

#4

Volume 21
2018



ESR REVIEW

Economic & Social Rights
Review in Africa

ENSURING **RIGHTS** MAKE REAL **CHANGE**



DULLAH OMAR  **INSTITUTE**
FOR CONSTITUTIONAL LAW, GOVERNANCE AND HUMAN RIGHTS

A publication of the Dullah Omar Institute for
Constitutional Law, Governance and Human
Rights (formerly Community Law Centre) at
the University of the Western Cape

ISSN: 1684-260X

A publication of the Dullah Omar Institute for Constitutional Law, Governance and Human Rights (formerly Community Law Centre), University of the Western Cape

EDITOR

Prof Ebenezer Durojaye

CO-EDITOR

Gladys Mirugi-Mukundi

ESR REVIEW ONLINE

dullahomarinate.org.za/socio-economic-rights/esr-review

PRODUCTION

The *ESR Review* is produced by the Socio-Economic Rights Project of the Dullah Omar Institute for Constitutional Law, Governance and Human Rights, with the financial assistance of the FORD Foundation.

The contents of the *ESR Review* are the sole responsibility of the Socio-Economic Rights Project and can under no circumstances be regarded as reflecting the position of the Ford Foundation.

CONTACT

Socio-Economic Rights Project

Dullah Omar Institute for Constitutional Law, Governance and Human Rights

University of the Western Cape, New Social Sciences Building, Private Bag X17, Bellville, 7535

Tel: (021) 959 2950

Fax: (021) 959 2411

Email: serp@uwc.ac.za

Website: <https://dullahomarinate.org.za>

Contents

03 EDITORIAL

04 FEATURE 1

Food Protest in South Africa: 'Them Belly Full, But We Hungry'

08 FEATURE 2

The Right to Access Nutritious Food in South Africa

14 CASE REVIEW

Judicial Overreach in Protecting the Right to Housing in South Africa? A Review of *Fisher v Unlawful Occupiers, Erf 150, Philippi*

19 UPDATES

Report of the United Nations Special Rapporteur on the Right to Food on Her Mission to Zambia

21 EVENT

National Colloquium on Access to Food For Students in South African Tertiary Institutions: Challenges of Hunger among Students in Higher Education in South Africa (13–14 August 2018)

Editorial

Welcome to the fourth issue of the *ESR Review* in 2018. Our first two articles focus on the current debate on food security in South Africa. The vision of the 2030 Agenda for Sustainable Development calls on all countries and stakeholders to work together to end hunger and prevent all forms of malnutrition by 2030 – an aspiration that can be achieved only if agriculture and food systems become sustainable, food supplies are stable, and all people have access to adequate nutrition and health.

The first article, by Bright Nkrumah, seeks to uncover the reasons for South Africa's lack of activism around food poverty. He notes that while South Africans have used social protest to hold state officials accountable and improve their access to basic human needs, paradoxically there has been hardly any protest to improve access to food even though millions are chronically hungry.

In the second feature, Yuri Ramkissoo explores the transformative intention of the constitutional imperative of the provision that 'everyone has the right to adequate food and water' by highlighting a 2017 study by South African Human Rights Commission. The aim of the study, *The Right to Access Nutritious Food in South Africa*, was to critically analyse what the right to food entails in actuality and assess whether this right is being observed, respected, promoted, protected and made accessible to everyone in the country.

The study found that the right and the food system in its entirety are complex matters and that a systematic analysis of the components of the food system was required to identify gaps in policy and problems in the implementation of policies – gaps and problems that limit the realisation of the right.

In the case review section of this issue, Tinashe Kondo examines the role of judicial activism in balancing the right to property with the right to access to housing by reflecting on the landmark decision in *Fisher v Unlawful Occupiers (Erf 150, Philippi) (297/2014) 2014 (3) SA 291*. To ensure that about 60,000 people were not evicted from their homes in Philippi East, the Western Cape High Court ordered the City of Cape Town to negotiate with the owners to buy the land on which the informal settlement is located. This case is significant for several reasons, one of which is that it underlines that municipalities have a clear responsibility to be proactive in acquiring housing, particularly in emergency housing situations.

