

UNCCD and Food Security for Pastoralists Within a Human Rights Context

By Veslemøy Ask

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FoodFirst Information and Action Network

The Drylands Coordination Group (DCG) is an NGO-driven forum for exchange of practical experiences and knowledge on food security and natural resource management in the drylands of Africa. DCG facilitates this exchange of experiences between NGOs and research and policy-making institutions. The DCG activities, which are carried out by DCG members in Ethiopia, Eritrea, Mali and Sudan, aim to contribute to improved food security of vulnerable households and sustainable natural resource management in the drylands of Africa.

The founding DCG members consist of ADRA Norway, CARE Norway, Norwegian Church Aid, Norwegian People's Aid, The Strømme Foundation and The Development Fund. The secretariat of DCG is located at the Environmental House (Miljøhuset G9) in Oslo and acts as a facilitating and implementing body for the DCG. The DCG's activities are funded by NORAD (the Norwegian Agency for Development Cooperation).

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ACRONYMS

ACHR	The African Charter on Human and Peoples' rights
CBO	Community-Based Organisation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Covenant on the Elimination of all forms of Racial Discrimination
COP	Conference of the Parties
CRC	Convention on the Rights of the Child
CRIC	Committee to Review the Implementation of the Convention
CST	Committee on Science and Technology
DCG	Drylands Coordination Group
EPA	The Federal Environmental Protection Authority of Ethiopia
FIAN	FoodFirst Information and Action Network
GC No.12	General Comment No. 12 on the Right to Adequate Food
GC No. 23	General Comment No. 23 on the Rights of Minorities
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IUCN	The World Conservation Union
NAP	National Action Programme
NGO	Non-Governmental Organisation
UDHR	Universal Declaration of Human Rights
UNCCD	United Nations Convention to Combat Desertification
VG	Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security

1. INTRODUCTION

The purpose of this study is to investigate how a rights-based approach can strengthen the Drylands Coordination Group's (DCG) work on ensuring food security for pastoralists. The concept of a 'rights-based approach' is widely understood as integrating norms, standards and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in international human rights treaties and declarations. The rights based principles include the following; accountability, participation, non-discrimination and attention to vulnerable groups.¹

Looking into how a rights-based approach can become a useful tool for the DCG will be a three-fold task. Firstly, the value of the right to food in this context will be examined, based on the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) and other core instruments. Claiming the right to food is one way of pursuing a rights-based approach to food security for pastoralists. Secondly, we will explore ways of strengthening the UNCCD's institutions and framework in terms of drawing on elements from a rights-based approach. Thirdly, other relevant human rights instruments will be identified based on their usefulness in strengthening the DCG in regard to pastoralists. Strategies attached to a rights-based approach will be presented, both at a national and international level. Case studies from Ethiopia will be provided to highlight some general challenges pastoralist communities are facing.

The study '*UNCCD and food security for pastoralists within a human rights context*' has been conducted by FIAN Norway on the request of the Drylands Coordination Group (DCG), a Norwegian supported NGO forum. The DCG promotes quality assurance of Norwegian-supported development projects dealing with food security and natural resource management in the drylands of Ethiopia, Eritrea, Sudan and Mali. Currently, one of the main instruments for DCG's work on food security in dryland areas is the follow-up of national obligations related to the UN Convention to Combat Desertification (UNCCD). This paper is intended to assist the DCG in further developing their strategy on work related to the UNCCD. The study has been prepared within 6 weeks.

FIAN, FoodFirst Information & Action Network, is an international human rights organisation that addresses violations of the right to adequate food, a human right enshrined in the ICESCR. FIAN International is a grassroots oriented organisation without political or religious affiliations. It consists of a network of national organisations with members in over 60 countries in Africa, the Americas, Asia, and Europe. FIAN has consultative status with the United Nations.

¹<http://www.unhchr.ch/development/approaches-04.html> January 2006

2. THE RIGHT TO FOOD

When exploring how the right to food can be a useful tool for ensuring food security for pastoralists, it is important to have a clear understanding of what it implies. This chapter will provide an overview of the concept, starting out by looking at the legal basis for claiming a right to food. The normative content of the right and its implications for State obligations will be dealt with. Finally, the possibilities and limitations of the right to food in protecting relevant aspects of pastoralist's concerns will be examined – namely access to land, participation of vulnerable groups and the right to traditional food.

2.1 NORMATIVE CONTENT

In international law the International Covenant on Economic, Social and Cultural Rights is the legally binding instrument that most forcefully establishes the human right to food. Article 11.1 of this Covenant recognises the 'right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...' In article 11.2 the Covenant confirms the 'fundamental right of everyone to be free from hunger'. No other right in the Covenant is termed 'fundamental'. However, no right should be regarded as separate from or independent of the totality of rights. This is clearly stated in the Vienna Declaration and Programme of Action, which were adopted by the World Conference on Human Rights on the 25th of June 1993. Its paragraph 5 confirms that

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis².

General Comment (GC) No. 12 from 1999 is the authoritative interpretation on the right to adequate food. The authority of the GC No. 12 comes from the fact that it is the interpretation of the Committee on Economic, Social and Cultural Rights, which is in charge of monitoring the implementation of the treaty. The Comment amplifies and interprets the content of the right to adequate food. It identifies its normative content, the corresponding States' obligations and what constitutes a violation of the right to food. GC's are not made subject to negotiations and ratification among States. This means that the GC No. 12 is not legally binding in itself. All the same it remains at the centre of how the right to food and the corresponding State obligations are understood and evaluated by the Committee and others.

Freedom from hunger is generally referred to as the "minimum core content" of the right to adequate food (Künnemann and Epal-Ratjen, 2004). However, full realisation of this right entails more than ensuring freedom from hunger. The elements of food security are dealt with in the GC No. 12, ensuring that the right to food serves the achievement of food security. It confirms that the right to adequate food 'shall not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients' (paragraph 6). The GC further argues that the right to food is fully realised when 'physical and economic access at all times to adequate food or means for its procurement' is safeguarded (ibid.).

The normative core content of the right to adequate food consists of two main elements. First, it must include the 'availability of food in a quantity and quality sufficient to satisfy the dietary needs

² <http://habitat.igc.org/undocs/vienna.html> January 2006

of individuals' and be 'acceptable within a given culture' (GC 12, paragraph 8). This statement clarifies that cultural acceptability is an important element of the right to food. It means that a number of non-nutrient-based values are attached to food and that the cultural meaning of food should be considered in designing and implementing strategies that will affect for example pastoralists. Second, the content of the right also implies 'accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights' (ibid.). The definition used by the GC No. 12 highlights access to an individual income-base, either through access to productive resources (land, fish, seeds, water etc.) or through work, or as a last resort through adequate income transfer or the transfer of food. The notion of sustainability is linked to the concept of adequate food or food security, implying 'food being accessible for both present and future generations' (GC 12, paragraph 7).

2.2 LEGAL OBLIGATIONS

The legal obligations of State parties are set out in article 3 of the ICESCR. The principal obligation is to take steps, progressively and to the maximum of its available resources, towards the full realisation of the right to food. In addition, State parties of the ICESCR must provide access to a minimum of essential food which is sufficient, nutritionally adequate and safe, to prevent anyone within its jurisdiction from starvation (GC 12, paragraph 14).

Violations of the Covenant occur when a State fails to ensure the minimum essential level required to be free from hunger. In determining which actions amount to a violation of the right to food, the GC 12 recognizes that it is important to distinguish the inability from the unwillingness of a State party to comply (GC No 12, paragraph 17). What is crucial is that no regressive steps should be taken and the State parties should conduct a national strategy on how to fully realize the right to food. Furthermore, any discrimination in access to food, as well as to means and entitlements for its procurement will constitute a violation of the Covenant (ibid., paragraph 18).

Human rights impose three levels of obligations to States: the obligation to respect, to protect, and to fulfil (GC 12, paragraph 15), which shall thus be taken into account in a right based approach to food security for pastoralists. The obligation to respect requires States to respect existing access to adequate food, and not to initiate or engage in any activities that could prevent such access (ibid.). The obligation to protect requires involvement by the State to ensure that a third party, like enterprises or individuals, do not deprive individuals of their access to adequate food (ibid.). The obligation to fulfil includes both an obligation to facilitate and to provide. This means that the State must pro-actively engage in 'activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security' (ibid.). Steps must be taken in order to guarantee that people have access to productive resources and employment so as to be able to feed themselves. Finally, when individuals or groups are unable to enjoy their right to food by the means at their disposal, the State shall provide that right directly (ibid.).

2.3 ACCESS TO LAND

The GC explicitly mentions that 'a particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened' (GC 12, paragraph 13). Also in the 'Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security' (VGs, 2004) on how to implement the right to food, the topic 'access to land' is dealt with. Guideline 8.1 claims that

States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forests, and livestock without any discrimination (...) Special attention should be given to groups such as pastoralists and indigenous peoples and their relation to natural resources'.

