007).

<sup>372</sup> *Idem*, p. 25.

<sup>373</sup> *Idem*, pp. 23 f.

<sup>374</sup> *Idem*, pp. 23 and 28.

<sup>375</sup> See CESCR, E/1994/23 (1993). Kenya finally issued a report later in 1993, but this report was considered too brief and incomplete by the Committee. It therefore requested another report, which Kenya has so far failed to provide. See CESCR, E/1995/23 (1994), para 160.

<sup>376</sup> See CESCR, E/1994/23 (1993), paras 74 f.

considerably.<sup>377</sup> In the CESC Committee's opinion, the development policies of the government were "not designed to ensure an adequate standard of living for the overwhelming majority of the population",<sup>378</sup> and it therefore recommended measures to protect vulnerable persons and groups from the negative consequences of structural adjustment.<sup>379</sup> While the Committee did not explicitly address participation in poverty reduction, it noted with concern that "the reform process seems to be slowed down by mismanagement as well as by a determination to maintain the political status quo",<sup>380</sup> thus referring to the KANU government and its exclusion of other actors from the development process. It also observed that the transition to a truly democratic multi-party system was hampered by "numerous obstacles set up by those in power".<sup>381</sup> Furthermore, the Committee noted that the central organisation of trade unions by KANU appeared to violate the CESC.<sup>382</sup>

In 1994, the government – following the recommendation of the CESC Committee – adopted a Social Dimensions for Development Strategy to address the detrimental effects of structural adjustment. The Strategy was however not successful, because the government subsequently failed to pursue its implementation.<sup>383</sup>

Continuing pressure from NGOs, some opposition groups and international donors finally forced KANU to convene with opposition parties in an Inter-Parties Parliamentary Group (IPPG) in 1997, with the objective of enabling a genuine multi-party democracy.<sup>384</sup> The IPPG agreed among other issues on a constitutional review process, which was to be held under the participation of civil society and should *inter alia* pursue the objectives of good governance and promotion of popular participation.<sup>385</sup> In the 1997 elections KANU won again, but the trend of increasing civil society participation continued.<sup>386</sup> A Local Government Reform Programme was launched as a step towards decentralisation and broader participation in development planning. The Programme was designed to enhance the role of the individual citizens in decision-making and to strengthen local

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<sup>377</sup> Idem, paras 73, 78, 83, 84.

<sup>378</sup> Idem, para 82.

<sup>379</sup> Idem, para 72.

<sup>380</sup> Ibid.

<sup>381</sup> Idem, para 71.

<sup>382</sup> Idem, para 79.

<sup>383</sup> See UNDP, Kenya HDR 1999, pp. 21 f. (consulted on 5 June 2007).

<sup>384</sup> See UNDP, Kenya HDR 2003, p. 26 (consulted on 5 June 2007).

<sup>385</sup> See UNDP, Kenya HDR 1999, p. 12 (consulted on 5 June 2007).

<sup>386</sup> See UNDP, Kenya HDR 1999, pp. 14 f. (consulted on 5 June 2007).

government through discretionary grants, and was at least partially successful.<sup>387</sup>

In 1997, the government changed its approach to development: Instead of taking isolated specific measures, it adopted a strategic focus on poverty reduction, including recognition of the importance of participation of the poor.<sup>388</sup> A National Poverty Eradication Plan (NPEP) was introduced in 1999 to serve as a policy framework for the empowerment of poor individuals and their communities.<sup>389</sup> The NPEP was prepared in line with the Copenhagen Declaration and Programme of Action on Social Development and set out to involve the poor in decision-making, for example in the identification of priority needs.<sup>390</sup> It recognised the right to participation in poverty reduction by stipulating that every citizen was entitled to “(participate) fully in society’s affairs and (help) make decisions on those matters which directly affect her or his material and social standing”.<sup>391</sup> In 2001, a Poverty Reduction Strategy Paper (PRSP) was adopted as a short-term strategy to implement the NPEP and to provide an opportunity for civil society to participate in development planning.<sup>392</sup> The PRSP has not been implemented so far, which has been traced back to a lack of resources and political commitment.<sup>393</sup> Aside from these centrally led processes, many communities were engaged in their own efforts to reduce poverty. However, due to the failure of the state to implement its coordination policies for the involvement of poor communities, these processes were not linked to the overall framework of poverty reduction.<sup>394</sup>

Between 1992 and 2002 poverty continued to increase in Kenya, accompanied by a decline in the access to basic social services and life expectancy.<sup>395</sup> The Human Development Report 2003 attributed these negative developments mainly to the persistent absence of good governance under the KANU government, characterised by a lack of popular participation, transparency and accountability of government actions.<sup>396</sup>

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<sup>387</sup> *Idem*, p. 50 (consulted on 5 June 2007) and Mars Group Kenya, Kenya’s National Civic Education Programme, Unit 2.4. (consulted on 5 June 2007).

<sup>388</sup> See UNDP, Kenya HDR 2001, p. 76 (consulted on 5 June 2007).

<sup>389</sup> *Idem*, p. 77.

<sup>390</sup> See UNDP, Kenya HDR 1999, p. 22 (consulted on 5 June 2007).

<sup>391</sup> *Idem*, p. 15.

<sup>392</sup> See UNDP, Kenya HDR 2001, pp. 77 f. (consulted on 5 June 2007).

<sup>393</sup> See Waiyaki, Coherence between Kenya’s PRSP, ERS and Achievement of MDGs, p. 13 (consulted on 5 June 2007). See also UNDP, Kenya HDR 2001, p. 79 (consulted on 5 June 2007).

<sup>394</sup> See UNDP, Kenya HDR 2001, p. 63 (consulted on 5 June 2007).

<sup>395</sup> See UNDP, Kenya HDR 2001, p. 20 f. and Kenya HDR 2003, p. 14 (both consulted on 5 June 2007).

<sup>396</sup> See UNDP, Kenya HDR 2003, p. 53 (consulted on 5 June 2007).

### 5.2.1.3. The second transition and the multi-party system under the NARC government (2002 until the 2007 elections)

In the elections of 2002 the National Rainbow Coalition (NARC), a coalition of several opposition parties, won and replaced KANU in government.<sup>397</sup> However, even after this change of government, the status of participatory rights was still not satisfactory. The HRC assessed the implementation of the CCPR in Kenya for the second time in 2005, and while it did not address the right to participation, it expressed concern about corruption in the administration and violations of the freedom of association (concerning some political meetings to which the government had denied authorisation).<sup>398</sup> NGOs reported continuing violations of the freedom of the press and increasing corruption.<sup>399</sup> Moreover, the decentralisation process did not advance significantly.<sup>400</sup> Accordingly, there were still deficits in the participation of civil society and local government in development and poverty reduction issues. The draft constitution presented by the NARC government in 2005 was supposed to address these problems, but instead retained a strong role of the presidential office.<sup>401</sup> It was therefore heavily criticised by large parts of the opposition and civil society groups, who united under the name of “Orange Demoratic Movement” (ODM), and finally rejected in a referendum.<sup>402</sup> After its success in the referendum, the ODM formed a political party in order to run for the 2007 elections. These elections, which were combined presidential, parliamentary and civic elections, took place in December 2007 and failed to meet “key international and regional standards for democratic elections”, including *inter alia* transparency, secrecy of vote and neutrality of the election administration.<sup>403</sup> In the parliamentary elections, ODM gained the majority of votes, followed by the Party of National Unity (PNU), the successor party to NARC.<sup>404</sup> The announced results of the presidential election, which displayed incumbent PNU president Kibaki as winner, were heavily contested by the opposition.<sup>405</sup> Weeks of widespread violence followed, in which more than 1.500 people lost their lives and 300.000 were displaced. Finally, Kibaki and

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<sup>397</sup> *Idem*, p. 29.

<sup>398</sup> See HRC, CCPR/CO/83/KEN (2005), paras 20 and 23.

<sup>399</sup> See Amnesty International, Amnesty International Report 2007: Kenya (consulted on 5 June 2007).

<sup>400</sup> See UNDP, Kenya HDR 2005, p. 6 (consulted on 5 June 2007).

<sup>401</sup> See BBC, Questions & Answers: Kenya Referendum (consulted on 5 June 2007). See also EU, EOM to Kenya, Final Report, p. 7 (consulted on 2 May 2008).

<sup>402</sup> See EU, EOM to Kenya, Final Report, p. 7 (consulted on 2 May 2008).

<sup>403</sup> See EU, EOM to Kenya, Final Report, p. 1 (consulted on 2 May 2008).

<sup>404</sup> *Idem*, p. 36.

<sup>405</sup> *Idem*, p. 37.

ODM leader Odinga, following international pressure to resolve the dispute, agreed on a new constitution which provides for the post of prime minister and was passed in parliament in March 2008, together with a law on a grand coalition between ODM and PNU.<sup>406</sup> It remains to be seen whether the new constitution and government will result in advanced decentralisation and devolution of powers, and therewith a better status of participatory rights.

In the years following the 2002 elections, the NARC government was increasingly quiet on the PRSP, focusing instead on its own strategy: the Economic Recovery Strategy for Wealth and Employment Creation (ERS) developed in 2003.<sup>407</sup> The ERS is built on four pillars: macroeconomic stability, the strengthening of institutions of governance, expansion of infrastructure, and investment in the human capital of the poor through the empowerment of communities.<sup>408</sup> Some specific measures were taken to implement this Strategy, for instance an Agriculture and Livestock Extension Programme.<sup>409</sup> Additionally, a Constituency Development Fund was created in order to alleviate poverty by providing funding for development projects at the grassroots level.<sup>410</sup>

Human development in Kenya has not improved significantly since the first change in government in 2002. Poverty is increasing, with an estimated 35.5% of the population suffering from human poverty in 2004.<sup>411</sup> The Kenya Human Development Report of 2005 attributed this to an ongoing decline in the access to basic services, mismanagement and corruption, and the failure to involve local structures in poverty reduction processes.<sup>412</sup>

In conclusion, in the one-party state all aspects of the right to participation enshrined in the CCPR – the right to vote and be elected, access to public service and certain forms of civil society participation – were violated. The principles of good governance as required by the CESCRC Committee (in particular accountability, transparency and decentralisation of

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<sup>406</sup> See BBC, Odinga sworn in as Kenyan premier (consulted on 2 May 2008).