The updates section reports on the mission the United Nations Special Rapporteur on the right to food, Hilal Elver, undertook to Zambia from 3–12 May 2017. The event section features a brief on the challenge of hunger that students face in higher education institutions in South Africa, challenges brought to light at the national colloquium on access to food for students held on 13–14 August 2018.

We thank our guest contributors, and extend special thanks to Prof. Serges Djoyou Kamga (University of South Africa), Prof. Olubayo Oluduro (Adekunle Ajasin University), and Prof. Christopher Mbazira (Makerere University) for acting as peer reviewers of the four issues of the 2018 *ESR Review*.

We hope you enjoy the issue.

Gladys Mirugi-Mukundi
Co-Editor

FEATURE

Food Protest in South Africa: 'Them Belly Full, But We Hungry'

Bright Nkrumah

**Cost of livin' gets so high,
Rich and poor they start to cry:
Now the weak must get strong;
They say, "Oh, what a tribulation!
'Them belly full, but we hungry';
A hungry mob is a angry mob
– Bob Marley and the Wailers**

South Africa is a 'food-secure' nation, producing enough to feed every member of its population adequately. The painful truth, however, is that more than 22 per cent go to bed hungry (Statistics South Africa 2017: 5; Nkrumah 2017: 1). The situation suggests one of two things: that the policy steps taken by the state are either woefully inadequate in themselves or are poorly implemented. As

such, this article sets out to determine which policy actor is best suited to bring about policy change to address the issue of chronic hunger.

One influential category of policy actor is the social protester. Social protesters have used protest to improve their access to key socio-economic rights, such as health (through, for example, the Treatment Action Campaign), education (#FeesMustFall) and housing (the squatters' movement Abahlali baseMjondolo). However, despite these and other service delivery protests, the right to food has rarely been a pivot around which protesters have sought to pursue reform in South Africa. The article thus seeks to understand the reasons for this lack of activism and to consider how citizens can be mobilised to address food insecurity.

The nature of food protests

Before attempting to define 'food protests', it is necessary to set out what the right to food entails, as this is a key concept in the discussion that follows. The right to food is a human right recognised under international and national law. In South Africa, it is guaranteed under section 27(1)(b) of the 1996 Constitution, which protects the right of everyone to feed him- or herself either by buying or producing his or her own food. Section

27(2) takes this obligation further when it provides that '[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights'. Thus, the Constitution imposes a legal obligation on the state to ensure that everyone has access to adequate food at all times without discrimination.

Food protest, or protesting for food, on the other hand, is an 'instinctive response to hunger' (Nkrumah 2017: 238). It implies contention over



Not everyone is aware the Constitution provides for the right to food

food between the masses and their government. This discussion will thus define ‘food protest’ as people taking to the streets in demand of food. Normally, such protests are defensive acts in which protesters attempt to assert previously established rights of theirs which they perceive as being violated by the state. In the case of South Africa, this right, as mentioned, is grounded in section 27 of the Constitution, which obliges the state to ensure that ‘everyone’ has access to adequate food.

To attract the necessary attention and popular support, protesters often perform their rebellious acts in places of ‘natural assemblage’, or common public places. These acts can take the form of petitioning, parading effigies, food looting, or mass demonstrations in which calls are made for the reduction of food prices or free provision of food by the state.

The next section outlines several of the reasons why these incidents are not common in South Africa in spite of widespread hunger due to poverty and the lack of means to afford basic foodstuffs in the market (Sen 1981: 1).

A hungry (but not angry) mob: Why is food protest rare?

Provincial or racial differences notwithstanding, a number of factors cut across the catalogue of food protest and significantly influence people’s participation, or lack thereof, in such acts. Among the most decisive are the payment of social grants, the weakening effect of chronic hunger, lack of activist organisations focused on the right to food, and lack of interest in the issue on the part of opinion leaders and political representatives.

This section provides a mapping of how these factors hinder the upsurge of protest in a context where citizens experience chronic hunger amidst challenges brought about by unemployment and high food prices. The factors are not exhaustive, since other forms of political discontentment (perhaps seemingly unrelated to food) could be a trigger of food protest. These other grievances fall beyond the ambit of this discussion.