This explicit link made to pastoralists' access to land and food security – and the recognition of State obligations to respect and protect access to pastoralists' productive resources – is an important contribution to the already existing legal documents on the right to food. The VGs are of great value as they were negotiated among governments and serve civil society organisations as a reference document in lobbying for governments to follow up their commitments on the right to food. The Guidelines build on the legal obligations already established in the ICESCR, and strengthen the provisions of the GC No. 12 as they go further in examining how to implement the right to adequate food. The VGs establish, amongst other, that the right to food requires a national strategy that begins with a careful analysis of the causes of hunger. On this basis, an assessment of the existing legislative and policy framework should be conducted in order to identify problematic legislation or areas. All policy measures should be screened to avoid violations of the right to adequate food (www.fian.org).

2.4 VULNERABLE GROUPS

The identification and targeting of vulnerable and marginalised groups is a crucial issue. Article 3.3 of the VGs claims that 'strategies should in particular address the needs of vulnerable and disadvantaged groups (...)'. When countries are reporting on the implementation of the right to food to the Committee on Economic, Social and Cultural Rights, State parties to the Covenant are asked to report especially on the situation of vulnerable or disadvantaged groups.³ Applying a rights-based approach reflects that State obligations must be met by identifying and targeting vulnerable and marginalised groups. Pastoralists are typically among the most vulnerable people in the countries where they live. A rights-based approach to food should guarantee pastoralists the right to participate in decision-making. Moreover, it requires State parties to actively take steps to identify and protect these groups when framing state policies.

A human rights approach removes the charity dimension found in many development strategies, and emphasises rights and responsibilities. It recognises beneficiaries as active subjects and right-holders and establishes duties or obligations. This introduces an important element of accountability. The human rights strategy provides a tool for holding States accountable for their actions towards pastoralists, considering the legally binding obligations that enter into force upon ratification. Human rights law also establishes a legal and political basis for pastoralists and their supporters in providing universally accepted standards on which to exercise and, if necessary, claim their rights. In this context human rights education and awareness-raising are important to make individuals and organisations capable of claiming and defending their rights, as well as the rights of others. However, actively claiming ones right can in some cases jeopardize the personal security of individuals. Civil society organisations should be cautious in taking steps and initiating actions on behalf of individuals or groups, considering that engaging in human rights work must be the choice of the concerned people themselves.

³ ECOSOC, Official Records, 1992, Supplement No. 3 (E/1992/23), <http://www.un.org/documents/ecosoc/docs/1999/e1999-22.htm> January 2006

The principle of participation is a key principle in all human rights instruments and essential to the realization of the rights of pastoralists and other minorities. Not only are the human rights of ethnic and cultural minorities unlikely to be properly protected, respected and fulfilled if they contrast with the interests of more influential and powerful groups; their needs and interests are also poorly understood by policy makers. Mechanisms should therefore be in place to ensure that minorities like pastoralists are effectively consulted and included in policy decisions, development planning and implementation. According to the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992) ‘national policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities’ (article 5.1). This is also in accordance with the ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries (ILO 1989), article 1.1 of the International Covenant on Civil and Political Rights (ICCPR, 1966) and ICESCR, and article 27 of the ICCPR.

2.5 THE RIGHT TO TRADITIONAL FOOD

Food culture is an integral part of one’s identity and an important expression of culture. This holds particularly true for traditional groups who harvest or produce large parts of their food. The food culture of such a group is intimately linked to their livelihood and resource base, and also to specific geographical areas. The food culture is therefore an integral part of the larger pastoralist culture. However, even though it is established in the GC No. 12 that food should be ‘culturally acceptable’ the right to *traditional* food is so far poorly underpinned and explored. A State party to the ICESCR might argue that a given policy preventing pastoralists from practicing their traditional way of life does not violate their right to food if they are given compensation in terms of another livelihood preventing hunger.

Yet, the right to food of pastoralists must be interpreted in light of the whole body of human rights instruments. Article 27 of the ICCPR is a provision more explicitly dealing with cultural rights of minorities. Article 27 spells out that people belonging to ethnic, religious and linguistic minorities have the right to enjoy their own culture. In the continuation of the article, and in its General Comment No. 23, it provides for linking subsistence and thus traditional food to the continued access to traditional land areas. GC No. 23 argues that

With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them (paragraph 7).

The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities is inspired by article 27 of the ICCPR, and reconfirms the right of minorities to enjoy their own culture (article 2). States shall ‘create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture’ (article 4.2). Also the Convention on the Rights of the Child (CRC, 1989) establishes that a child belonging to a minority or indigenous community have the right to enjoy his or her own culture, language and religion (article 30). Food habits are an important component of culture. Even if the link between the right to culture, the right to food, the rights of pastoralists and environmental rights are so far poorly established and explored, this does not mean that these rights should be disregarded. Economic, social, cultural and minority rights are all constantly being clarified. The interpretation of the right

to food of pastoralists is therefore constantly developing, and existing human rights instruments open up for new interpretations and instruments strengthening pastoralists' cultural rights, including the right to decide their way of life and to enjoy their traditional food.

3. ANALYSIS OF THE UNCCD

The purpose of this chapter is to analyse the normative and legal content of the UNCCD. As a starting point, a brief presentation of the UNCCD according to its background, purpose and legal status will be given. Furthermore, specific State obligations, reporting mechanisms and institutions will be identified and analysed. This will form the basis for later discussions on how to strengthen the UNCCD by applying a rights-based approach.

3.1 BACKGROUND, PURPOSE AND LEGAL STATUS

Like the human rights treaties, the UNCCD is a treaty under international law, meaning that it is a legally binding document to the State parties of the Convention that have ratified it. The Convention was adopted in Paris on June 17th 1994, and entered into force on December 26th 1996. Currently, it is ratified by 191 countries (www.unccd.int). The need for strengthening the efforts on combating desertification was raised at the United Nations Conference on Environment and Development, which was held in Rio de Janeiro in 1992. The so-called Agenda 21 that followed the conference, especially chapter 12, provides a basis for combating desertification. The Convention is a direct result of the recommendations made in the Action 21 programme. This document gave important guidelines for the UNCCD, and the Convention aims at being consistent with its content.

The UNCCD claims to be the first legally binding document to define a common understanding of desertification and it provides a framework of action. The purpose of the Convention is stated in article 2: ‘The objective of this Convention is to combat desertification and mitigate the effects of draught (...) particularly in Africa (...) with a view to contributing to the achievement of sustainable development’. Further, it aims at ensuring the long-term productivity of inhabited drylands, and consequently ensuring the livelihood of affected rural people.

The Convention recognises the link between desertification and poverty (www.iucn.org). The UNCCD is commonly perceived to have a well-included perspective on poverty and livelihood security, and further to be the environmental Convention taking the notion of participation and local ownership seriously. Regardless, critique has emerged, arguing that it holds a view close to a ‘neo-malthusian’ perspective on decertification, namely that degradation is mainly caused by increasing numbers of humans (Movik, Dejene and Synnevåg, 2003). The UNCCD thus builds on the understanding that poor people living in the drylands are marginalised in their own countries, and often have no alternative than to overexploit their environment in order to survive (*ibid.*). If so, this recalls the discourse at the time of the Brundtland commission (1983), as it was accused of ‘blaming the victims’.

Turning to the Convention text, it is clear that the main concern of the UNCCD is environmental protection and contributing to sustainable development, including the concern that human beings in affected or threatened areas should be adequately consulted and involved in order to combat desertification (UNCCD p.4). The Convention starts out by ‘affirming that human beings in affected or threatened areas are at the centre of concerns to combat desertification and mitigate the effects of drought’ (UNCCD p.4). This touches on the possible conflicting roles between environmental- and human rights law. Traditionally, most resolutions aiming at reducing damage to the environment treat human beings as perpetrators of environmental damage rather than beneficiaries of rights (Tomasevski, 1995). The UNCCD seems to move away from this traditional approach, as it goes on to affirm the importance of ensuring the livelihood of affected rural people. Although the concept of responsibility has a strong position in the Convention, it still gives basis for

arguing that individuals must be seen as beneficiaries of rights when dealing with environmental protection. This is consistent with Agenda 21 where we witnessed a much stronger emphasis on poverty and livelihood security than what had been evident in earlier debates.

3.2 LEGAL OBLIGATIONS OF THE UNCCD

The legal obligations of the Convention are dealt with according to three categories – general obligations, obligations of affected State parties and those of developed country parties⁴. The obligations can be said to be common in the sense of a common set of principles and goals, but they indicate differentiated responsibility.