<sup>407</sup> See Waiyaki, Coherence between Kenya's PRSP, ERS and Achievement of MDGs, pp. 6 and 13 (consulted on 5 June 2007).

<sup>408</sup> See Waiyaki, Coherence between Kenya's PRSP, ERS and Achievement of MDGs, p. 8 (consulted on 5 June 2007).

<sup>409</sup> See CEDAW, CEDAW/C/KEN/6 (State report, 2006), p. 37.

<sup>410</sup> However, there are concerns by NGOs that the Fund could become "another tool for political patronage", as the use of funds is not monitored. See Mars Group Kenya, Kenya's National Civic Education Programme, Unit 2.4. (consulted on 5 June 2007).

<sup>411</sup> See UNDP, Global HDR 2006, p. 293 (consulted on 5 June 2007). "Human poverty" is a multi-dimensional concept of poverty developed in the context of the Human Development Reports. It draws not only on the income approach to poverty, but also takes into account deprivation of basic needs and capabilities. See UNDP, Kenya HDR 2005, p. 8 (consulted on 5 June 2007).

<sup>412</sup> See UNDP, Kenya HDR 2005, p. 6 (consulted on 5 June 2007).

state actions) were not guaranteed on account of political patronage, corruption and the centrality of provincial administration, as was the obligation to involve the poor in poverty reduction processes. The introduction of the multi-party system in 2002 has led to improved implementation of the right to participation in poverty reduction. Citizens now have more opportunities to influence decision-making on development issues, for instance through engagement in advocacy groups. However, until the 2007 elections the central government continued to be the predominant actor in development decisions, placing obstacles to the participation of local government structures and civil society. The new constitution of 2008 is promising, as it provides for enhanced separation of powers and decentralisation; whether it will result in better implementation of participatory rights in practice remains to be seen. The poverty reduction strategies that have been introduced in the last years are designed to involve the poor and appear to be in compliance with international human rights instruments, but are yet awaiting full implementation.

### *5.2.2. Participation of women in poverty reduction*

#### *5.2.2.1. The one-party state (1969-1992)*

Kenyan women are legally entitled to vote and stand for elections since the country's independence in 1963.<sup>413</sup> In the context of women's participation, it is important to note that there are no conditions of literacy or property on these rights.<sup>414</sup> Despite this formal equality, the participation of women in Kenya's development was very low from the beginning. Reasons include both a strong societal bias against women in politics and structural discrimination against women in the access to education, employment and productive resources such as land.<sup>415</sup> As laid down in Chapter 5.2.1.1., decisions about poverty reduction processes in the one-party state were for the most part made by the central government, where women were not participating.<sup>416</sup> Moreover, the representation of women in parliament was very low with approximately one to two percent of women members between 1969 and 1992.<sup>417</sup>

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<sup>413</sup> See IPU, Women's Suffrage (consulted on 5 June 2007).

<sup>414</sup> See HRC, CCPR/C/KEN/2004/2 (State report, 2004), paras 197 f.

<sup>415</sup> See for example CEDAW, A/48/38 (1993), para 88 f. and 143.

<sup>416</sup> See UNDP, Kenya HDR 1999, p. 33 (consulted on 5 June 2007).

<sup>417</sup> In the last elections under the one-party system in 1988, in which there was no secrecy of vote, only 1.4% women were elected to parliament. See CEDAW, CEDAW/C/KEN/3-4 (State report, 2000), p. 16.

Although women's participation in the one-party state was thus virtually non-existent, the government introduced some measures to incorporate gender concerns into policy-making. In 1976, a Women's Bureau was established as a division of the Ministry of Culture and Social Services. It had the task of ensuring that government policies worked towards the advancement of women and its functions included advice on policy formulation and implementation, coordination of programmes, data analysis, and support of and collaboration with women's organisations and projects by NGOs, such as educational and training measures.<sup>418</sup> Beginning in 1988, the Women's Bureau developed a National Policy on Gender and Development to provide for gender mainstreaming in development processes.<sup>419</sup> The government also took some measures in the areas of education, vocational training and health in order to empower women.<sup>420</sup> Nonetheless, the CESCR Committee, in its assessment of the implementation of the Covenant in 1993, expressed concern that the government policies to guarantee women's economic and social rights were inadequate.<sup>421</sup> The CEDAW Committee, while not addressing the issue of poverty directly, noted in the same year that women were discriminated against in the political, economic and social spheres, more specifically in political participation and access to land, education, health care and employment opportunities.<sup>422</sup>

#### 5.2.2.2. The first transition and the multi-party system under the KANU government (1992-2002)

In the first multi-party elections in 1992, nineteen women candidates competed with 835 men for 200 seats in parliament.<sup>423</sup> Given this very low number of women candidates, the number of seven women elected to parliament was in fact surprisingly high, although only amounting to 3.5%.<sup>424</sup> Women's representation in local government was even lower with 2.7%.<sup>425</sup> One major reason for the low number of women candidates was the fact that KANU and the new political parties were essentially "men's clubs"

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<sup>418</sup> See CEDAW, CEDAW/C/KEN/3-4 (State report, 2000), pp. 3 f. In its first report and hearing before the CEDAW Committee, the government did not provide any information on the participation of women in the Bureau.

<sup>419</sup> See CEDAW, A/48/38 (1993), para 90.

<sup>420</sup> *Idem*, para 97.

<sup>421</sup> See CESCR, E/1994/23 (1993), para 86.

<sup>422</sup> See CEDAW, A/48/38 (1993), paras 96, 117, 136, 143.

<sup>423</sup> See CEDAW, CEDAW/C/KEN/3-4 (State report, 2000), p. 15.

<sup>424</sup> *Idem*, p. 16.

<sup>425</sup> *Idem*, p. 17.

and not dedicated to enhancing women's participation.<sup>426</sup> Again, no women were appointed to the cabinet as ministers, although there was one female assistant minister,<sup>427</sup> and only two women were participating in the higher levels of government decision-making as permanent secretaries.<sup>428</sup> In public service women were routinely encouraged to work on contractual terms, which was criticised by the CEDAW Committee as forming an obstacle to their promotion to higher positions.<sup>429</sup> On the positive side, women benefited from the relative opening of political space with the introduction of the multi-party system. Women's organisations were increasingly engaged in lobbying activities<sup>430</sup> and there was a significant rise in the number of women's groups at the community level.<sup>431</sup> The CEDAW Committee assessed the situation of women's rights in Kenya in 1993, shortly after the first multi-party elections. It noted that women were hardly represented in higher political office and observed that it would be difficult to achieve the advancement of women if they were excluded from the "planning and development of the country".<sup>432</sup> To improve women's situation, the Committee recommended "significant legal changes"<sup>433</sup> as well as "strong measures" to eliminate stereotypes and raise awareness about women's rights and role in society.<sup>434</sup> Furthermore, it defined literacy as a "keystone to the solution of women's problems", including their low participation in decision-making.<sup>435</sup>

In response to the recommendations of the CEDAW Committee, the government set up a Task Force to review laws for their impact on women.<sup>436</sup> In 1999, the Task Force came up with several suggestions to improve women's situation, including affirmative action to enhance their participation in political life.<sup>437</sup> The government, together with civil society organisations, also initiated some measures to eliminate gender stereotypes and raise awareness among women and society as a whole about the importance of women's participation in public life. For instance, the Electoral Commission began to cooperate with NGOs in providing civic

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<sup>426</sup> See UNDP, Kenya HDR 1999, p. 31 (consulted on 5 June 2007).

<sup>427</sup> See CEDAW, A/48/38 (1993), para 113.

<sup>428</sup> *Idem*, para 112.

<sup>429</sup> *Idem*, para 124.

<sup>430</sup> See CEDAW, A/48/38 (1993), para 106.

<sup>431</sup> See UNDP, Kenya HDR 2003, pp. 24 and 35 f. (consulted on 5 June 2007).

<sup>432</sup> See CEDAW, A/48/38 (1993), para 96.

<sup>433</sup> *Idem*, para 140.

<sup>434</sup> *Idem*, para 143.

<sup>435</sup> *Idem*, para 97.

<sup>436</sup> See UNDP, Kenya HDR 1999, p. 29 (consulted on 5 June 2007).

<sup>437</sup> See UN DAW, Kenya Review and Appraisal, p. 17 (consulted on 5 June 2007).

education to women.<sup>438</sup> Affirmative action to promote women's participation was first introduced by the Inter-Parties Parliamentary Group in 1997, which decided to include gender equality as an objective of the constitutional review process<sup>439</sup> and agreed that each party would nominate fifty percent female candidates for the 1997 elections to parliament and local government. These agreements were however not adhered to,<sup>440</sup> and consequently the elections did not bring any significant enhancement of women's representation in these bodies.<sup>441</sup> As KANU won the elections and there was no change in government, women's participation in cabinet did not improve either.<sup>442</sup>

Despite the very low participation of women in decision-making positions relevant to poverty reduction, women's concerns were at least partially taken into account in poverty reduction processes. In the District Development Committees, women's interests were to be represented by one woman leader.<sup>443</sup> In 1998, a new National Policy on Gender and Development was drafted with the objective of incorporating the various international commitments of Kenya concerning women's rights into the national framework on poverty reduction.<sup>444</sup> Furthermore, in the preparation of the PRSP 2001 a gender-thematic group was set up to integrate gender issues into the Paper.<sup>445</sup> Nevertheless, the final outcome has been criticised for failing to take into account the impact of gender issues on poverty and poverty reduction processes.<sup>446</sup> Notable measures of the government in the area of women's empowerment encompassed the provision of development grants and entrepreneurship training for rural women.<sup>447</sup> In the educational sector, lower entry point requirements for women to public universities were introduced as temporary special measures.<sup>448</sup> In order to address the problem

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<sup>438</sup> See CEDAW, CEDAW/C/SR.593 (Summary records, 2003), para 17.