1. Lack of awareness of the right

Exacting accountability (in the form of protest) depends on awareness that a right exists and on people having been equipped to claim the right, even if the existence of that right has, to date, been only nominal. Hence, for South Africans to be able to claim their right to food, they first need to know that such a right exists and that they are entitled to it.

While every South African knows that human beings must eat to live – if not, they will die – not everyone is aware the Constitution provides for the right to food. Unlike its counterparts (the rights to health, education and housing), this right is not widely recognised as a right to be claimed. The situation is reflected in the lack of political debate about chronic hunger and the fact, for instance, that political parties do not compete with each other on the issue and seek to position themselves as best suited to addressing it (see further remarks below).

The right to food’s lack of visibility or priority is also apparent in the international arena, where it is regarded once again as less important than other rights. For instance, whereas the recently approved Sustainable Development Goals clearly recognise access to education, health and water as universally guaranteed rights, access to adequate and affordable food is not given such recognition. As such, it is important that civil society organisations deconstruct the dominant narrative of food as a commodity and replace it with a human-rights narrative in which food is placed squarely as a public good and, ultimately, as a right to be claimed.

2. Social assistance brings some relief

South Africa has a range of social assistance programmes that arguably assuage the need people in poverty would otherwise feel to take to the streets in food protest. It is important to note that the grants provided in these programmes (namely the old age, war veterans, grant-in-aid, child support, care dependency, foster care and disability grants) are not only 'usually distributed among many individuals besides the intended beneficiary', but 'make up part of the income of the household and are spent on (non)food requirements of the entire household' (Nkrumah 2017: 157).

For instance, as of January 2018, beneficiaries of the disability grant receive R1,600 per month; the foster care grant, R920; the care dependency grant, R1,600; the child support grant, R380; grant-in-aid, R360; the war veterans grant, R1,530; and the old age grant, R1,620 (SASSA).

While in most cases the funds are inadequate, especially given that they are typically used to cover the non-food as well as food needs of entire recipient households rather than only the nominal beneficiaries, they bring relief to millions living in poverty, thus serving to keep them from taking action through protest.

3. Hunger demobilises potential protestors

Many political scientists and journalists new to the field assume that food protests are the work of the hungriest, and poorest, people, but that is yet to be proven. Indeed, severe deprivation appears to demobilise people in that they 'just don't have the energy to take to the streets' (Brown 2011: 5). After observing the lack of participation in Haiti's 2008 food-market looting by residents of the country's poorest slums, Girard (2010) mooted that hunger can weaken people's physical and mental ability

to resist unfair treatment and agitate for reform. Arguably, the chronically hungry in South Africa too lack the energy to mobilise themselves to undertake food protests.

4. Lack of activist civil society organisations

South Africa lacks effective right-to-food movements or non-governmental organisations (NGOs) that advocate for the right to food for the poor. The country has no clear-cut social movement or NGO equivalent to, for example, the Right to Food Campaign in India. The latter played an influential role in the adoption of India's 2013 National Food Security Act, through which subsidised grain is provided to about two-thirds of the population (Pradhan 2015: 133).

Those few such civil society organisations with food-security mandates – among them Oxfam, the Ekurhuleni Environmental Organisation, the Centre of Excellence in Food Security, and the Studies in Poverty and Inequality Institute – seek to address food poverty mainly at the policy level rather than by mobilising the food-poor to assert their right. This points to the need for these organisations to broaden their activities by embarking on a joint campaign with the food-poor, a strategy which India's Right to Food Campaign used successfully in advocating for the National Food Security Act.

5. Opinion leaders lack interest

Although there are chronically hungry people in every street corner, under bridges, parks and in front of shopping malls, opinion leaders in the country have not shown much interest in promoting their right to food. For instance, Archbishop Desmond remains a strong advocate for the gay community, former Wits University SRC president Mcebo Dlamini for the #FeesMustFall movement, and Zackie Achmat for people living with HIV and AIDS. The chronically hungry, however, lack such leadership and support.