3.2.1 General obligations

The general obligations put forward in article 4, confirm that parties to the Convention shall approach desertification and draught in a holistic manner, addressing its physical, biological and socio-economic aspects (article 4.2a). What's more, strategies to combat desertification must be connected to poverty eradication policies (article 4c). Another obligation heavily emphasized, is that of enabling appropriate financial and institutional resources (Article 4.2b,g,h). 'Establishing an enabling international economic environment' includes the consideration of a trade, marketing and debt system that can support sustainable development (Article 4.2b). In this regard, it is explicitly emphasized that 'affected developing country Parties are eligible for assistance in the implementation of the Convention' (Article 4.3). Moreover, it is also included in the general obligations that the State parties to the Convention shall promote and strengthen cooperation between states and organizations, with a sub regional, regional and international approach (Article 2d, e, f).

3.2.2 Obligations of developed country parties

Article 6a of the obligations of the developed country parties confirms that the member States shall give priority to affected African countries and least developed countries. Also articles 6 b, c, and d deal with the aspect of funding. Member states are obliged to provide funding and to find ways to mobilise funds, both from the private sector, the NGO sector and other available funds. According to article 6e, State parties are obliged to facilitate access to 'appropriate technology, knowledge and know-how'. In this context, article 18 confirms that this technology should be 'socially acceptable'. Additionally, article 17 stresses that the parties of the Convention should 'protect, integrate, enhance and validate traditional and local knowledge, know-how and practices'. This is highly relevant in the context of pastoralists, and gives basis for a strong argument in favour of respect for and participation of pastoralist communities. At the Conference of the Parties meeting number 7 (COP7) in 2005, the issue of protecting traditional knowledge was raised at the Committee on Science and Technology (CST). Members of the NGO community were promoting the idea of establishing a system to ensure the protection of traditional knowledge. However, decision-making and agreements on how to strengthen State's obligations is a slow and difficult task, and consequently no decision was taken by the CST to establish such a system.

What is also made clear is that the developed countries are supposed to share the burden with the affected countries, especially regarding finances, technology, and knowledge. The non-affected parties have a clear responsibility to ensure successful implementation of the Convention in affected countries. The Convention does not indicate how much funding and support is expected, nor does it indicate steps that should be taken according 'to the maximum of its available resources' – as emphasised for instance in the ICESCR. A major challenge at present is that developed countries

⁴ Recognizing that some countries are considered both 'developed' and 'affected', the structure of this chapter will nevertheless be given according to the three categories given in the Convention text.

are not fulfilling their obligation to ‘share the burden’, and conferences on the UNCCD are largely dominated by the issue of funding. It could be said that the UNCCD has essentially created obligations more concerned with results rather than the process itself, in the sense that it contains given aims of objectives and results, but leaves the country parties considerable discretion in how to achieve these results (Pülzl, Rametsteiner, Tarasofsky, 2004). This is evident when considering the reports to the Committee to Review the Implementation of the Convention (CRIC) and the variation in content and quality in how the countries claim to follow up their obligations on the implementation of the Convention.

3.2.3 Obligations of affected country parties

Regarding the affected country parties, their main task should be to establish strategies and priorities on how to implement the Convention. This is done by adopting so-called National Action Programmes (NAPs) as described in article 10 of the UNCCD⁵. There are two significant sets of reports, where NAPs are reports at the beginning of the process and CRIC reports relate to the results of the implementation. The NAPs form the conceptual and legal framework for the implementation of the Convention at the national and local levels (article 9.1). The countries affected by desertification and draught shall establish these strategies and priorities within the framework of policies to combat poverty (article 5b). Article 5c claims that underlying socio-economic factors must be addressed, and according to article 5e ‘as appropriate’ a relevant legislation must be strengthened or established. Article 5a confirms their obligation to ‘allocate adequate resources in accordance with their circumstances and capabilities’.

One of the most significant obligations is article 5d stating that the affected countries shall ‘promote awareness and facilitate participation of local populations, particularly women and youth, with the support of non-governmental organizations (...)’. In this way the UNCCD includes a clear recognition of the need to associate civil society with the action of the State. The treaty is significant in its participatory approach, involving the commitment of all actors – national governments, scientific institutions, local communities, and NGOs as well as international partners, both bilateral and multilateral (Shelton, 2004). The Convention also makes explicit reference to the participation of pastoralists in article 10 referring to National Action Programmes. State parties shall

provide for effective participation at the local, national and regional levels of non-governmental organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes (article 10, 2f).

The supreme body of the Convention is the COP. Its mandate is to review the implementation of the Convention and to ensure its promotion and to facilitate information sharing. It shall also approve the budget and programs of activities of its subsidiary bodies, and cooperate with international organisations, NGOs and other conventions. From 1997 up until 2001 the COP was meeting yearly; since then it has been meeting every two years (www.unccd.int).

According to article 26, every state party must report on the measures taken for the implementation of the Convention to the COP. The agency in charge of reviewing and analysing national reports submitted to the COP is CRIC. This is a subsidiary body of the Parties’ Conference, and was created by COP 5 in 2001. The first gathering was held in Rome in 2002.

⁵ See Annex 1 on status of NAPs in DCG’s partner countries Mali, Ethiopia, Eritrea and Sudan.

4. ADDRESSING PASTORALIST CONCERNS WITHIN THE UNCCD SYSTEM

This chapter will investigate to what extent the Convention deals with the special needs and concerns of pastoralist communities. Case studies from Ethiopia will be presented in order to discuss some selected challenges for pastoralists, namely access to land and participation. In light of this the UNCCD's ability to meet these challenges will be examined. Finally, some suggestions for improvements within the UNCCD system will be put forward by drawing on elements of a rights-based approach.

4.1 PASTORALISM – ACCESS TO LAND IN THE AFAR PROVINCE OF ETHIOPIA

Pastoralists comprise a major group living in dryland areas. Broadly defined, the term pastoralist can be understood as 'a livestock farmer who derives more than 50% of economical activity and subsistence from livestock keeping'⁶. There are great differences between various pastoralist communities as some are partially or fully sedentary, and some are regarded as nomad pastoralists. Generally, pastoralists living in the most arid places will be the most nomadic or mobile. Mobility is an essential element of the pastoralists' way of life as they move in search of water and grazing. This system has developed during hundreds of years and is ideally suited to sustain life in areas where rainfall is unpredictable from season to season and from place to place. In these areas, pastoralism is often the most important way of making a living from the land (Movik, Dejene and Synnevåg, 2003).

The relationship between pastoralists and the government is often based on a long history of misunderstanding and mistrust⁷. In most African countries, pastoralists are a minority population. The majority live a more settled life, and most services are organised to meet their needs. Often, pastoralists live in marginal environments with little or no access to infrastructure, and little or no income alternatives apart from livestock. Also the climatic conditions of aridity and rainfall variability, together with a weak socio-economic and political environment make them vulnerable to poverty (Movik, Dejene and Synnevåg, 2003). Pastoralists are highly capable of adapting to shifting environments, however their strategies have largely become ineffective due to land encroachment by cultivators and population growth⁸. Pastoralists are typically among the most vulnerable people in the countries where they live and pastoralist women may be doubly disadvantaged given the limitations they face within their own societies, for example in owning property⁹.

The Afar region in Ethiopia is covering 270,000 sq km - about one fifth of the entire country – and some 1.2 million people live in this lowland region bordering Djibouti and Eritrea. It has varied natural resources that however, are largely under-developed (Motzfeldt, 2005). The Afar people survived for centuries by adapting and perfecting a lifestyle of pastoralism. The pastoral lowlands of Afar are often faced with stresses such as drought, violent conflicts and policies poorly suited to the particular conditions of the region. Consequently, the pastoralists of Afar remain one of the

⁶ http://www.drylands-group.org/Thematic_Focus/Pastoralism/index.html January 2006

⁷ http://www.oxfam.org.uk/what_we_do/issues/pastoralism/introduction.htm January 2006

⁸ http://www.drylands-group.org/Thematic_Focus/Pastoralism/index.html January 2006

⁹ http://www.oxfam.org.uk/what_we_do/issues/pastoralism/introduction.htm January 2006

most impoverished people in Ethiopia. Loss of grazing land, water sites and increased population has disrupted the traditional Afar economy (ibid.).

The Ethiopian government is in a process of decentralisation, and this has great implications for life in the pastoral Afar communities. Previously, governmental planning processes and implementation often took place at a more central regional level (ibid.). In Afar this meant that traditional institutions could work without much interference from the external public governmental system. For example, the system of land 'ownership' was managed by a system called 'Desso' and administered by a council of elders (ibid.). As a consequence of the new decentralisation structure, an increasing need for political dialogue is emerging. Policy planning and decision-making processes occur to a large extent at the district and local community level with other actors involved. This stresses the importance for pastoralists to be part of the government themselves or to enter into dialogue with the government officials and other relevant actors (ibid.).