<sup>439</sup> See HRC, CCPR/C/SR.2255 (Summary records, 2005), para 3.

<sup>440</sup> See UNDP, Kenya HDR 1999, p. 33 (consulted on 5 June 2007).

<sup>441</sup> In parliament women were represented with 3.6% in 1997 and with 4.1% (due to one additional female member) in 1998. There was however a certain progress regarding women's participation in local councils, which rose from 2.7% to 8.1%. See CEDAW, CEDAW/C/KEN/3-4 (State report, 2000), pp. 15-17.

<sup>442</sup> See UNDP, Kenya HDR 2003, p. 27 (consulted on 5 June 2007).

<sup>443</sup> See CEDAW, CEDAW/C/KEN/3-4 (State report, 2000), p. 35. For general information about the District Development Committees see above 5.2.1.1.

<sup>444</sup> See Sever & Jolly, Gender Equality and Women's Rights in Kenya, p. 10 (consulted on 5 June 2007).

<sup>445</sup> See CEDAW, A/58/38 (2003), para 196.

<sup>446</sup> See Sever & Jolly, Gender Equality and Women's Rights in Kenya, pp. 14 f. (consulted on 5 June 2007).

<sup>447</sup> See CEDAW, CEDAW/C/KEN/3-4 (State report, 2000), pp. 35 f.

<sup>448</sup> In the case of Zambia, which had introduced a similar lowering of entry requirements for women to enhance their enrolment in secondary schools, some members of the Committee criticised such a measure as reinforcing stereotypical attitudes towards women. See CEDAW, CEDAW/C/SR.241 (Summary records Zambia, 1994), para 34.

of the low literacy rate among women, the government adopted a Children's Act with a view to providing equal opportunities for girls and boys in education;<sup>449</sup> additionally, adult education programmes were launched in which women constituted the majority of students.<sup>450</sup>

The Kenya Human Development Reports of 1999 and 2001 observed that the incidence of poverty among women was higher and that poverty had a more severe impact on women than on men in Kenya, particularly in rural areas.<sup>451</sup> The CEDAW Committee, in its second Concluding Observations of 2003, came to the same conclusion, although not explicitly addressing poverty. It expressed concern that despite the National Policy on Gender and Development, especially rural women were discriminated against in the access to social services and land ownership as well as in the exercise of participatory rights,<sup>452</sup> and concluded that it were particularly these women who should be encouraged to participate in decision-making,<sup>453</sup> including in local government.<sup>454</sup> To this end, the CEDAW Committee recommended the adoption of temporary special measures and training programmes to enhance women's participation in all decision-making bodies.<sup>455</sup> Finally, the Committee noted the persistence of stereotypes and societal attitudes detrimental to women and requested the state to increase its efforts to raise awareness about women's rights. It also encouraged the media to promote a positive image of women.<sup>456</sup>

### 5.2.2.3. The second transition and the multi-party system under the NARC government (2002 until the 2007 elections)

In the 2002 elections, the number of women elected to parliament increased to eighteen, women thus constituting 8.1% of all members of parliament.<sup>457</sup> The transition in government with NARC as the new ruling party also brought a certain improvement for women: three women ministers were appointed to the cabinet.<sup>458</sup>

After its victory in the 2002 elections, the first measures of the NARC government with regard to women's rights concerned changes in the

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<sup>449</sup> See UN DAW, Kenya Review and Appraisal, pp. 19 f. (consulted on 5 June 2007).

<sup>450</sup> See CEDAW, CEDAW/C/KEN/3-4 (State report, 2000), pp. 25 f.

<sup>451</sup> See UNDP, Kenya HDR 1999, p. 29 and Kenya HDR 2001, p. 24 (both consulted on 5 June 2007).

<sup>452</sup> See CEDAW, A/58/38 (2003), paras 223 f.

<sup>453</sup> *Ibid.*

<sup>454</sup> See CEDAW, CEDAW/C/SR.593 (Summary records, 2003), para 10.

<sup>455</sup> See CEDAW, A/58/38 (2003), para 216.

<sup>456</sup> *Idem*, paras 209 f.

<sup>457</sup> See HRC, CCPR/C/KEN/2004/2 (State report, 2004), para 28.

<sup>458</sup> See CEDAW, CEDAW/C/KEN/6 (State report, 2006), p. 22.

national machinery for the advancement of women. The Women's Bureau was transformed into a full department, giving it a higher status and more autonomy within the administrative machinery, and the Ministry of Culture was renamed into "Ministry of Gender, Culture, Sports and Social Affairs".<sup>459</sup> However, the CEDAW Committee criticised that the Ministry was lacking the financial resources as well as the authority within the institutional hierarchy to effectively fulfil its tasks.<sup>460</sup> In 2003 the government created the National Commission on Gender and Development, which was given the tasks of advocating for reforms on laws and customs detrimental to women and of determining policy priorities in gender issues.<sup>461</sup> Although the establishment of the Commission was welcomed by the CEDAW Committee, it expressed concern in both its 2003 and 2007 assessments of Kenya that the Commission's responsibilities were not clearly defined, resulting in a potential fragmentation of efforts of the Commission and the Ministry for Gender.<sup>462</sup> The NARC government, like the KANU government before it, failed to adopt a general policy of affirmative action in spite of the CEDAW Committee's urgent recommendations in 2003, which were repeated in the 2007 Concluding Observations.<sup>463</sup> However, some new national institutions, such as the Constituency Development Fund Committees<sup>464</sup> and the Human Rights Commission established in 2003, were introduced with a quota of one third of women members.<sup>465</sup> In the area of awareness-raising, the NARC government reported on a review of the school curriculum and school books as well as continued cooperation with civil society in providing voter and civic education. It also mentioned that the portrayal of women in the media had improved.<sup>466</sup> Nevertheless, the CEDAW Committee urged Kenya in 2007 to intensify its efforts to modify stereotypes about women in public life and create awareness about the importance of women's participation in all spheres of society.<sup>467</sup>

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<sup>459</sup> See CEDAW, A/58/38 (2003), para 203.

<sup>460</sup> See CEDAW, CEDAW/C/KEN/CO/6 (2007), para 19.

<sup>461</sup> See CEDAW, CEDAW/C/KEN/6 (State report, 2006), p. 7.

<sup>462</sup> See CEDAW, A/58/38 (2003), para 225 and CEDAW/C/KEN/CO/6 (2007), para 19.

<sup>463</sup> See CEDAW, CEDAW/C/KEN/CO/6 (2007), para 28.

<sup>464</sup> These Committees were created together with the Constituency Development Fund. See above 5.2.1.3.

<sup>465</sup> See CEDAW, CEDAW/C/KEN/6 (State report, 2006), pp. 3 and 14. The draft constitution of 2005, which was rejected in a referendum, would have provided for a quota of one third of women in all elected and appointed posts. *Idem*, pp. 2 f. Women's organisations and the National Commission on Gender and Development have been advocating for some time for the adoption of an Affirmative Action Bill, which has been pending since 2001. See CEDAW, CEDAW/C/KEN/Q/6 (Follow-up, 2007), para 3.

<sup>466</sup> See CEDAW, CEDAW/C/KEN/6 (State report, 2006), pp. 3, 16 and 22.

<sup>467</sup> See CEDAW, CEDAW/C/KEN/CO/6 (2007), paras 22 and 28.

By 2005, when the HRC adopted its latest Concluding Observations on Kenya, women's participation in decision-making positions had not increased significantly.<sup>468</sup> The HRC noted that discrimination against women continued both in law and in practice, including in the participation in public affairs.<sup>469</sup> In July 2007, the CEDAW Committee observed in its third Concluding Observations on Kenya that women continued to be underrepresented in political and public life, particularly in parliament and ministries.<sup>470</sup> The number of women ministers had declined to two and there was no notable increase of women's participation in sectors of public service relevant to poverty reduction;<sup>471</sup> for instance, the number of women permanent secretaries continued to be very low with 16.7%.<sup>472</sup> On the positive side, the state reported that women's organisations had been involved in decision-making on some development policies.<sup>473</sup> The elections of December 2007 resulted only in a modest improvement of women's participation in the main decision-making bodies: Women are now represented in parliament with ten percent<sup>474</sup> and in cabinet with seven (out of 42) ministers.<sup>475</sup>

The NARC government's Economic Recovery Strategy, while acknowledging the importance of involving communities in poverty reduction, was criticised for failing to take into account the situation of women and the fact that community empowerment is not necessarily women's empowerment.<sup>476</sup> On the other hand, specific poverty reduction programmes, such as the Agriculture and Livestock Extension Programme and the Constituency Development Fund, have increasingly incorporated a gender dimension; their success will depend on their full implementation, which has been a critical point in the past.<sup>477</sup> In addition to these general policies, a five-year action plan based on all critical areas of concern of the Beijing Platform was launched to improve women's situation.<sup>478</sup> With

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<sup>468</sup> See HRC, CCPR/C/KEN/2004/2 (State report, 2004), para 28 and CCPR/C/SR.2255 (Summary records, 2005), para 21.

<sup>469</sup> See HRC, CCPR/CO/83/KEN (2005), para 10.

<sup>470</sup> See CEDAW, CEDAW/C/KEN/CO/6 (2007), para 27.

<sup>471</sup> *Ibid.* See also CEDAW, CEDAW/C/KEN/6 (State report, 2006), pp. 22 f. and 31.

