



Submission

to the

South African Human Rights Commission, Eastern Cape

on the

Commission's Imbizo on the Right to Food

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Introduction

1. The Centre for Applied Legal Studies ("CALS") would like to thank the South African Human Rights Commission ("the Commission/SAHRC") for the opportunity to make a submission in respect of the Commission's call for submissions to its Right to Food Imbizo.
2. CALS is a civil society organisation based at the University of the Witwatersrand School of Law. CALS is also a law clinic registered with the Legal Practice Council of South Africa. As such, CALS connects the worlds of both academia and social justice.
3. Our vision is a society where historical and social justice is achieved, state institutions are strengthened and powerful entities are held to account by marginalised actors. In working towards this vision, we are guided by four key pillars, namely:
 - 3.1. Expanding the agency of marginalised actors – We recognise that in pursuing a truly equal society, it is not enough simply for civil society organisations to hold powerful entities responsible for rights abuses. We must instead ensure that the people experiencing the violations are placed at the centre of these efforts and are able to vindicate their rights themselves.
 - 3.2. Developing a critical partnership with the state – It is our view that a well-run and accountable state is essential to addressing injustice. We see our role as that of a partner which engages with and helps to capacitate the state in order to realise the promise of the Constitution, but is not uncritical when the state fails in its duties.
 - 3.3. Ensuring horizontal application of the Constitution – While much social justice work focuses on the state's constitutional obligations, many private corporations are large and powerful enough to have a serious impact on human rights. South Africa's Constitution offers a unique opportunity to address this situation, since it binds both public and private entities.
 - 3.4. Taking an intersectional and gendered approach to human rights violations – We appreciate that rights violations do not generally occur in isolation, but rather intersect. These violations also often have a disproportionate impact on particular groups who are already rendered vulnerable, such as women and people with disabilities.

4. We work towards our vision by undertaking research, advocacy and strategic litigation organised according to our five intersecting programmes, namely: Business & Human Rights; Civil & Political Justice; Environmental Justice; Gender Justice and Home, Land & Rural Democracy.
5. Our Home, Land and Rural Democracy ("HLRD") Programme aims to advocate for access to land and the extension of the definition of home and rural democracy to align with the rights framework under the Constitution and its promise for each person to live a quality and dignified life by ensuring impoverished people have access to land, adequate public participation, a safe home and basic services. The HLRD programme has contributed to numerous decisions pertaining to access to a home and basic services which includes adequate, safe and nutritious food.
6. The Right2Protest Project (R2P) is a coalition of organisations that aim to advance and support the realisation of the constitutional right to protest as entrenched in section 17 of the Constitution by providing legal assistance and support to all protesters. The Project seeks to achieve this by adopting an intersectional approach towards implementing interventions to address challenges that prevent the full exercise of the right to protest, especially for women, persons with disabilities and gender non-conforming persons. The project deems it essential to collaborate with organisations, institutions and individuals who seek to advance the freedom of assembly through abolishing unconstitutional practices that seek to repress the right to protest. In the current shrinking civic space, the project is committed to working with solidarity groups across the Southern African region to further promote good practices and legislation in relation to the right to protest.
7. R2P runs a national hotline wherein people call seeking assistance. One of the issues that have been prevalent is the lack of food security which is an ultimate driver for protests. R2P has been working closely with CALS in establishing the working group for food security advocating for access to adequate food.

Food Security

Food security is defined as a situation “when all people, at all times, have physical, social and economic access to sufficient safe and nutritious food that meets their dietary needs and

food preferences for an active and healthy life”.¹ Food insecurity, therefore, results from the lack of economic resources to obtain adequate and nutritious food.² This submission will consider several factors contributing to food insecurity in South Africa and will also illustrate the legal framework relating to food security.

There are four main dimensions of food security:³

- **Physical availability of food:** Food availability addresses the “supply side” of food security and is determined by the level of food production, stock levels and net trade.
- **Economic and physical access to food:** Insufficient food access has resulted in a greater policy focus on incomes, expenditure, markets and prices in achieving food security objectives.
- **Food utilisation:** Utilisation is commonly understood as the way the body makes the most of various nutrients in the food. Individuals' sufficient energy and nutrient intake result from good care and feeding practices, food preparation, and diversity of the diet and intra-household distribution of food. Combined with good biological utilisation of food consumed, this determines the nutritional status of individuals.