The Afar pastoralists have to a very little extent been involved in the national political arena, and they are lacking political representatives to influence policies that reflect their interests. Ethiopia strives for equity in ethnic representation at a national level, and in the Federal cabinet there is at least one Afar representative. In 2002, a Parliamentary Standing Committee on Pastoralist Affairs was established (Markakis, 2004). However, according to Markakis (2004), pastoralist politicians in the region 'have not been able to initiate a single piece of legislation of significant benefit to their constituents'.

The struggle for access to land – and in particular the dry season pastures – is said to be the number one challenge for various pastoral groups and crucial to livestock management. This struggle is triggered by factors like general poverty, social inequality, and degradation and decline in resources, leading to fierce competition over land. One of the challenges the people of Afar are facing is the spread of cultivated farm crops, leaving less forests and grazing land available for pastoralists. People in the highlands of Afar cultivate the land, and expand their production area into land traditionally utilised by pastoralists. The federal Constitution in Ethiopia from 1975 establishes in article 40 the right of pastoralists 'to free land for grazing and cultivation as well as the right not to be displaced from their own lands' (Markakis, 2004). Still, user rights over grazing land between ethnic groups are difficult to solve in practice.

4.1.1 UNCCD and access to land

Without access to resources such as land, the pastoralist's herds will not survive the dry season. Hence, spatial mobility is important to pursue optimal utilisation of resources depending on seasonal variability, and is an important element in risk mitigation strategies. Regardless, the UNCCD remains silent on the issue of access to land. The more open and vague the formulations of the obligations are, the bigger the chance that many States will ratify it. It is therefore possible that, at the time of drafting the Convention, this was not discussed or included in the text because the topic was regarded as too politically sensitive.

There will always be certain weak points in conventions under international law. It is therefore crucial to look at other instruments for support when provisions fall short in protecting the people and their rights at stake. As mentioned in the context of the right to food, all human rights are universal, indivisible and interrelated. Noting that the UNCCD does not address the issue of access to land, other documents should be consulted.

Chapter 26 of Agenda 21 of the United Nations Conference on Environment and Development calls upon intergovernmental organizations to establish a process that empowers indigenous communities

through, inter alia, recognition of their lands, support for alternative environmentally sound means of production and arrangements to strengthen indigenous participation in the national formulation of policies, laws and programs relating to resource management and development that may affect them¹⁰. The UNCCD aims at being consistent with Agenda 21. Following from this one could build an argument supporting pastoralists' access to land within the context of desertification.

Agenda 21, chapter 26, is also consistent with the ICESCR and its state obligation to respect, protect and fulfill, and violations of pastoralists' human rights could be raised and addressed in for example the Committee on Economic, Social and Cultural Rights. As mentioned, the UNCCD should not promote any actions that could violate human rights, hence, the various human rights instruments should be consulted in the interpretation of the UNCCD Convention text. Where the UNCCD provisions are neglecting a topic of concern, it will be useful to consult other documents of international law for guidance. Various provisions under international human rights law deal with the issue of access to land and freedom of movement. These will be discussed in more detail in chapter 5.

Within the UNCCD, one of the strongest arguments supporting access to land for pastoralists is the notion of participation. Participation in the sense of bottom-up development means that pastoralist should make the agenda concerning the kind of development they want to pursue. Article 17 of the Convention further claims that local and traditional practices should be protected and included. This is consistent with human rights standards found for instance in the ICESCR on the principle of participation and in the ICCPR on the right to enjoy ones own culture. Mobility is clearly part of the traditional practice of many pastoralist communities, and the Convention provides an argument in favour of pastoralists' access to land.

Still, there are major challenges ahead, and there is little proof that governments are meeting their legal obligations according to the participation element of the UNCCD. Markakis (2004) argues that land is a factor over which pastoralists have no control. Land in Ethiopia is state owned, and the system does not recognise pastoral rights over unimproved, unsettled land and the waters that cross it (ibid.). Privatisation and economic liberalisation has long been embraced by eastern African countries in order to create an 'enabling environment' to satisfy international institutions like the World Bank and the International Monetary Fund (IMF). Realistically, the UNCCD is a system with few means of implementing its policies compared to the World Bank and IMF institutions. If the policies entailed within these latter bodies do not include a participatory approach, the struggle for access to land and resources will continue to be a difficult task for pastoralist communities.

4.2 PASTORALISTS' PARTICIPATION IN THE PRSP PROCESS IN ETHIOPIA

At a national level, the pastoralist organisation Pastoral Forum Ethiopia (PFE) has been a strong advocate for pastoral rights, and they have to some extent achieved their goal by emphasising a participatory approach. PFE has been involved in the issue of the Poverty Strategy Reduction Paper (PRSP) in Ethiopia. When the interim PRSP came out in November 2000 in Ethiopia, it was faced with serious criticism from civil society organisations for its lack of participation and consultation. The PFE mobilised its network with support from international donors, and began to advocate for the inclusion of pastoralist concerns in the country's final PRSP. The document as it was at that point did not mention pastoralist's matters, except arguing that it is a 'complex phenomenon that is difficult to understand' (Hughes, 2005).

¹⁰ <http://www.unhchr.ch/development/approaches-08.html> January 2006

The PFE's strategies included alliance-building with the Government and NGOs, and they participated in all levels of the government's PRSP consultation processes. Furthermore, they organised national conferences and workshops with pastoralists and stakeholders. They were able to translate their concerns and strategies into 'A Chapter on Pastoralism', which was handed over to the Government for inclusion in the PRSP (ibid.). When the PRSP was finished in September 2002 it included a six-page chapter on pastoralism and pastoral poverty reduction strategies. The text was partly taken from the PFE's proposals (ibid.). This placed the issue of pastoralism on the national agenda, and to a certain extent it became institutionalised. Moreover, a Pastoralist Development Department was included in the Ministry of Federal Affairs (Markakis, 2004), and an official pastoralist day was declared – the Ethiopian Pastoralist Day. This has been held on the 25th of January every year since 1999¹¹.

4.2.1 UNCCD and participation

In discussing how pastoralist concerns can best be protected within the frame of the Convention in the above mentioned situation, the strongest card at hand would again be the concept of participation. Pastoralists are mentioned only a few times in the UNCCD where they are referred to explicitly in the context of participation. First, in article 10.2f they are mentioned as part of civil society that should be consulted in the designing, implementing and reviewing of National Action Programmes. The importance of their participation is also mentioned in article 8.2c of Annex 1 on implementation of the Convention in Africa, arguing that 'local populations and communities, including women, farmers and pastoralists' should be included and given more responsibility for management. Participation is not only mentioned as an overall principle (article 3a) – it is also included explicitly as a legal obligation of the affected country parties in article 5d. The pastoralists' right to participate is thereby well protected by the Convention.

Although participatory methods may have potential, there are several obstacles to successful results. The Convention fails to address these limitations, and might present unrealistic expectations regarding the immediate participation of pastoralists. Unequal power relations and unequal capacities to participate are major barriers in this concern.

'Poor peoples' ability to realize their right to participate presupposes a knowledge of this political right, and access to basic economic and social rights to meet their survival needs. (...) For minorities and indigenous peoples, participatory processes will only be successful if they take account of linguistic and cultural differences, gender inequalities, the impact of direct and indirect discrimination, as well as geographic remoteness and dispersion' (Hughes, 2005).

To ensure effective participation, 'special procedures, institutions and arrangements through which pastoralists are able to effectively influence policy and politics, must be established' (ibid.). Participation of minorities and indigenous peoples is often difficult for governmental actors as they know little about these groups. Indeed, governmental officials in charge of facilitating the participation process would for instance risk creating a setting that would be culturally inappropriate and the different views could easily become misinterpreted. Distance from pastoralists' day-to-day realities, discrimination and lack of understanding of these groups' rights are challenges to be met (ibid.).

For various reasons, government officials are often reluctant to effectively include civil society in decision-making and management on specific matters. This is said to be the case in Ethiopia during the drafting of the National Action Programmes (Mossige, Berkele and Maiga, 2001). The

¹¹ http://www.oxfam.org.uk/what_we_do/issues/pastoralism/story_epd.htm January 2006

relationship between the authorities and NGOs and community based organisations (CBOs) has been weak, and moreover, there has been a lack of financial resources to ensure a participatory NAP process. Consequently, ensuring participation in the implementation of the UNCCD has become a difficult task. Falling short on implementation capacities is not only true when describing the Ethiopian authorities, but its civil society alike. Community based organisations in Ethiopia are still few, young and inexperienced, and do not maintain adequate resources and capacities to respond proactively to the UNCCD initiative (ibid.). In addition, the NAP's guidelines have failed to describe the roles and responsibility of the various actors, causing a problem of lack of ownership. The NAP process has been slow and mechanisms for reporting, monitoring and evaluation are lacking, consequently creating a passive civil society and preventing effective participation at a local level, especially in local, rural communities (ibid.). From the example above on the PRSP process, it is obvious that an extensive network providing funding and other resources both at a national and international level can be an important aspect for successful participation.