<sup>472</sup> See CEDAW, CEDAW/C/KEN/6 (State report, 2006), p. 22.

<sup>473</sup> *Idem*, p. 24.

<sup>474</sup> See EU, EOM to Kenya, Final Report, p. 28 (consulted on 2 May 2008). According to the EU Report, this was not only due to the limited social and economic resources of women, but also to number of violent assaults against women candidates during the campaign period, which resulted in "a general climate of fear and intimidation (which) restricted the political activities of women". *Ibid.*

<sup>475</sup> See Pan-African News Wire, Kenya News Bulletin (consulted on 2 May 2008).

<sup>476</sup> See World Bank, Gender Donor Roundtable Statement, pp. 2 f. (consulted on 5 June 2007).

<sup>477</sup> See CEDAW, CEDAW/C/KEN/6 (State report, 2006), p. 37. See also above 5.2.1.

<sup>478</sup> See CEDAW, A/58/38 (2003), para 200.

respect to women's empowerment, the NARC government reported efforts both in the areas of education and economic empowerment. Since 2003 it pursued the implementation of free and compulsory primary education, which resulted in a significant rise in primary school enrolment for both girls and boys.<sup>479</sup> Regarding economic empowerment, the government supported community development initiatives<sup>480</sup> and introduced measures to facilitate the forming of cooperative associations by women.<sup>481</sup> Moreover, a National Land Policy was drafted with a view to removing discrimination against women in the access to and ownership of land; it is however not yet in force and the CEDAW Committee criticised in July 2007 that the progress towards its enactment has been slow.<sup>482</sup>

According to the Kenya Human Development Report of 2005, women's development in Kenya is slowly improving.<sup>483</sup> In its 2007 assessment the CEDAW Committee confirmed some positive developments, for instance in the area of education.<sup>484</sup> Nonetheless, feminisation of poverty is still a problem<sup>485</sup> and the Committee noted that women have not achieved equality with men in many important factors of development, including literacy, higher education, health, and access to productive resources such as land.<sup>486</sup>

In conclusion, women in Kenya are discriminated against in the exercise of the right to participate in poverty reduction. Women were particularly disadvantaged in the one-party state, and the transition to a multi-party democracy has overall been beneficial for them. The improvement of women's participation has however largely been limited to forms of civil society participation. In political bodies women continue to be heavily underrepresented, although the elections of 2002 and 2007 and the subsequent changes of government brought a certain increase also in these areas. Although the NARC government took some measures to further enhance women's participation, women's right to participate in poverty reduction processes continues to be poorly implemented. In particular, the NARC government failed to follow the CEDAW Committee's recommendations to adopt a general policy of affirmative action, which was

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<sup>479</sup> See CEDAW, CEDAW/C/KEN/6 (State report, 2006), p. 27 and UN DAW, Kenya Review and Appraisal, p. 21 (consulted on 5 June 2007).

<sup>480</sup> See CEDAW, CEDAW/C/KEN/6 (State report, 2006), pp. 38 f.

<sup>481</sup> *Idem*, p. 39.

<sup>482</sup> *Idem*, p. 38 and CEDAW/C/KEN/CO/6 (2007), para 41.

<sup>483</sup> See UNDP, Kenya HDR 2005, p. 8 (consulted on 5 June 2007).

<sup>484</sup> See CEDAW, CEDAW/C/KEN/CO/6 (2007), para 5.

<sup>485</sup> See UN DAW, Kenya Review and Appraisal, p. 5 (consulted on 5 June 2007): "gross inequalities of women still prevail".

<sup>486</sup> See CEDAW, CEDAW/C/KEN/CO/6 (2007), paras 33, 37, 39 and 41.

one of the main reasons for the low level of women's participation in parliament and government also after the 2007 elections. While an institutional and policy framework for addressing women's concerns in poverty reduction has been enacted, it appears to be rather ineffective due to insufficient resources and lack of implementation.

### 5.3. Mauritius

#### 5.3.1. General participation in poverty reduction

Mauritius has been a multi-party democracy since independence from Great Britain in 1968.<sup>487</sup> First a kingdom with the English queen as head of state, it became a republic in 1992.<sup>488</sup> The HRC, which has so far issued four Concluding Observations on the implementation of the CCPR in Mauritius, found the situation of participatory rights to be generally satisfactory.<sup>489</sup> The main points of concern relevant to political participation have been some restrictions on the freedom of expression<sup>490</sup> and on trade union rights.<sup>491</sup> The conditions on the right to stand for parliamentary elections are citizenship, majority of age, residence of two years in Mauritius, and the ability to read the English language with sufficient proficiency to facilitate active participation in the proceedings of the parliament.<sup>492</sup> The last two requirements could be deemed unreasonable restrictions in the meaning of Article 25 CCPR; however, the HRC has not yet commented on them. In general, the political institutions in Mauritius have been praised for their high quality and for allowing for a “culture of transparency and participatory politics”.<sup>493</sup> This has been attributed to the high degree of ethnic diversity in Mauritius, with the population being divided into four major groups by the state: the “general population” (persons of African ancestry), Chinese, Hindus and Muslims.<sup>494</sup> It has been argued that this diversity made wide

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<sup>487</sup> See Subramanian & Roy, *Who Can Explain the Mauritian Miracle*, p. 36 (consulted on 8 June 2007).

<sup>488</sup> See European Commission, *Development and Relations with African, Caribbean and Pacific States: Country Profile Mauritius* (consulted on 6 June 2007).

<sup>489</sup> See HRC, A/33/40 (1978), A/44/40 (1989), A/51/40 (1996), CCPR/CO/83/MUS (2005).

<sup>490</sup> See HRC, A/44/40 (1989), para 538 and A/51/40 (1996), para 154.

<sup>491</sup> See HRC, A/33/40 (1978), para 491; A/44/40 (1989), para 538; CCPR/CO/83/MUS (2005), para 19. See also CESCR, E/1995/22 (1994), para 175 and E/1996/22 (1995), para 244.

<sup>492</sup> See CEDAW, CEDAW/C/MAR/1-2 (State report, 1992), p. 27. There was also a requirement of a deposit for candidature in parliamentary elections; it was however revoked by the Supreme Court for being too high. See HRC, CCPR/C/64/Add.12 (State report, 1995), para 6.2.

<sup>493</sup> See Subramanian & Roy, *Who Can Explain the Mauritian Miracle*, pp. 27 f. and 36 (consulted on 8 June 2007).

<sup>494</sup> See HRC, A/44/40 (1989), para 504.

popular participation of all groups a necessity in order to avoid tensions between the different ethnic groups.<sup>495</sup> The HRC asked in its discussion with the state in 1989 whether there were any problems concerning the participation of individuals of all ethnic groups in elected office and public service; the state representative answered in the negative and asserted that there were neither legal nor practical obstacles.<sup>496</sup> Moreover, a so-called “best loser”-system is in place since independence,<sup>497</sup> providing for the reservation of eight seats in parliament for the “best losers” of ethnic groups which are underrepresented in the election results.<sup>498</sup> The CESCR Committee acknowledged in 1994 that Mauritius was indeed a country where various groups were living together peacefully and in mutual respect.<sup>499</sup> While the overall political situation has not changed since that time, there have been occasional incidents of ethnically motivated violence in the more recent past, and it has been observed that ethnic tensions in Mauritius are increasing with growing poverty.<sup>500</sup>

Mauritius, while starting from a similar economic position as other sub-Saharan African countries after independence, has been described as one of the few successes of the continent in terms of development.<sup>501</sup> From the 1970s on, economic growth increased rapidly with the establishment of export-processing zones (EPZ) and the development of a strong tourism sector and financial centre.<sup>502</sup> This economic success has been explained *inter alia* with the good standard of participatory rights, which ensured accountability of government policies and relatively low levels of corruption in public administration.<sup>503</sup> In Mauritius, a large part of the population benefited from the country’s economic growth.<sup>504</sup> In its first Concluding Observations in 1994,<sup>505</sup> the CESCR Committee acknowledged that the economic growth had resulted in a high degree of human development,<sup>506</sup>

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<sup>495</sup> See Subramanian & Roy, Who Can Explain the Mauritian Miracle, pp. 36 and 38 (consulted on 8 June 2007).

<sup>496</sup> See HRC, A/44/40 (1989), para 535.

<sup>497</sup> See Bunwaree, 2004, p. 156.

<sup>498</sup> See HRC, A/44/40 (1989), para 504.

<sup>499</sup> See CESCR, E/1995/22 (1994), para 171.

<sup>500</sup> See Bunwaree, 2004, pp. 151 and 157 f. and European Commission, 2005. See also below.

<sup>501</sup> See Subramanian & Roy, Who Can Explain the Mauritian Miracle, pp. 4-7 and 13 (consulted on 8 June 2007).

<sup>502</sup> See Bunwaree, 2004, p. 157.

<sup>503</sup> See Subramanian & Roy, Who Can Explain the Mauritian Miracle, p. 28 (consulted on 8 June 2007).

<sup>504</sup> See Bunwaree, 2004, p. 157.

<sup>505</sup> See CESCR, E/1995/22 (1994). As in the case of Kenya, the Committee assessed the situation in Mauritius without a state report, after the state had failed to file a report since ratification of the CESCR. However, Mauritius issued a fairly detailed report later that year. See CESCR, E/1996/22 (1995).