¹ Declaration on World Food Security and World Food Summit Plan of Action: World Food Summit, 13-17 November 1996, Rome, Italy.

² M D Smith, MP Rabbit & A Coleman-Jensen “Who are the Worlds Food Insecure? New Evidence from the Food and Agriculture Organisation’s Food Insecurity Experience Scale, World Development” (2017).

³ Ibid.

- ***Stability of the other three dimensions over time: Even if a person's food intake is adequate today, they are still considered food insecure if they have inadequate access to food periodically, risking a deterioration of their nutritional status.*** Adverse weather conditions, political instability, or economic factors (unemployment, rising food prices) may impact their food security status. Food insecurity has been flagged as one of the reasons behind the 2021 July unrest in Kwa-Zulu Natal and Gauteng, in which over 300 people lost their lives. In fact, there are concerns that the 13-year-high inflation will lead to the resurgence of unrest.⁴

Context for ending the food crisis

The right to food is enshrined in several international, regional and domestic instruments. Internationally, the Universal Declaration of Human Rights, 1948, in Article 25(1): "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services". Moreover, Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that the right to food is legally binding on its State Parties.

Regionally, Article 15 of the Protocol to the Banjul Charter on the Rights of Women in Africa expressly recognises the right to food in relation to women and domestically, the Constitution, 1996 section states that, "Everyone has the right to have access to [...] (b) sufficient food and water". In addition, as a Member of the United Nations, South Africa is called to end poverty in all its forms as per the call by the "UN" Sustainable Development Goals (SDGs) of "Zero hunger" by 2030.⁵ Therefore, our duty as civil society is to ensure that

⁴Rédaction Africanews and Wandiswa Ntengento "Fears of unrest as food prices soar in South Africa" (2022) Available at: <https://www.africanews.com/2022/07/22/fears-of-unrest-as-food-prices-soar-in-south-africa//>.

⁵ United Nations. (2023) 'The Sustainable Development Goals in South Africa'. Pretoria, South Africa.

it works with all stakeholders, including government, to find solutions to the food crisis issue. To this extent, civil society should encourage government officials to consider the below issues in addressing the food security crisis:

1. Access to safe and clean drinking water, food and nutrition security

Water access is inextricably related to the fundamental right to food, as it is an essential resource for agricultural production and survival. However, too many people in South Africa continue to live in areas without consistent access to clean water, which exacerbates food and nutrition insecurity. Water security in rural areas of South Africa remains a dire issue that affects the livelihoods of people.⁶ At the core, this interferes with the fundamental provisions made in the constitution of South Africa. Section 27⁷ of the constitution ultimately guarantees the right to access sufficient water.

This guarantee is given effect by the National Water Act⁸, which has a role of governing water resources such as the allocation of water resources, the conservation of water resources and the management of water resources. When there is an appropriate allocation of water resources that are functioning and that are at an accessible point, people are afforded the opportunity to drink clean and fresh water for their nutrition. Households can cook nutritious meals and if there is access to land, people can start small backyard gardens. This is all taken away when municipalities fail to provide and build water infrastructure, administer the supply of water⁹, engage in water advocacy programs. The prevalent condition surrounding clean drinking water is that majority of people living in the rural areas access their water through boreholes, streams, rivers, dams and other water

⁶ Balent et al, (2022) "Profiling Water Insecurity and its Impacts on Agricultural Practices and Rural Livelihood in the Eastern Cape Province of South Africa" *African Journal of Development Studies* 12(3) at 5.

⁷ Section 27(1)b of the Constitution of the Republic of South Africa, 1996.

⁸ National Water Act 36 of 1998.

⁹ Municipalities are failing to provide clean water. Citizens are stepping in to fix the problem Available on <https://groundup.org.za/article/water-in-two-thirds-municipalities-does-not-meet-minimum-standards/>

sources.¹⁰ These water sources are often located farther from households, and the responsibility of fetching water often falls upon women and children. Furthermore, these water sources are usually shared with animals, meaning that the water is usually polluted and breeds illnesses.

This crisis is further exacerbated by municipalities' failure to fulfil its constitutional obligation "to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights [the right to have access to sufficient food and water]". Only few municipalities in the country are compliant with the water and sanitation compliance.¹¹ The failures of municipalities reflect systemic challenges associated with government issues within municipalities. Furthermore, it is often difficult for locals to hold these failing municipalities accountable because of the lack of resources and expensive litigations. And if these municipalities continue to operate in "*laissez-faire*" fashion, vulnerable communities will continue to bear the brunt of water and food insecurity.