To pastoralists the recognition of their traditional cultural practices and their right to self-determination is a key issue. Pastoralists live under extremely harsh conditions, with few resources. Their experience and survival skills are likely to be important assets in combating desertification. Yet in the past their skills have been ignored, and they have been blamed as the agents of desertification (Movik, Dejene and Synnevåg, 2003). This view of seeing pastoralists as agents of environmental harm is reflected in the section of the Convention dealing with research and development (article 17), which provides a basis for emphasising the value of traditional cultural practices of pastoralists. The article claims that traditional and local knowledge, know-how and practices should be protected and included in combating desertification (article 17.1c). This principle could be emphasised in arguing that the views and experiences of pastoralists should be respected and actively sought when desertification and the management of pastoralist areas are discussed. This also implies that steps should not be taken that could threaten a pastoralist traditional way of life, without the approved consent of the pastoralists themselves.

However, the provision on including traditional and local knowledge remains weak as it is not mentioned as a legal obligation upon which a right can be claimed. Still, it is a useful rhetorical tool for building an argument in favour of protecting pastoralists' rights. According to international human rights norms, states have an obligation to facilitate the food security of vulnerable groups, including pastoralists. This will, firstly, imply not taking steps that could threaten a pastoralist way of life. Furthermore, the State should protect pastoralists from harmful actions from non-governmental actors. They should also, as far as possible, help facilitate the food security of traditional pastoralists. Pastoralists are well capable of adjusting their livelihoods according to changing environments. However, sometimes as a last measure, due to increasing food and livelihood insecurity they will have to leave the livelihood they are trained for. In this case they will be particularly vulnerable and thereby likely to end up among the poorest segments of the non-pastoralist society. In this case, the state has an obligation to take measures to facilitate the transition. According to the principle of participation, the State should include the pastoralists themselves in the planning and decision-making of this process.

4.3 PRACTICAL LEGAL TOOLS – IMPROVING THE UNCCD SYSTEM

In addition to the UNCCD document itself, which possibilities are available to protect pastoralist concerns within the institutions and procedures attached to the UNCCD? Do the regular meetings of the Convention provide an opening for drawing attention to important pastoralist issues? And do the National Action Programmes and CRIC reports give room for evaluating progress made on pastoralist matters? As discussed above, the Convention does have some strong provisions on the

protection of pastoralist's rights. The challenge for pastoralists and civil society remains one of how to pressure governments to follow up their obligations according to the UNCCD. Some suggestions on how to strengthen the implementation of the Convention on pastoralist's concerns according to a rights-based approach will be provided.

The main items for discussion at the Parties' Conference are prepared and announced between COPs. The detailed agenda is adopted in plenary sessions at the beginning of the COP. The UN negotiations and decision system relies on the principle of one country, one vote. To participate in the COP, NGOs need to apply for accreditation to the COP. Today, nearly 800 NGOs have been accredited to the UNCCD, and more than half of the organisations are African (www.unccd.int). NGOs may participate in COPs as observers in plenary meetings as well as other meetings. The same goes for sessions at the CRIC, and NGOs can participate in the discussions without any right to vote. During the COPs, there are two plenary sessions organised by NGOs – so called open dialogue sessions. NGOs define the topics for discussion, making them well suited forums for raising pastoralist issues.

One of the side events on pastoralism was held at the CRIC 1 in Rome 2002 where representatives from the Centre for Sustainable Development and Environment (CENESTA) and the UN Development Programme (UNDP) highlighted the need for special attention to be given to pastoralists. The interest in these meetings has varied, and according to a press release by UNDP and IUCN from the seventh session of COP in 2005, pastoralists continue to be a 'forgotten' topic on the UNCCD agenda¹². In COP7 representatives of pastoralists had the opportunity to raise their concerns to high-level government and NGO representatives at a COP for the first time (*ibid.*). A side event, Pastoralist Manyatta, was organised by IUCN, UNDP, the World Agroforestry Centre (ICRAF) and the World Alliance for Mobile and Indigenous Peoples. This was a community-led event where 100 community representatives could engage in a dialogue with governmental delegates at the COP. Issues relevant to sustainable pastoralist development and rangeland development were discussed.¹³ The participants shared knowledge and explored key themes on capacity building, the Millennium Development Goals, participation and partnership.¹⁴ Despite obstacles of making pastoralists' voices heard in the official parts of the COP, this continues to be a forum where the question of pastoralism can be raised. In addition to the element of awareness-raising, relevant NGOs could co-operate at COPs and function as a working group on pastoralism; this would strengthen their lobbying capacities and enable them to share ideas and experiences with pastoralist issues.

There are several possibilities for NGOs to lobby for improvements within the UNCCD system. Firstly, NGOs could work together in lobbying for a General Comment or other guidelines dealing with the issue of pastoralists. This could facilitate the work of the UNCCD and give important guidance on how to deal with pastoralist issues within the framework of the Convention. This could also serve as a useful measure to mobilise civil society organisations on pastoralist issues, and on establishing common demands and strategies in this regard. A General Comment serves as the authoritative interpretation of the Convention text, and provides important clarification on the normative content and the legal obligations of the Convention. In order to strengthen pastoralist issues, the document could establish and clarify the importance of the topic, and make recommendations on how to identify and target pastoralists in the process of combating desertification. The GC could also provide some guidelines on how to address the issue of access to land for pastoralists.

¹² www.iucn.org/themes/cem/documents/drylands/iucnundp_pressrelease_unccd_2005.pdf January 2006

¹³ <http://www.undp.org/equatorinitiative/secondary/announcements.htm> February 2006

¹⁴ http://www.iucn.org/themes/cem/ecosystems/drylands/side_eventcop7.html February 2006

A clear interpretation of the content of the right to adequate food is needed to determine where and when the right is actually violated. The GC No. 12 and the VGs can provide a basis for elaborating on the cultural aspect of the right to food for pastoralists, considering the existing legal framework and national context. The continuing work of determining the actual content of this and other human rights are crucial steps towards making them justiciable.

The GC No. 12 on the right to adequate food has been a crucial document in the work of organisations active in the field of economic, social and cultural rights. The document was adopted in 1999. NGOs such as FIAN have been heavily involved in the development of the Voluntary Guidelines (VGs) described above. The document gives instructions on what governments can and should do within several policy areas when they begin to mainstream their policies towards implementing the right to adequate food. The document was adopted in November 2004 by 187 governments. For years FIAN and other human rights organisations have invested extensive amounts of lobbying and advocacy work in establishing an international understanding of the content and the state obligations under the right to adequate food. Already during the World Food Summit meetings in the UN Food and Agriculture Organisation (FAO) in 1996, the work had begun, and at this point the right to food received great attention. Still, it would take almost ten years of follow-up work before the NGO network was finally able to see the VGs document being adopted¹⁵.

Secondly, guidelines for reporting to the CRIC should be strengthened on the topic of pastoralism. Many countries address pastoralist issues in their NAPs, and the UNCCD secretariat claims that it expects all national reports to the CRIC to include reporting on vulnerable groups such as pastoralists. However, reporting on the situation of pastoralists is not mandatory to the State parties and the participation of local rural communities is often difficult or non-existing (Mossige, Berkele and Maiga, 2001).

Thirdly, NGOs could lobby for procedures opening up for NGOs to hand in parallel reports to COP. The reports could provide the COP with important information on the implementation at a national level, raise awareness on particular issues and supplement the official national reports. This could give a broader picture of the current situation and challenges ahead. Within the human rights regime, parallel reports can be handed in for example to the Committee on Economic, Social and Cultural Rights. This can be done either by organisations themselves or in cooperation with other organisations and institutions. Ensuring effective participation of all stakeholders in drafting the national reports has proven to be a difficult task, as evident in the case study from Ethiopia. Still, this is an important strategy to make sure that voices from civil society are being heard.

Finally, NGOs could promote and facilitate education and capacity building in pastoralist communities, both directly and for example by lobbying member states to the convention to take action and provide funding to carry out such activities. Having human rights education and skills on how to manoeuvre politically and how to influence the UNCCD on pastoralist issues will empower pastoralists and enable them to raise their own issues. Correspondingly, change must also be promoted on the part of the authorities. Education and capacity building should also target governmental officials to improve their knowledge about and understanding of pastoralist communities.