<sup>506</sup> See CESCR, E/1995/22 (1994), para 171.

which it attributed to Mauritius' "heavy investment in human development".<sup>507</sup> In particular, the Committee commended the high standard of the Mauritian social system, including free education at all levels and investment in health care.<sup>508</sup> The Committee observed that unemployment was "all but eradicated" and that the average income had increased significantly. It concluded that Mauritius was an "example for a country where structural adjustment seems to have worked to the benefit of the entire population".<sup>509</sup>

During the 1990s, the development situation in Mauritius began to deteriorate. The increase of labour costs and the loss of preferential trade treatment led to economic decline,<sup>510</sup> which in turn resulted in massive reduction of jobs, especially in the EPZ. The subsequent increase in unemployment was accompanied by a growing incidence of poverty.<sup>511</sup> In response, the government introduced several poverty reduction programmes, partly with the support of the international community. All of these programmes incorporate a participatory approach and target at empowering the poor through economic support and decentralisation of decision-making.<sup>512</sup> In 1999, a Trust Fund for the Social Integration of Vulnerable Groups was established to provide financing for community projects, micro-credit programmes and student loans.<sup>513</sup> In the same year, a Micro Project Programme for Poverty Alleviation was launched with funds of the European Union. The focus of this project is on income generation, social infrastructure and technical assistance.<sup>514</sup> A more comprehensive programme is the Rural Diversification Programme supported by the International Fund for Agricultural Development (IFAD) of 2000.<sup>515</sup> It comprises two elements: a Micro-Credit Programme supporting micro-enterprises and a Community Development Programme providing capacity building to poor communities.<sup>516</sup> Finally, in 2001 the government adopted a National Action Plan for Poverty Alleviation to coordinate reforms in four

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<sup>507</sup> Ibid.

<sup>508</sup> Ibid.

<sup>509</sup> Ibid.

<sup>510</sup> See UN DAW, Republic of Mauritius: Response to UN Questionnaire, p. 13 (consulted on 8 June 2007).

<sup>511</sup> See Bunwaree, 2004, pp. 151 and 157.

<sup>512</sup> See ILO, Government Programmes in Mauritius: Poverty Alleviation (consulted on 8 June 2007).

<sup>513</sup> See ILO, Government Programmes in Mauritius: Poverty Alleviation (consulted on 8 June 2007).

<sup>514</sup> Ibid.

<sup>515</sup> Ibid.

<sup>516</sup> See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 32.

major areas – social programmes, health, poverty, and education – with a view to poverty alleviation.<sup>517</sup>

Another positive achievement concerning participation in poverty reduction is the granting of autonomy to the island of Rodrigues in 2002. The incidence of poverty in Rodrigues is considerably higher than in mainland Mauritius and its human development index is lower.<sup>518</sup> In 2002, Rodrigues was given political autonomy and a Rodrigues Regional Assembly was established.<sup>519</sup> Since that time, Rodrigues has achieved some success in the reduction of poverty, including the drafting of its own MDG Report under broad participation of civil society<sup>520</sup> and the development of a Sustainable Integrated Development Plan for the island.<sup>521</sup> The participation of women in decision-making has also improved, with a higher percentage of women in the Rodrigues Regional Assembly than in other local government bodies and at the national level.<sup>522</sup> Moreover, a Commission for Women's Rights was set up to promote gender issues in Rodrigues.<sup>523</sup>

Overall, the poverty reduction processes that have been adopted in Mauritius appear to be successful, as the basic indicators of human development (education, life expectancy and average income) have been increasing steadily,<sup>524</sup> and the incidence of human poverty is with 11.4% still considerably lower than in other countries of Southern Africa.<sup>525</sup> Nevertheless, inequality in income distribution and the growth of “pockets of poverty” have continued to rise in the last years.<sup>526</sup>

To conclude, Mauritius' record as regards the implementation of the right to participation in poverty reduction in general is rather good. Broad political participation seems to have fostered economic growth and ensured

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<sup>517</sup> See UNDP, *Preparation of the National HDR Mauritius*, p. 3 (consulted on 8 June 2007) and SIDS, *Mauritius 2005* (consulted on 8 June 2007). Measures that have been taken so far include for instance the extension of compulsory education until the age of 16 and investment in new schools. See UN CSW, *Statement by Mr. Rajeswara Duva Pentiah, Ministry for Women's Rights*, p. 2 (consulted on 8 June 2007).

<sup>518</sup> See UNDP, *Local Ownership of the MDGs: A Case Study of the Republic of Mauritius*, p. 4 (consulted on 8 June 2007). Reasons are the isolated geographical situation of Rodrigues and its predominantly rural structure. *Idem*, p. 5.

<sup>519</sup> See HRC, *CCPR/C/MUS/2004/4* (State report, 2004), para 109.

<sup>520</sup> See UNDP, *Local Ownership of the MDGs: A Case Study of the Republic of Mauritius*, p. 14 (consulted on 8 June 2007).

<sup>521</sup> See UNDP, *UNDP in Mauritius and the Seychelles: Poverty Reduction* (consulted on 8 June 2007).

<sup>522</sup> In 2002, women were represented with 20% (3 out of 15) in the Rodrigues Regional Assembly, whereas at this time there were only 6.3% women in parliament and 9.6% women in municipal councils. See CEDAW, *CEDAW/C/MAR/3-5* (State report, 2005), p. 40.

<sup>523</sup> See CEDAW, *CEDAW/C/SR.745* (Summary records, 2006), para 18.

<sup>524</sup> See UNDP, *Global HDR 2006*, p. 289 (consulted on 5 June 2007).

<sup>525</sup> See SARP, *Regional Views: Mauritius* (consulted on 8 June 2007).

<sup>526</sup> See UNDP, *Local Ownership of the MDGs: A Case Study of the Republic of Mauritius*, p. 4 (consulted on 8 June 2007).

fair distribution of this growth. However, the ongoing decline of the Mauritian economy poses new challenges for the state with regard to poverty reduction. The poverty reduction processes that have been launched so far involve the poor in decision-making and focus on their empowerment, and thus appear to be compatible with the requirements of international human rights instruments.

### *5.3.2. Participation of women in poverty reduction*

#### 5.3.2.1. The situation before systematic treaty body assessment

Mauritian women received the right to vote and stand for elections in 1956 and are thus not directly discriminated against with regard to political participation.<sup>527</sup> The literacy requirement for candidature to parliamentary elections may however amount to indirect discrimination, as women's literacy rate is still considerably lower than men's.<sup>528</sup> Owing to the patriarchal structure of Mauritian society,<sup>529</sup> women were virtually excluded from the public sphere in the early years after independence. The first woman was elected to parliament in 1975,<sup>530</sup> and women's representation continued to be low throughout the 1980s with an average of seven percent of women in parliament.<sup>531</sup>

In the treaty body reporting process, women's participation in Mauritius was first made an issue by the HRC in its second Concluding Observations of 1989, when members of the Committee asked for information about women's enjoyment of the rights in Article 25.<sup>532</sup> The state representative replied that there were three women members of parliament (amounting to 7%), one minister and "more women than men" in public service.<sup>533</sup> At this time, the Committee did not make any further comments on this topic.

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<sup>527</sup> See IPU, *Women's Suffrage* (consulted on 5 June 2007).

<sup>528</sup> See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 11. The literacy rate among women is 81.5%, the rate among men 88.7%. See also above 5.3.1.

<sup>529</sup> See UN DAW, *Republic of Mauritius: Response to UN Questionnaire*, p. 12 (consulted on 8 June 2007).

<sup>530</sup> See UNDP, *Global HDR 2006*, p. 381 (consulted on 5 June 2007).

<sup>531</sup> See CEDAW, CEDAW/C/MAR/1-2 (State report, 1992), p. 28.

<sup>532</sup> See HRC, A/44/40 (1989), para 534.

<sup>533</sup> *Idem*, para 535.

### 5.3.2.2. The first wave of treaty body assessment in the mid-1990s

A more systematic analysis of women's participation by the UN treaty bodies began in the middle of the 1990s with the first Concluding Observations of the CEDAW Committee in 1995 and the third Concluding Observations of the HRC in 1996.

When the CEDAW Committee first assessed the implementation of the Convention in Mauritius, the situation of women regarding membership in parliament and cabinet had not changed since 1989.<sup>534</sup> In its report, the government additionally provided information about women's representation in local government, which was even lower than at the national level, and particularly low in village councils with only 2.4% of women.<sup>535</sup> Contrary to the statement before the HRC in 1989, the state report pointed out that there were only 13.5% of women in public service.<sup>536</sup> Information on women's participation in NGOs was provided as well: the report noted that "many women are involved in the management and service provision in NGOs concerned with welfare".<sup>537</sup> Concrete information about the involvement of women's organisations in policy-making was missing. However, in the discussion with the Committee the state representative mentioned that the Minister for Women's Rights was visiting grassroots women and rural women's groups on a weekly basis "to identify their needs".<sup>538</sup>

The review of the HRC in 1996 showed that the 1995 elections had brought a slight improvement of women's political participation. There were two female ministers in cabinet and women's representation in parliament had increased to 9%.<sup>539</sup>

Beginning in the 1970s, an institutional machinery for the advancement of women was set up. In 1976 the first Ministry for Women's Affairs was established, but was soon replaced by a Women's Desk at the Office of the Prime Minister. The Ministry for Women's Rights as it exists today was created in 1982.<sup>540</sup> It is divided into four units, with the Women's Unit bearing the main responsibility for the improvement of women's

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<sup>534</sup> See CEDAW, CEDAW/C/MAR/1-2 (State report, 1992), p. 27.

<sup>535</sup> In municipal councils women were represented, as in parliament, with 7%. There were no female mayors and village presidents. See CEDAW, CEDAW/C/MAR/1-2 (State report, 1992), p. 28.

<sup>536</sup> See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 29.

<sup>537</sup> See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 29.

<sup>538</sup> See CEDAW, CEDAW/C/MAR/1-2 (State report, 1992), p. 20.

<sup>539</sup> See HRC, CCPR/C/SR.1476 (Summary records, 1996), para 19. Women's participation in local government had increased as well. See UN DAW, Republic of Mauritius: Response to UN Questionnaire, p. 7 (consulted on 8 June 2007).