2. Access to Land

Securing access to land is critical for millions of impoverished people living in South Africa. Security of land tenure remains a fundamental problem in addition to the food crisis, especially for small-scale farmers. Disproportionate access to farmland is, of course, related to South Africa's racial and colonial past. This exacerbates inequitable access to food, as farming and production of food is disproportionate in those areas. A modern, effective, and transparent land tenure policy is crucial for fostering growth and sustainable development as well as for lowering poverty. In order to protect livelihoods, uphold social stability, and

¹⁰ Apraku et al (2023) " Water Security in rural Eastern Cape SA: Interrogating the impacts of politics and climate change" *Scientific African* 19 e0149319.

¹¹ Municipalities are failing to provide clean water. Citizens are stepping in to fix the problem | GroundUp available on <https://groundup.org.za/article/water-in-two-thirds-municipalities-does-not-meet-minimum-standards/>

increase incentives for investment and sustainable, productive land use, property rights must be secure.¹²

Another issue is the accessibility to land for poor urban dwellers. The terrible reality is that a sizable portion of the populace in our cities lacks access to land for subsistence farming, which increases their susceptibility to food and nutrition instability. Ensuring equitable land access for food production and livelihood is crucial in fulfilling the needs of urban residents.¹³

Yet, rural subsistence farmers are often overlooked when it comes to vital support systems like agricultural funding and resources. This continued disregard of their capacity to feed themselves and contribute to the food and nutrition security of the country is detrimental to national food security.

3. Access to nutritious foods

Although food is generally available, a number of people and communities face obstacles in their quest for nutritious food options, including cost, accessibility, and cultural preferences. Food crises are made worse by this lack of access to nourishing food, which also exacerbates immunodeficiencies, malnutrition, and other problems associated to diet. During Covid-19, civil society organisation created working groups and hotlines and one of the prevalent issues was food security. Food security became the driving force for the July 2021 unrest. Additionally, a South African Human Rights Commission Report¹⁴ further investigates and proves that food insecurity was the driving for violent killing which affected breadwinner's income and prohibited them to further earn an income because of the injuries sustained during the 2021 July unrest.

¹²WORLD BANK (2014) "Land and Food Security". Available from: <https://www.worldbank.org/en/topic/agriculture/brief/land-and-food-security1>

¹³ D Satterthwaite (2010) "Urbanization and its implications for food and farming" *Philos Trans R Soc Lond B Biol Sci.* 365(1554): 2809–2820.

¹⁴ South African Human Right Commission Report July's people: The National Investigative Hearing Report into the July 2021 unrest in Gauteng and KwaZulu Natal. 29 January 2024. Available from https://www.sahrc.org.za/home/21/files/JULY%20UNREST%20REPORT%20FINAL_29%20JAN%202024.pdf

Furthermore, vulnerable populations, such as children, pregnant women, the elderly, and those living in impoverished or marginalised communities, are disproportionately impacted by discrepancies in availability to healthy food. This refers to both section 28(1)(c) of the Constitution, which supports children's rights to basic nourishment, and section 27(1)(b), which guarantees the right to enough food. The policies and processes that provide basic nutrition should be maintained since there is a serious connection between the availability of enough food and the right to basic nutrition.

Recommendations

Food security requires a multifaceted approach where civil society becomes intensively involved in the process towards mitigation before the crisis exacerbates. This approach requires a multistakeholder expansive partnership that will be research and advocacy intensive and involves:

1. safeguarding the use of competition law to inflate food prices and reduce accessibility to food;
2. addressing the redistribution of arable land proportionally to communities across rural communities in South Africa;
3. reconfiguring the state's budgets to address food insecurity by supporting: youth-led farming projects, women-led farming projects and other communal farming or kitchen projects (The goal should be long-term empowerment and entrance of the farming industry for marginalised individuals and communities);
4. formulating a legislative framework that is clear on redistribution of land, operations of grants for small- holder farmers and other laws that impact food security as a whole;
5. incorporating indigenous systems into water and food conservations, livestock breeding and addressing climate change;

6. empowering climate change trainers within rural communities to expand awareness, call for action and inform communities of government interventions and opportunities for collaborations; and
7. including community leaders in research projects to enrich reports, and chosen interventions to address the food crisis in different communities.