¹⁵http://www.fian.org/fian/index.php?option=com_doclight&Itemid=100&task=showdocument&dl_docID=62 January 2006

5. PASTORALISTS IN A HUMAN RIGHTS CONTEXT

This chapter will enter the field of human rights law to analyse how the particular needs of pastoralists can be met through a human rights-based approach. Relevant legal instruments that can be useful in protecting pastoralist's rights will be presented. This will include human rights treaties and legal documents on minority and indigenous rights. In the second part, the value of these laws will be discussed, in terms of how they can be used as practical tools for NGOs. Existing enforcement mechanisms will be investigated, to highlight how NGOs can influence decision-making at a national and international level.

5.1 HUMAN RIGHTS INSTRUMENTS IN THE PROTECTION OF PASTORALISTS

According to article 8 of the UNCCD, the provisions of the Convention 'shall not affect the rights and obligations of any Party deriving from a bilateral, regional or international agreement into which it has entered prior to the entry into force of this Convention'. This clarifies that the provisions of the UNCCD should complement a country's human rights obligations. Human rights standards relevant for pastoralists should therefore provide guidance on how to interpret the UNCCD and strengthen its shortcomings.

Quite a number of human rights conventions include provisions that could be useful in the protection of pastoralist's rights. This paper will investigate the conventions thematically according to four categories of rights: freedom of movement, cultural recognition, self-determination, and equality and non-discrimination.

5.1.1 Freedom of movement

When the mobility of pastoralists is sought to be restricted, article 12 of the ICCPR is useful in claiming that 'everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.' This is consistent with article 13 of the Universal Declaration of Human Rights (UDHR, 1948), confirming that 'everyone has the right to freedom of movement and residence within the borders of each State'. At a regional level, the African Charter on Human and Peoples' rights (ACHPR, 1981) protects this right in its article 12. It argues that 'every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law'.

Part two of the ILO convention 169, the Indigenous and Tribal Peoples Convention, establishes significant rights not only on freedom of movement, but more specifically on the issue of land. It identifies that 'the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised (...). Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect' (article 14.1). Parties to the Convention are obliged to take steps to identify the lands and guarantee effective protection of their rights of ownership and possession (article 14.2). The convention also confirms that 'the peoples concerned shall not be removed from the lands which they occupy' (article 16.1). The obligations of this Convention are way more extensive than any other instrument – possibly explaining why few countries so far have ratified it¹⁶.

¹⁶ None of DCG's partner countries have ratified the ILO convention 169, the Indigenous and Tribal Peoples Convention (1989). See Annex 1 for an overview of ratification of human rights instruments among DGC's partner countries.

5.1.2 Cultural recognition

The Convention on the Prevention and Punishment of the Crime of Genocide outlaws the destruction of national, ethnic, racial and religious groups. It ‘formally recognises the right of these groups to exist as groups, which surely must be considered the most fundamental of all cultural rights’ (Stavenhagen, 1995).

On special rights for minorities, article 27 of the ICCPR is said to be the most well known provision (Bloch, 1995). As mentioned above, it establishes the right to enjoy your own culture:

In those States in which ethnic, religious and linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Although the article is formulated in a negative way, it has been argued through interpretative practice that the duty of the State is not only one of non-interference in the enjoyment of minority rights, but also one of supportive action (Bloch, 1995). This is the only article in the International Bill of Human Rights which specifically addresses the question of the cultural rights of minorities, and is arguably a step towards recognising the rights of cultural minorities (Stavenhagen, 1995). Nevertheless, the phrasing of the article opens for several questions. First, by using the words ‘those States in which ethnic, religious, or linguistic minorities exist’, leaves the question of how to define if minorities exist – and who is to define them. A second drawback is that the article 27 refers to persons belonging to a minority rather than the group itself. However, it is obvious that this is a right that can only be enjoyed through the group (ibid.).

The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities is inspired by article 27 of the ICCPR, and claims that

‘States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities, within their respective territories and shall encourage conditions for the promotion of that identity. States shall adopt appropriate legislative and other measures to achieve those ends’ (article 1).

Further, it confirms the right of minorities to enjoy their own culture (article 2). States shall ‘create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture’ (article 4.2). Moreover, ‘States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country’ (article 4.5). In this regard, ‘National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities’ (article 5.1).

Another relevant instrument is the Convention on the Rights of the Child. It is clear in arguing that, ‘(...) a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture (...)’ (Article 30). This targets minorities and indigenous peoples specifically. In an African context the right to freely take part in the cultural life of the community is dealt with in article 17 of the ACHPR.

5.1.3 Self-determination

The concept of self-determination in human rights law leaves space for interpretation and is still being debated and developed at the international arena. The ACHPR deals with the right of self-determination in its article 20, claiming the right to pursue an economic and social development

‘according to the policy they have freely chosen’. This is consistent with article 1 of both the ICESCR and the ICCPR. They confirm that ‘all peoples have the right to self-determination (...) and to freely pursue their economic, social and cultural development’. For ethnic and cultural groups living inside sovereign States, the issue of self-determination relates to the right to maintain and preserve their separate identity within the larger society. The internal aspect of self-determination also highlights the importance of participation with the larger society, in order to be able to set the agenda for development policies (Rosas, 1995). This is consistent with the Declaration on the Right to Development (1986) which confirms in article 2 that ‘the human person is the central subject of development’ and that the States shall ensure the ‘equality of opportunity for all in their access to basic resources (...)’ (article 8).

5.1.4 Equality and non-discrimination

Equality and non-discrimination are cornerstones in the protection of minority rights. This does however not necessarily mean identical treatment in every instance. Article 1.4 of the International Covenant on the Elimination of all forms of Racial Discrimination (ICERD, 1965) is one of the instruments establishing that special measures can be taken:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

This supports the argument that special measures can and should be reflected also in the implementation of the UNCCD / NAPs in order to ensure equality and non-discrimination towards pastoralists.

5.2 ADDED VALUE – HUMAN RIGHTS AS PRACTICAL TOOLS

How can these above mentioned documents be practical, useful tools for pastoralists and civil society organisations? There is no simple answer on how to ensure effective protection of the rights at stake. Most of all, there is a need for political will and commitment, and a legal system willing and able to address these issues. Still, rights cannot be successfully implemented from above without at the same time being seized from below by an active civil society.

In addition to international conventions on environmental protection, ‘human rights have become an important method for claiming and obtaining the fundamental aims embodied in environmental rights’ (Tomasevski, 1995). A rights-based approach commands a double strategy which first implies a thorough screening of relevant policies and measures to make sure that they do not impede the enjoyment of human rights (negative obligations). Furthermore, a rights-based approach implies positive obligations which require States to make sure that policies and programmes are carried out to actively promote the realisation of the rights at stake.

Cornerstones of a rights-based approach are the principles of equality, non-discrimination, participation, transparency, accountability, and access to justice. Linking pastoralist issues to human rights can lead to social changes like creating higher demands and expectations relating to pastoralists as a group, and ‘a more comprehensive set of social values rather than a narrow focus on private interests’ (Hancock, 2003). Moreover, placing pastoralist demands in a human rights context may provide a solid basis for defining and mobilising support on the issue. Substantive

human rights recognise universally accepted standards on which to mobilise the public opinion. This paper will argue that value is added by including a human rights approach to the work on ensuring food security for pastoralists.

First, strategies at a national level will be investigated. Human rights provide the opportunity to take action, if necessary before courts or state authorities, and to base political struggles on human rights law and principles. Grassroots campaigns can include providing expertise and financial support in order to support people's struggle for their rights. More generally, educating people who can make things change is an effective long-term strategy. Human rights education and awareness-raising will be a crucial step in order to empower individuals to claim their rights. Legal recognition of human rights will not necessarily change anything unless disadvantaged groups possess economic and political power to mobilise relevant institutions and authorities (Anderson, 1996).

A second strategy is lobbying with national and local institutions. In the North, NGOs have an important role to play in sensitising concerned embassies, ministries of development cooperation or foreign affairs officials, as well as members of parliament with responsibility for the concerned groups (Künnemann and Epal-Ratjen, 2004). National human rights commissions and ombudsmen to human rights and indigenous peoples could also be identified as important partners.

A third aspect of a human rights approach is the established set of procedural mechanisms available for implementation. These include: reporting procedures, arrangements for fact-finding bodies, political supervision, complaint procedures, judicial supervision, and non-judicial dispute resolution' (Anderson, 1996). Civil society organisations could do an important job in promoting and lobbying for procedural rights, such as the right to information, the right to participate in decision-making on relevant issues, the right to legal redress, and the right to effective remedies (ibid.). This means that a procedural approach seeks to protect specific rights by way of strengthening the democratic channels for participation.