<sup>540</sup> See CEDAW, CEDAW/C/MAR/1-2 (State report, 1992), p. 4.

situation.<sup>541</sup> The Unit functions through twelve women centres and a large number of women's associations and provides primarily training and educational services to women.<sup>542</sup> In its report to the CEDAW Committee in 1992, the state conceded that the impact of the Ministry was limited on account of its insufficient resources.<sup>543</sup> In 1985, the National Women's Council was established as a para-statal body attached to the Ministry to serve as a linkage between the state machinery and women's organisations.<sup>544</sup> Its task is to ensure that government policies are coherent with the priorities of women at the grassroots level and it functions as a networking structure, pressure group and service provider.<sup>545</sup> Additional institutional mechanisms include the Inter-Ministerial Committee and the National Advisory Committee to the Ministry. The Inter-Ministerial Committee comprises desk officers in various ministries and is intended to facilitate exchange of information on projects with a potential impact on women. It was admitted in the state report that its work had been somewhat inefficient due to a lack of expertise in gender issues.<sup>546</sup> Finally, the National Advisory Committee to the Ministry of Women's Affairs is a consultative body consisting of members of NGOs, ministries, the UNDP and the private sector and is charged with the task of providing policy directions and input on gender issues to the government.<sup>547</sup>

The government had already indicated in the course of its second report to the HRC in 1989 that measures had been initiated by the National Women's Council to promote women's rights, which had brought some progress in the removal of societal attitudes detrimental to women's participation.<sup>548</sup> The state report of 1992 to the CEDAW Committee mentioned that several programmes and publicity spots on the changing role of women had been launched by the Ministry for Women's Rights, as well as television programmes showing women "in different types of occupation".<sup>549</sup> There was no general policy of affirmative action to increase

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<sup>541</sup> See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 14.

<sup>542</sup> See CEDAW, CEDAW/C/MAR/1-2 (State report, 1992), p. 20 and CEDAW/C/MAR/3-5 (State report, 2005), p. 14.

<sup>543</sup> See CEDAW, CEDAW/C/MAR/1-2, pp. 20 f. The full name of the Ministry today is Ministry for Women's Rights, Child Development and Family Welfare. See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 13.

<sup>544</sup> See CEDAW, CEDAW/C/MAR/1-2 (State report, 1992), p. 10.

<sup>545</sup> See CEDAW, CEDAW/C/MAR/1-2 (State report, 1992), p. 21.

<sup>546</sup> *Idem*, p. 19 and CEDAW, CEDAW/C/SR.271 (Summary records, 1995), para 34.

<sup>547</sup> See UN DAW, Republic of Mauritius: Response to UN Questionnaire, pp. 15 f. (consulted on 8 June 2007).

<sup>548</sup> See HRC, A/44/40 (1989), paras 502 and 505.

<sup>549</sup> See CEDAW, CEDAW/C/MAR/1-2 (State report, 1992), p. 23.

women's participation.<sup>550</sup> According to the state report, all political parties were "encouraging women to stand as candidates";<sup>551</sup> however, no party had developed a specific policy to enhance the representation of women.<sup>552</sup> The absence of concrete affirmative action measures to improve women's participation in decision-making was criticised both by the CEDAW Committee<sup>553</sup> and the HRC.<sup>554</sup>

Since the 1990s, some measures were introduced to integrate women's concerns into the development process. In 1995, the Inter-Ministerial Committee developed a White Paper on Women in Development to serve as a "policy framework for the empowerment of women".<sup>555</sup> The Paper's main point was training in gender issues of all those responsible for the planning of development processes.<sup>556</sup> State measures to empower women included for instance the provision of community support services, in cooperation with NGOs and the private sector, to working women.<sup>557</sup> In the area of education, the government offered training programmes in traditional women's occupations, such as industrial sewing, secretarial work, home science and similar occupations.<sup>558</sup> The state also presented the creation of two girls-only schools as a temporary special measure.<sup>559</sup> These educational measures were heavily criticised by the CEDAW Committee, which expressed the opinion that they were contrary to the intent of the Convention<sup>560</sup> and reinforcing "feminised sectors" of economy as well as stereotypes about women.<sup>561</sup> The Committee was also concerned that the content of literacy programmes for women, instead of empowering them, was promoting women's traditional roles.<sup>562</sup>

The CESCR Committee issued the first Concluding Observations on Mauritius – without a state report – in 1994. The Committee's assessment was overall very favourable to Mauritius,<sup>563</sup> but it came to a less

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<sup>550</sup> In fact, one of the members of the HRC expressed concern in the discussion of the third state report in 1996 that the wording of the non-discrimination provision in the constitution could be interpreted to exclude affirmative action. See HRC, CCPR/C/SR.1476 (Summary records, 1996), para 35.

<sup>551</sup> See CEDAW, CEDAW/C/MAR/1-2 (State report, 1992), p. 28.

<sup>552</sup> See UN DAW, Republic of Mauritius: Response to UN Questionnaire, p. 7 (consulted on 8 June 2007).

<sup>553</sup> See CEDAW, A/50/38 (1995), para 167.

<sup>554</sup> See HRC, A/51/40 (1996), para 158.

<sup>555</sup> CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 25.

<sup>556</sup> *Idem*, p. 25.

<sup>557</sup> See CEDAW, A/50/38 (1995), para 193.

<sup>558</sup> See CEDAW, CEDAW/C/MAR/1-2 (State report, 1992), pp. 21 f.

<sup>559</sup> *Idem*, p. 21.

<sup>560</sup> See CEDAW, CEDAW/C/SR.268 (Summary records, 1995), para 39.

<sup>561</sup> *Idem*, paras 39 f. and 47.

<sup>562</sup> *Idem*, para 48.

<sup>563</sup> See above 5.3.1.

encouraging conclusion with regard to women's development. It found that women "still occupy a subordinate role in society", which affected the enjoyment of their economic, social and cultural rights.<sup>564</sup> The initial state report of Mauritius to the CESCR Committee later that year did not succeed in changing this picture. Although the report was very elaborate, it failed to pay attention to women's rights in a systematic way and only contained some specific information on women in the context of work rights, mainly about maternity leave and protective measures for women at work.<sup>565</sup> In 1995, the CEDAW Committee came to a similar conclusion about the state of women's development as the CESCR Committee one year before it. While it commended the strong Mauritian social programme<sup>566</sup> and asserted positive developments regarding women's rapidly increasing employment, it expressed concern about "what (appears) to be excessive emphasis on directing female employment towards industrial occupations in export-processing zones and in the private sector".<sup>567</sup> Women's participation in the labour force had increased from 28% in 1983 to 44% in 1993<sup>568</sup> and women constituted the majority of workers in the export-processing zones.<sup>569</sup> However, they were heavily discriminated against in the right to equal pay<sup>570</sup> and the working conditions in the EPZ were unfavourable: the CESCR Committee observed in 1994 that the EPZ were characterised by "excessive overtime work" as well as "ineffective enforcement of health and safety standards".<sup>571</sup> Therefore it could be argued that women's empowerment and their progress in terms of development was limited in spite of their relatively high participation in paid labour. The CEDAW Committee concluded in 1995 with the recommendation to direct temporary special measures towards an increase of women's participation in decision-making positions rather than in traditional occupations, where they were already overrepresented.<sup>572</sup>

### 5.3.2.3. The second wave of treaty body assessment in 2005/2006

The latest Concluding Observations on Mauritius were issued by the HRC in 2005 and the CEDAW Committee in 2006. According to the last state report

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<sup>564</sup> See CESCR, E/1995/22 (1994), para 172.

<sup>565</sup> See CESCR, E/1990/5/Add.21 (State report, 1994), paras 126-141.

<sup>566</sup> See CEDAW, A/50/38 (1995), para 205.

<sup>567</sup> *Idem*, para 166.

<sup>568</sup> See CEDAW, CEDAW/C/SR.268 (Summary records, 1995), para 15.

<sup>569</sup> See Subramanian & Roy, *Who Can Explain the Mauritian Miracle*, p. 18 (consulted on 8 June 2007).

<sup>570</sup> See CESCR, E/1996/22 (1995), para 237.

<sup>571</sup> See CESCR, E/1995/22 (1994), para 174.

<sup>572</sup> See CEDAW, A/50/38 (1995), para 167.

to CEDAW, which was delivered in the beginning of 2005, the situation of women's participation in decision-making positions relevant to poverty reduction had not improved significantly.<sup>573</sup> In the 2000 elections, four out of 64 (6.3%) persons elected to parliament were women,<sup>574</sup> indicating a decline of 2.7% in comparison to the 1995 elections. As before 1995, only one woman was participating in cabinet at the ministerial level, amounting only to 4.2%.<sup>575</sup> There was a slight increase of women's participation in local government, with women constituting 9.6% of municipal and 2.9% of village councillors.<sup>576</sup> In public service, participation of women had risen to 25.3%; among the posts of "legislators, senior officials and managers"<sup>577</sup> there were 30.9% of women (which, according to the report, meant an increase of 5.3% since 1997).<sup>578</sup> The state report contained a specific chapter on Article 7 lit c CEDAW, which however did not include much substantive information. It was merely stated that women were encouraged to participate in trade unions, for instance through educational programmes and the establishment of women's branches, and that the contribution of women's organisations to policy-making had been quite marginal, although mechanisms had been established for this purpose.<sup>579</sup> At the time of the discussion of the second state report before the CEDAW Committee, the 2005 elections had brought a considerable improvement of women's representation in parliament to 17%.<sup>580</sup> The number of women in rural government had also increased somewhat.<sup>581</sup> The percentage of women ministers had not improved to the same extent, amounting only to 8%.<sup>582</sup>

In addition to the existing national machinery, Gender Focal Points were created in all ministries and departments in 2001.<sup>583</sup> The Focal Points are intended to identify cross-cutting gender issues, but – similarly to the Inter-Ministerial Committee before them – they suffer from a lack of expertise in gender mainstreaming of the persons involved, and have so far

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<sup>573</sup> See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 39.

<sup>574</sup> *Idem*, p. 40.

<sup>575</sup> See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 40.

<sup>576</sup> *Ibid.*

<sup>577</sup> This includes permanent secretaries, principal assistant secretaries, directors/managers/commissioners, rectors/principals, and head teachers/deputy head teachers. See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 41.

<sup>578</sup> *Ibid.*

<sup>579</sup> *Idem*, p. 42. This probably refers to the National Women's Council, which was intended to serve as the main linkage between women's organisations and the state. See also above 5.3.2.2.

<sup>580</sup> See CEDAW, CEDAW/C/MAR/Q/5 (List of issues, 2006), para 16.

<sup>581</sup> See CEDAW, CEDAW/C/SR.746 (Summary records, 2006), para 14.

<sup>582</sup> See UNDP, Global HDR 2006, p. 381 (consulted on 5 June 2007).

<sup>583</sup> See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 27 and CEDAW, CEDAW/C/MAR/Q/5 (List of issues, 2006), para 6.

failed to produce notable results. However, there are attempts to increase their effectiveness through skills training provided by the UNDP.<sup>584</sup>

With respect to positive measures to enhance women's participation, Mauritius increased its efforts to overcome stereotypes about the role of women in society, for example through workshops to encourage women to take leadership positions<sup>585</sup> and a "Men as Partners" campaign, which sought to promote equal responsibility of men in the household.<sup>586</sup> The government also took first steps towards affirmative action by signing the Gender and Development Declaration of the Southern African Development Community (SADC) in 1997, thereby committing itself to the goal of 30% of women's representation in parliament by 2005.<sup>587</sup> In 2002, a Sex Discrimination Act was adopted that provided *inter alia* for the possibility of affirmative action to improve women's political participation.<sup>588</sup> The CEDAW Committee asked the state in 2006 which measures had been taken to increase women's participation in parliament from currently 17% to 30%; the state replied that political parties had been made aware of the SADC commitment and that symposiums had been held on women in decision-making.<sup>589</sup> In addition, the government was considering amendments to the electoral system to make it more democratic and ensure fairer representation of women.<sup>590</sup> However, concrete affirmative action measures, such as quotas for women in decision-making positions, had not been initiated. Both the HRC in 2005 and the CEDAW Committee in 2006 expressed their concern about the persistently low participation of women in public life and strongly recommended effective positive measures in this area.<sup>591</sup> The CEDAW Committee specified that given the obvious resistance to change, legislative measures were in order,<sup>592</sup> including the establishment of "concrete numerical goals and timetables"<sup>593</sup> and more comprehensive awareness-raising campaigns about the importance of women's participation in decision-making.<sup>594</sup>

Between 1997 and 2006, two main documents were developed by the government in the area of women's development and poverty reduction: the

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<sup>584</sup> See CEDAW, CEDAW/C/MAR/Q/5 (List of issues, 2006), para 6.

<sup>585</sup> See CEDAW, CEDAW/C/SR.745 (Summary records, 2006), para 75.

<sup>586</sup> See CEDAW, CEDAW/C/MAR/CO/5 (2006), para 16.

<sup>587</sup> See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 40.

<sup>588</sup> See CEDAW, CEDAW/C/MAR/CO/5 (2006), para 6.

<sup>589</sup> See CEDAW, CEDAW/C/MAR/Q/5 (List of issues, 2006), para 16.

<sup>590</sup> See CEDAW, CEDAW/C/SR.745 (Summary records, 2006), para 73.

<sup>591</sup> See HRC, CCPR/CO/83/MUS (2005), para 8 and CEDAW, CEDAW/C/MAR/CO/5 (2006), para 23.

<sup>592</sup> See CEDAW, CEDAW/C/SR.745 (Summary records, 2006), para 70.

<sup>593</sup> See CEDAW, CEDAW/C/MAR/CO/5 (2006), para 23.

<sup>594</sup> *Idem*, para 19. In the discussion before the CEDAW Committee, the head of the Ministry for Women's Rights made a personal commitment to pursue more forceful legislation with regard to women's political participation. See CEDAW/C/SR.745 (Summary records, 2006), para 74.

National Gender Action Plan (2000) and the Gender and Development Project (1999-2003). The Gender and Development Project aimed at promoting gender mainstreaming and equality through capacity building and technical assistance,<sup>595</sup> its main achievement was the introduction of a mechanism of gender responsive budgeting.<sup>596</sup> The National Gender Action Plan was intended as a follow-up to Mauritius' priority concerns of the Beijing Platform, which encompass gender mainstreaming, the advancement of women's health, protection from domestic violence, and the encouragement of women to take up non-traditional subjects in education.<sup>597</sup> To a question of the CEDAW Committee about the concrete achievements of the Plan, the state answered that it was "used as a tool to create awareness" about the Beijing commitments,<sup>598</sup> which suggests that it has not produced substantial improvements. Additionally, measures were adopted to empower women (and in particular rural women) economically, including the creation of an empowerment fund<sup>599</sup> and a women's desk in the Mauritian Development Bank to enhance women's access to credits.<sup>600</sup> With regard to educational empowerment, several capacity building programmes were launched, for instance by the National Women's Entrepreneur Council (a para-statal body attached to the Ministry for Women's Rights).<sup>601</sup> Aside from these specific programmes, women's concerns were integrated into the mainstream poverty reduction processes described in Chapter 5.3.1.: Approximately half of the beneficiaries of the Trust Fund for Social Integration were women, and 25 out of 177 community development programmes as well as 74% of the micro-credit programmes within the IFAD Rural Diversification Programmes were exclusively targeting women.<sup>602</sup>

Despite these measures adopted by the government, especially in the area of economic empowerment, the development of women has not progressed in consonance with the overall human development in Mauritius.<sup>603</sup> While the CEDAW Committee commended the government's measures to empower women economically, it criticised that women's

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<sup>595</sup> See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), p. 26.

<sup>596</sup> See CEDAW, CEDAW/C/MAR/Q/5 (List of issues, 2006), para 5.

<sup>597</sup> See CEDAW, CEDAW/C/MAR/3-5 (State report, 2005), pp. 25f. The improvement of women's participation in political life is thus not one of the priority concerns of Mauritius.

<sup>598</sup> See CEDAW, CEDAW/C/MAR/Q/5 (List of issues, 2006), para 5.

<sup>599</sup> See CEDAW, CEDAW/C/SR.745 (Summary records, 2006), para 75.

<sup>600</sup> See CEDAW, CEDAW/C/SR.746 (Summary records, 2006), para 13.

<sup>601</sup> See UN CSW, Statement by Mr. Rajeswara Duva Pentiah, Ministry for Women's Rights, p. 3 (consulted on 8 June 2007).

<sup>602</sup> See CEDAW, CEDAW/C/SR.746 (Summary records, 2006), para 13.

<sup>603</sup> See UNDP, Global HDR 2006, p. 364 (consulted on 5 June 2007).

development in the areas of education, employment and participation was lagging behind. In particular, it showed concern about women's "precarious situation" in employment, as evidenced by the continuing occupational segregation and the fact that their average wage is still less than half of men's.<sup>604</sup> Since the last report, women's employment situation had deteriorated due to the economic decline in Mauritius, which had led to a massive shedding of labour in the EPZ sector and therefore predominantly affected women.<sup>605</sup> Women also continue to fare worse than men in education, with women's literacy rates being approximately eight percent lower than men's.<sup>606</sup> Moreover, women are still discriminated against in the choice of subjects offered to them at school, which restricts their employment opportunities.<sup>607</sup>

In conclusion, the implementation of women's right to participation in poverty reduction is deficient in Mauritius. Notwithstanding a certain improvement in the 2005 elections, women's participation in political decision-making bodies continues to be low, and women's organisations are not as active as in other African countries.<sup>608</sup> The recommendations of the CEDAW Committee and HRC in the mid-1990s to adopt concrete affirmative action measures to promote women's participation were not followed, although some limited steps have been taken towards this direction. This is all the more surprising as Mauritius' record regarding the right to participation in general is good, and a system to enhance fair representation of all ethnic groups in parliament has been in place since independence. Mauritius has been fairly active in promoting women's employment; however, the state's efforts appear to have been directed towards economic growth rather than women's empowerment. It has been argued that the exploitation of women's labour under the excuse of empowerment has in fact disempowered Mauritian women,<sup>609</sup> which might also have contributed to the absence of a women's mass movement in Mauritius. Moreover, the evasive replies of the state regarding the success of its mechanisms to integrate women's concerns into development suggest that these mechanisms have not been very effective. However, recent initiatives

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<sup>604</sup> See CEDAW, CEDAW/C/MAR/CO/5 (2006), paras 7 f. See also UN DAW, Republic of Mauritius: Response to UN Questionnaire, p. 9 (consulted on 8 June 2007).

<sup>605</sup> While men's unemployment rate rose from 3.1% to 3.7% during the 1990s, women's unemployment increased from 2.3% to 10%. See UN DAW, Republic of Mauritius: Response to UN Questionnaire, pp. 12 f. (consulted on 8 June 2007). See also Bunwaree, 2004, p. 161.

<sup>606</sup> See UNDP, Global HDR 2006, p. 364 (consulted on 5 June 2007).

<sup>607</sup> See CEDAW, CEDAW/C/MAR/CO/5 (2006), para 24.

<sup>608</sup> See also Bunwaree, 2004, p. 149.

<sup>609</sup> See also Bunwaree, 2004, p. 159.

to enhance women's access to credits are more promising and are in compliance with the requirements of CEDAW and CESC.