Also at the international level there are several monitoring procedures available to NGOs working on human rights issues. The various UN treaty committees monitor states' compliance with their human rights obligations. The treaty monitoring bodies examine the information submitted by the states, as well as additional information from NGOs. The UN treaty committees are open for the active participation of NGOs, both at their meetings and in terms of receiving so-called shadow or parallel reports on specific topics. NGOs need to apply for consultative status, or can choose to hand in their reports in cooperation with other NGOs that already have that status. This means that when countries have their regular reports reviewed by the various committees, NGOs can make contributions on matters that concern them. In order to facilitate the work load for NGOs, the same report could be submitted to more than one committee. The reports could be conducted either in collaboration with the relevant government officials in order to lobby for governmental support, or the work could be done independently.

The committees present their observations and recommendations, and can eventually 'sanction' a State by making their concluding observations public (Künnemann and Epal-Ratjen, 2004). In this case, the comments of the committee can be used effectively by attracting substantial media attention, and NGOs can function as watchdogs. The committees' comments also provide a basis for creating constructive dialogue between state officials and civil society organisations on relevant issues. The human rights obligations to respect, protect and fulfil provide a strong tool for holding governments accountable for their actions.

Another relevant UN institution in this context is the UN Special Rapporteurs working on various thematic issues. There is for instance a Special Rapporteur both on the right to adequate food and on indigenous peoples. Three main functions are connected to their positions, namely thematic research, country visits and communications¹⁷. The Special Rapporteurs receive a large number of communications providing information about allegations of violations of the human rights at stake. The main sources of these communications are NGOs, intergovernmental organizations and other UN procedures concerned with the protection of human rights. Awareness among civil society actors on these procedures is important, and can create possibilities for NGOs to have their topic of concern investigated and commented on by a Special Rapporteur.

¹⁷ <http://www.ohchr.org/english/issues/indigenous/rapporteur/> January 2006

6. CONCLUSION

This paper has analysed how a rights-based approach to food security for pastoralists can strengthen DCG's work related to the UNCCD. The presentation of a rights-based approach has been investigated according to three different sets of instruments. Firstly, a rights-based approach can be applied by engaging in work on the right to adequate food. The right to food entails all elements of the right to food security, and it ensures accountability by States' obligations to respect, protect and fulfil. Furthermore it recognizes the need to ensure active and meaningful participation of pastoralists in the planning, implementation and evaluation of desertification policies, projects and decisions.

Secondly, principles of a rights-based approach can be applied through elaborating the normative content of the UNCCD, and strengthening its procedural mechanisms. The DCG could be an active supporter of raising pastoralist concerns within UNCCD forums, as well as improving the routines for making the issue of pastoralism mandatory in all reporting procedures. Drawing on lessons learned from the right to food, the adoption of a general comment on pastoralism could prove to be a useful tool in the protection of pastoralist's rights within the UNCCD system. The UNCCD is particularly useful to pastoralists by establishing the right to participation. On matters concerning access to land – where the provisions of the Convention are weak – human rights instruments should be consulted to ensure a more effective protection of pastoralists' rights. By including a human rights approach to food security for pastoralists into the ongoing context of the UNCCD one will strengthen the concern on how to improve people's livelihoods in dryland areas. This should be an integral part of combating environmental problems.

Finally, as demonstrated above, several human rights instruments address the concerns of pastoralists. This paper has examined conventions dealing with the topics of freedom of movement, cultural recognition, self-determination, and equality and non-discrimination. A rights-based approach entails strategies for individuals and concerned organisations both at a national and international level. These include various reporting mechanisms, and strategic use of the human rights instruments in lobbying, awareness-raising and capacity building. As demonstrated above, these elements are likely to be useful in the protection of food security for pastoralists.

7. SUMMARY OF RECOMMENDATIONS TO THE DRYLANDS COORDINATION GROUP

1. UNCCD

- Lobby for the adoption of guidelines on NAPs that make reporting on pastoralism mandatory
- Lobby to improve the description of roles and responsibilities of the various actors in implementing the NAPs
- Create and promote the practice of making parallel reports to the UNCCD among civil society organisations, and strategically using the CRIC's comments for example through media attention
- Lobby for the adoption of a General Comment or other guidelines on pastoralists to the UNCCD
- Promote awareness on pastoralist issues during COP and CRIC, for example by direct talks with concerned governments and by arranging side events or open dialogue sessions

2. Committee on Economic, Social and Cultural Rights

- Establish contact with Committee members
- Submit parallel reports on violations of pastoralist's economic, social and cultural rights and make strategic use of the Committee's comment

3. Other international human rights institutions

- Identify relevant human rights treaty committees and make use of their reporting procedures
- Follow-up the committees' concluding observations and comments as identified in Annex 2

4. Norwegian authorities

- Close follow-up of Norway's obligations under the UNCCD and serve as a watchdog to ensure implementation of the obligations, including financial obligations
- Lobby for Norwegian support for increased awareness among civil society and governmental institutions on pastoralist issues
- Promote a rights-based approach on the work on pastoralists and desertification

5. International networking

- Human rights education and awareness-raising among pastoralists and their representative organisations, civil society in general and governmental institutions
- Identify relevant partners and strategic forums for lobbying on pastoralist issues for example by co-operating with CENESTA and FIAN on preparing some case studies for an international gathering of pastoralists to take place in Spain, 2006
- Promote awareness and capacity building in DCG's partner countries on pastoralists rights and participation in the UNCCD system

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International Covenant on civil and Political Rights, 1966

International Covenant on the Elimination of all forms of Racial Discrimination, 1965

The Convention on the Rights of the Child, 1989

Convention on the Elimination of All Forms of Racial Discrimination Against Women, 1979

The African Charter on Human and Peoples' Rights, 1981

Declaration on the Right to Development, 1986

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http://www.drylands-group.org/Thematic_Focus/Pastoralism/index.html *Pastoralism*, January 2006

FIAN International:
www.fian.org January 2006
http://www.fian.org/fian/index.php?option=com_doclight&Itemid=100&task=showdocument&dl_docID=62 *The Voluntary Guidelines on the Right to Adequate Food from Negotiation to Implementation*, January 2006

IUCN – The World Conservation Union:
www.iucn.org
http://www.iucn.org/themes/cem/documents/drylands/iucnundp_pressrelease_uncdd_2005.pdf
Press Release, January 2006

Oxfam
http://www.oxfam.org.uk/what_we_do/issues/pastoralism/introduction.htm *Pastoralism: Introduction*, January 2006
http://www.oxfam.org.uk/what_we_do/issues/pastoralism/story_epd.htm *The Sights and Sounds of Ethiopian Pastoralist Day*, January 2006

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UN Department of Economic and Social Affairs, Division for Sustainable Development:
<http://www.un.org/esa/sustdev/documents/agenda21/index.htm> *Agenda 21*, January 2006

The UN High Commissioner for Human Rights:
<http://www.unhcr.ch/development/approaches-04.html> *What is a Rights-Based Approach to Development*, January 2006
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ANNEXES

ANNEX 1: HUMAN RIGHTS INSTRUMENTS AND NAP STATUS FOR DCG PARTNER COUNTRIES

Table 1: Human rights instruments ratified by DCG's partner countries

<i>Ratification of Human Rights Law</i>	CRC 1989	ICESCR 1966	ICCPR 1966	Genocide Conv 1948	ICERD 1966	CEDAW 1979
Mali	20.09.1990	16.06.1974	16.07.1974	16.07.1974	16.07.1974	10.09.1985
Ethiopia	14.05.1991	11.06.1993	11.06.1993	01.07.1949	23.06.1976	10.09.1981
Eritrea	03.08.1994	17.04.2001	22.01.2002	not ratified	31.07.2001	05.09.1995
Sudan	03.08.1990	18.03.1986	18.03.1986	13.10.2003	21.03.1977	not ratified

Table 2: Status of NAPs in DCG's partner countries

<i>Countries</i>	<i>Year of Completion of the National Action Programmes (NAPs)</i>	<i>Endorsement status of the National Action Programmes</i>
Mali	1998	Endorsed in 2002 ¹⁸
Ethiopia	1998	Endorsed in 1998 ¹⁹
Eritrea	2001	Endorsed in 2001 ²⁰
Sudan	2000	Not endorsed ²¹

¹⁸ The enactments of the NAP were integrated into the PRSP in May 2002 (Mali report to the UNCCD, 2004).

¹⁹ The NAP was submitted to the environmental council in 1998. However, members of the council were not able to meet to discuss the document. EPA waited for some time and decided that the document can be considered as endorsed. It is thus considered a national document since 1998. EPA made this decision by the virtue of its power given by Ethiopian legislation and the fact that NAP is a program document (EPA).

²⁰ The NAP was endorsed by the government after a National Forum was organized by the Ministry of Agriculture in 2001 to adopt it and it was signed by the Ministry of Foreign Affairs (MoA).

²¹ The NAP has been submitted for endorsement to the Parliament (DCG Sudan).