## 6. CONCLUSIONS AND RECOMMENDATIONS

The analysis of human rights norms and other international instruments has shown that the questions that have been the subject of this research can be answered in the affirmative: there is a human right to participation in poverty reduction processes as well as a specific right of women to this effect. These rights apply to a wide range of processes, from the national to the community level, including measures as diverse as macroeconomic policies, provision of basic services, income-generating and empowerment measures. The right to participate in these processes encompasses the right to vote and be elected, procedural guarantees regarding the access to public service, and participation of civil society in decision-making. The latter aspect is particularly emphasised in CEDAW and by the CDESCR Committee, but according to the interpretation of the HRC, some forms of civil society participation are also implicit in the right to direct participation in the CCPR. The CDESCR Committee and the African Commission additionally recognise a right to participation in the context of the community that is inferred from certain economic, social and cultural rights in the CDESCR and the African Charter.

The right to participation imposes both negative and positive obligations on states. The negative obligation requires that states refrain from interfering with the right to participation without justification, for instance through conditions of literacy or property on the right to vote and stand for elections. Aside from the establishment of a democratic system and holding of elections, states have to facilitate the *de facto* exercise of participatory rights through positive measures to overcome obstacles to participation, such as voter education, literacy campaigns and even the reduction of poverty. Finally, states are under an obligation to protect these rights from interference by non-state actors, including political parties.

Specific state obligations concerning women's participation can be found both in general human rights treaties and in treaties on women's rights. These documents prohibit direct and indirect discrimination against women and entail a wide range of positive obligations with regard to the participation of women. The obligation to protect is expressly included in CEDAW and the Protocol to the ACHPR on the Rights of Women in Africa,

and is especially emphasised by the CEDAW Committee in connection with political parties. Moreover, the CEDAW Committee has addressed political parties, as well as other non-state organisations, directly and assumed that they have a responsibility to ensure the principle of gender equality in their internal management. The state obligation to fulfil women's right to participation covers the modification of societal attitudes that are detrimental to women's participation and the improvement of women's *de facto* participation, including through affirmative action. Indeed, all the examined treaties (with the exception of the Convention on the Political Rights of Women) can be interpreted to confer an obligation to take affirmative action where it is necessary to enhance women's participation. In addition, women's right to participation in poverty reduction processes is supported by various international non-binding instruments. In these instruments, states commit themselves to enhancing women's participation and fostering their empowerment as a means of improving their status in all spheres of society. Measures to empower women encompass educational programmes, such as capacity building and leadership training, and measures to enhance women's economic situation, for example through access to credits, productive resources and employment.

The case studies have found that the implementation of the general right to participation in poverty reduction differs greatly between Kenya and Mauritius. In the Kenyan one-party state, all aspects of the right to participation were violated, resulting in gross inequalities in the distribution of wealth and in persistently high poverty. Although the situation has improved with the re-introduction of the multi-party system, it is still characterised by a lack of popular participation, domination of the central government, and a public service that is weakened by political patronage and corruption. Recently adopted poverty reduction processes have been designed as inclusive, but their implementation has so far been deficient. Consequently, poverty continues to be on the increase in Kenya. Mauritius, on the other hand, is renowned for its long democratic tradition and its strong participatory institutions, which have fostered economic growth and ensured fair distribution of this growth through a comprehensive social system. While the economic decline beginning in the 1990s has led to a rising incidence of poverty, the processes that have been adopted in response involve the poor and appear to work towards their empowerment.

In contrast to the considerable differences between Kenya and Mauritius regarding the general right to participation in poverty reduction and development, the situation with respect to women is rather similar in both countries. Due to the patriarchal structure of Kenyan and Mauritian

society, women's participation is hampered by negative stereotypes against women who are active in the public sphere and by structural discrimination, for instance in the access to education and productive resources. Accordingly, the participation of women in political decision-making positions is very low and in both countries below the global average of 14.3% of women in ministerial positions and 15.6% in parliament, with the exception of the Mauritian parliament since the 2005 elections, where women are represented with 17%. The two countries are thus far from the 30% of women's participation that have been identified as a "critical mass" in decision-making bodies. Furthermore, Kenya and Mauritius go against the global trend of relatively better representation of women in local government; in fact, women's participation is significantly lower at the local than at the national level in the two states. In both Kenya and Mauritius, women are also disadvantaged in the access to public service, particularly with regard to senior positions. The situation of women's participation in civil society is more promising in Kenya, where there are many organisations advocating for women's rights and for instance lobbying for affirmative action; in Mauritius, women's groups are not as active in the area of policy-making.

In the study of the documents adopted in the course of the treaty body reporting procedures it becomes apparent that both Kenya and Mauritius in principle recognise the importance of women's participation for poverty reduction. Both countries have established a machinery for the advancement of women in the mid-1970s, which has been extended over the years. However, these institutions to promote women's rights are generally fairly weak and suffer from lack of budgetary allocations and expertise. This seems to have contributed to the failure of both countries to adopt a general policy of affirmative action and a comprehensive strategy to modify societal attitudes with a view to enhancing women's participation. Institutional and policy mechanisms with the task of ensuring gender mainstreaming in development have been created, but have not yet produced substantial results. Both countries have additionally adopted various measures to empower women economically and through educational measures. Empowerment measures in Kenya have for example included capacity building programmes, development grants and enhanced access to micro-credits; however, the issue of women's empowerment has not been addressed in a comprehensive manner and women continue to be discriminated against in crucial empowerment factors, such as the access to land and higher education. In Mauritius, educational measures and the promotion of women's employment appear to have been directed towards

the exploitation of women's labour rather than their empowerment, and have therefore failed to enhance women's standing in society. Recent Mauritian initiatives promoting women's access to micro-credits are more promising.

In consonance with women's low participation and empowerment, their development is lagging behind in both Kenya and Mauritius. Women's situation is slowly improving in most spheres of life, but there seems to be a lack of real political commitment towards the goals of advancing women's participation and reducing feminised poverty. The consequences of women's low participation for development in general, on the other hand, have been quite different in the two countries. In the case of Kenya, it can be argued that the absence of women in public service and decision-making positions has hampered the development of the country. Women's participation could have contributed to improving the status of principles of good governance, for example through the reduction of corruption, which is one of the main problems that the country is facing today. In Mauritius, general development has advanced until the 1990s although women were virtually excluded from decision-making. However, this development has occurred at the expense of women and through the exploitation of their labour force. Now that the first cracks have begun to appear in the Mauritian system due to a decline in economic growth and increasing unemployment, equal participation of women will be necessary to address the issue of poverty reduction in a comprehensive way.

The study of documents issued in the course of Kenya's and Mauritius' reporting to the UN treaty bodies has indicated that there are deficiencies in dealing with women's right to participate in poverty reduction in a systematic manner. While Kenya and Mauritius claim in their reports to recognise the importance of women's participation for poverty reduction, they do not provide much specific information on this topic. State reports frequently include detailed information on the hierarchy and functions of the national machinery for the advancement of women and on policies to integrate gender mainstreaming in development, but both countries have for the most part been quiet on concrete achievements of these mechanisms. In connection with the right to participation, information is usually provided on women in political offices and, more recently, women's organisations in policy-making. Substantive information concerning the last topic is however missing, as is information on the participation of women in political parties. Moreover, state reports do not address the issues of poverty and poverty reduction with regard to women in a systematic way, and the UN treaty bodies have failed to bring up these

topics in some of their Concluding Observations on Kenya and Mauritius. These shortcomings should be corrected in future reporting procedures.

In the context of women's right to participation, states should provide more information on the participation of civil society groups in decision-making, the representation of women in political parties and on the concrete achievements of the national machineries for the advancement of women. Furthermore, the topics of women's poverty, poverty reduction processes and participation of women therein should be addressed in a systematic way both in state reports and in discussions before the Committees; this would require an in-depth analysis of these issues by the state and could thus contribute to the improvement of state policies. In particular, the next state reports to the CESCR Committee, which are long overdue in the cases of Kenya and Mauritius, should include concrete information on women's enjoyment of economic, social and cultural rights and their participation in development.

The case studies of Kenya and Mauritius suggest a number of recommendations with regard to the institutional and policy framework for the enhancement of women's participation in poverty reduction processes and their empowerment.

In societies with a strong patriarchal structure, measures to enhance women's economic standing and access to education are not sufficient to address their low participation in public life, particularly in political institutions. Affirmative action and comprehensive strategies to change detrimental societal attitudes should be adopted in order to improve women's participation in decision-making bodies and positions. Political parties play a crucial role in the enhancement of women's participation in public office. States should therefore also take measures to ensure that political parties integrate the principle of gender equality in their internal management, for instance through women's quotas in the nomination of candidates for elections.

Until equal participation of women in political decision-making positions has been achieved, civil society organisations, such as community-based organisations and NGOs, often offer the best opportunities for the poor, and especially poor women, to participate in poverty reduction. Hence, states should intensify the support of these organisations and their programmes in the area of poverty reduction and encourage them to endorse women's participation in their internal structures. Moreover, states should coordinate their own policies with programmes of civil society organisations, without however infringing upon the autonomy of these organisations.

In both Kenya and Mauritius, there is a fairly large number of institutions to promote women's participation and gender mainstreaming in development, but they tend to be rather ineffective on account of financial under-equipment, lack of expertise and overlap in aim and functions between different mechanisms. It would appear preferable to have fewer institutions that are assigned clear responsibilities, are provided with the necessary budgetary allocations, and involve professionals who are well-trained in gender issues. Furthermore, a system should be in place to analyse and evaluate the achievements of these mechanisms in order to monitor their effectiveness.

Finally, policies to advance women's empowerment should be genuinely directed towards the improvement of women's status in all spheres of society. The enhancement of women's economic standing is not sufficient to ensure that women can take direct control of their lives and participate in decision-making. For instance, employment does not lead to women's empowerment if it is not accompanied by equal enjoyment of work rights. Educational measures, such as literacy and training programmes, should be carefully designed so as to avoid reinforcing stereotypes against women.

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