ANNEX 2: REPORTS SUBMITTED BY DCG PARTNER COUNTRIES TO THE UN HUMAN RIGHTS COMMITTEES

Table 3: Overview of the most recent reports submitted to UN human rights committees

<i>Status of most recent reporting to the UN treaty committees</i>	ICCPR	CEDAW	CERD	CESCR	CRC
Mali	3 rd reporting ²² 01.04.05	6 th reporting 10.10.06	15 th and 16 th reporting ²³ 15.08.05	3 rd reporting ²⁴ 30.06.00	3 rd reporting ²⁵ 18.10.02
Ethiopia	3 rd reporting 10.09.04	6 th reporting ²⁶ 10.10.02	14 th reporting ²⁷ 23.07.03	2 nd reporting 30.06.00	3 rd reporting ²⁸ 12.06.03
Eritrea	1 st reporting 22.04.03	3 rd reporting 05.10.96	2 nd reporting 30.08.04	1 st reporting 30.06.03	2 nd and 3 rd reporting ²⁹ 01.09.06
Sudan	3 rd reporting 01.04.05	6 th reporting 10.10.06	15 th and 16 th reporting ³⁰ 15.08.05	3 rd reporting ³¹ 30.06.00	3 rd reporting ³² 18.10.02

²² See the **Human Rights Committee's** concluding observations on **Mali's** report from 16.04.03
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/1b93b939fb14761dc1256d17004aca6f?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/1b93b939fb14761dc1256d17004aca6f?Opendocument)

²³ See the **CERD** committee's concluding observations on **Mali's** report from 01.11.02
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/48e5de7ae7d8e733c1256c75005c29ad?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/48e5de7ae7d8e733c1256c75005c29ad?Opendocument)

²⁴ See the **CESCR** committee's concluding observations on **Mali's** report from 21.12.94
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/e6441688dc656f94c12563e90034c3d5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e6441688dc656f94c12563e90034c3d5?Opendocument)

²⁵ See the **CRC** committee's concluding observations on **Mali's** report from 02.11.99
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²⁶ See the **CEDAW** committee's concluding observations on **Ethiopia's** report from 09.05.96
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²⁸ See the **CRC** committee's concluding observations on **Ethiopia's** report from 21.02.01
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²⁹ See the **CRC** committee's concluding observations on **Eritrea's** report from 02.07.03
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³⁰ See the **CERD** committee's concluding observations on **Sudan's** report from 27.04.01
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³¹ See the **CESCR** committee's concluding observations on **Sudan's** report from 01.09.00
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³² See the **CRC** committee's concluding observations on **Sudan's** report from 09.10.02
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ANNEX 3: FURTHER READING ON HUMAN RIGHTS IN THE CONTEXT OF FOOD SECURITY FOR PASTORALISTS

On a rights-based approach to development:

An overview of a rights-based approach presented by the Office of the United Nations High Commissioner for Human Rights

<http://www.unhcr.ch/development/approaches.html>

Declaration on the Right to Development, 1986

<http://www.ohchr.org/english/law/rtd.htm>

Note article 2 and 8

The Overseas Development Institute (ODI), UK, briefing paper

http://www.odi.org.uk/publications/briefing/3_99.html

Vienna Declaration and Programme of Action, 1993

<http://www.ohchr.org/english/law/vienna.htm>

Note paragraph 5

On indigenous peoples and minorities:

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992 <http://www.ohchr.org/english/law/minorities.htm> Note article 1, 5(1), 2, 4(2), 4(5), and 5(1)

The Indigenous and Tribal Peoples Convention, 1989 (ILO, No. 169)

<http://www.ohchr.org/english/law/indigenous.htm>

Note article 14(1) and 16(1)

On minority issues within the UN system <http://www.ohchr.org/english/issues/minorities/index.htm>

Minority Rights Group International (MRG) works to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities <http://www.minorityrights.org/>

The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples <http://www.ohchr.org/english/issues/indigenous/rapporteur/>

Relevant human rights instruments:

Universal Declaration of Human Rights, 1948

<http://www.unhcr.ch/udhr/lang/eng.htm>

Note article 13

International Covenant on Economic, Social and Cultural Rights, 1966

<http://www.ohchr.org/english/law/cescr.htm>

Note article 11, 3 and 1(1)

International Covenant on Civil and Political Rights, 1966

<http://www.ohchr.org/english/law/ccpr.htm>

Note article 1(1) and 27

Convention on the Elimination of All Forms of Discrimination against Women, 1979

<http://www.ohchr.org/english/law/cedaw.htm>

International Convention on the Elimination of All Forms of Racial Discrimination, 1965

<http://www.ohchr.org/english/law/cerd.htm>Note article 1(4)

Convention on the Rights of the Child, 1989

<http://www.ohchr.org/english/law/crc.htm>

Note article 30

The African Charter on Human and Peoples' Rights, 1981

<http://www1.umn.edu/humanrts/instree/z1afchar.htm>

Note article 12, 17, and 20

Other useful documents and institutions on the right to food and the rights of minorities

General Comment No. 12 on the Right to Adequate Food, 1999, commenting on article 11 of the International Covenant on Economic, Social and Cultural Rights

<http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9?Opendocument>

Note paragraph 6, 7, 8, 13, 14, and 15

General Comment No. 23 on the Rights of Minorities, 1994, commenting on article 27 of the International Covenant on Civil and Political Rights

<http://www.unhchr.ch/tbs/doc.nsf/0/fb7fb12c2fb8bb21c12563ed004df111?Opendocument> Note paragraph 7

The Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, 2004

<http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.htm>

Note guideline 8(1) and 3(3)

The Special Rapporteur on the Right to Food

<http://www.ohchr.org/english/issues/food/index.htm>

The human rights treaty bodies monitoring the conventions:

On the human rights treaty bodies in general

<http://www.ohchr.org/english/bodies/treaty/index.htm>

The Committee on Economic, Social and Cultural Rights, monitoring economic, social and cultural rights

<http://www.ohchr.org/english/bodies/cescr/index.htm>

The Human Rights Committee, monitoring civil and political rights

<http://www.ohchr.org/english/bodies/hrc/index.htm>

Committee on the Rights of the Child, monitoring children's rights

<http://www.ohchr.org/english/bodies/crc/index.htm>

Committee on the Elimination of Racial Discrimination, monitoring racial equality and non-discrimination

<http://www.ohchr.org/english/bodies/cerd/index.htm>

Committee on the Elimination of Discrimination Against Women, monitoring women's rights

<http://www.un.org/womenwatch/daw/cedaw/>

National Action Programmes of the UNCCD

www.unccd.int/actionprogrammes/menu.php



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- 1 B. Synnevåg, G. and Halassy, S. 1998: "Food Security Indicators in Two Sites of Norwegian Church Aid's Intervention Zone in Mali: Bambara Maoudé and N'Daki (Malian Gourma)", Drylands Coordination Group and Noragric, Agricultural University of Norway.
- 2 A. Aune, J.B. and Doumbia, M.D. 1998: "Integrated Plant Nutrient Management (IPNM), Case studies of two projects in Mali: CARE Macina programme and PIDEB", Drylands Coordination Group and Noragric, Agricultural University of Norway.
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- 3 B. Berge, G., Larsen, K., Rye, S., Dembele, S.M. et Hassan, M. 1999. "Rapport de synthèse et quatre études de cas sur Les Questions de Genre et Développement d'une Approche Améliorée concernant les Femmes et les Projets d'Agriculture et de Gestion des Ressources Naturelles", Groupe de Coordination des Zones Arides et Noragric, Agricultural University of Norway.
- 4 A. Sydness, M., Ba, B. 1999: "Processus de décentralisation, développement institutionnel et réorganisation des ONG financées par la Norvège au Mali", Groupe de Coordination des Zones Arides et Noragric, Agricultural University of Norway.
- 4 B. Sydness, M. and Ba, B. 1999: "Decentralization Process, Institution Development and Phasing out of the Norwegian Involvement in Mali", Drylands Coordination Group and Noragric, Agricultural University of Norway.
5. Waktola, A. and Michael, D.G. 1999: "Institutional Development and Phasing Out of the Norwegian Involvement, the Case of Awash Conservation and Development Project, Ethiopia", Drylands Coordination Group and Noragric, Agricultural University of Norway.
6. Waktola, A. 1999: "Exploratory Study of Two Regions in Ethiopia: Identification of Target Areas and partners for Intervention", Drylands Coordination Group and Noragric, Agricultural University of Norway.
7. Mossige, A. 2000: "Workshop on Gender and Rural Development – Training Manual", Drylands Coordination Group and Noragric, Agricultural University of Norway.
8. Synnevåg, G. et Halassy, S. 2000: "Sécurité Semencière: Etude de la gestion et de

l'approvisionnement en semences dans deux villages du cercle de Ké-Macina au Mali: Kéle et Tangana”, Groupe de Coordination des Zones Arides et Noragric, Agricultural University of Norway.

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