6. Lack of political opposition

In India and Egypt, opposition political parties (OPPs) play a key role in the mobilisation and agitation for adequate food for citizens. Yet parties in South Africa, such as the Democratic Alliance (DA), Economic Freedom Fighters (EFF), and Congress of the People (COPE), hardly engage on issues to do with chronic hunger.

The most recent involvement of these parties in food-related issues can be linked to three incidents, namely the EFF's call for wholesale expropriation of land, the OPPs' condemnation of the Minister for Social Development's assertion that R753 a month was adequate for sustaining a family, and the DA's march over the social grants debacle. The interventions, although useful, are inadequate since they were or are not directly targeted at either food prices or lack of access to food.

Thus, the lack of interest among existing political representatives or parties in triggering large-scale food protests to ensure the rights of the food-poor (and not only of beneficiaries of grants) is another factor contributing to the rarity of food protest in South Africa.

Conclusion

This article set out to consider the question of why the chronically hungry rarely protest in South Africa, especially amidst numerous protests directed at other socio-economic conditions. It was argued that key actors, such as civil society organisations and opposition political parties, lack commitment to agitating for improved access to food. The food-poor therefore lack activists or leadership figures who engage with the government to ensure that it complies with its constitutional obligation.

It is recommended that, to address chronic hunger effectively, all the relevant actors join forces and rally to engage the state to adopt a 'reasonable' policy aimed at expanding existing social security grants to provide for the excluded food-poor. The state could broaden the scope of its social grant programme into a large-scale grant to provide for the needs of the unemployed until such time

as they become employed or have a means of livelihood.

Bright Nkrumah is a Postdoctoral Research Fellow with the NRF/British Academy Chair in Political Theory at the Department of Political Studies, University of the Witwatersrand.

References

- Allix M (2016) 'Fawu workers protest against chicken dumping.' *BusinessDay*. Available at <https://bit.ly/2T7Sgvt>
- Brown L (2011) 'The great food crisis of 2011.' *Foreign Policy*. Available at <https://bit.ly/2WlXG7Y>
- Erdkamp P (2002) "'A starving mob has no respect": Urban markets and food riots in the Roman world, 100 BC – AD 400.' In L De Blois and J Rich (eds), *The Transformation of Economic Life under the Roman Empire*. Amsterdam
- Girard P (2010) *Haiti: The Tumultuous History – from Pearl of the Caribbean to Broken Nation*. Macmillan
- Nkrumah B (2017) *Mobilising for the Realisation of the Right to Food in South Africa*. DPhil thesis, University of Pretoria
- Pradhan K (2015) 'Fiscal sustainability of India's National Food Security Act 2013.' *Margin: The Journal of Applied Economic Research*, 9(2), pp. 133–156
- SASSA 'Social grants.' Available at <https://bit.ly/2HRY22e>
- Sen A (1981) *Poverty and Famines: An Essay on Entitlement and Deprivation*. Oxford: Clarendon Press
- Statistics South Africa (2017) *Statistical Release P0318: General Household Survey 2016*. Available at <https://bit.ly/2OpChbo>
- Tuwani T (2015) 'Hundreds protest for food consultations.' *Health-E News*. Available at <https://bit.ly/2FuRuUl>

FEATURE

The Right to Access Nutritious Food in South Africa

Yuri Ramkissoon

In a study of the right to food in the 2013/2014 financial year, the South African Human Rights Commission (Commission) found that the right and the food system in its entirety were vast, complicated matters. The Commission believed that a systematic analysis of the different components of the food system was required to identify policy gaps and implementation challenges that were limiting the realisation of the right.

In a 2016/2017 study by the Commission specifically on access to food, a literature review indicated alarming rates of hunger in South Africa. The Commission began interviews to examine factors affecting access to nutritious food in South Africa. The research sought to assess if the National Policy on Food and Nutrition Security (NPFNS) is adequate to ensure food security at a household level. The findings of the study are presented in this article.

The 2016/2017 report found, when examining the NPFNS, that it did not address essential components of the food system and was limited and vague as to ways in which the policy would be implemented and the vision of the NPFNS achieved. Furthermore, there was a lack of engagement on the development of the NPFNS, which means that it is unlikely to respond adequately to the problems and practical realities associated with the right or associated issues. In relation to access, the research found that although South African is food secure at a national level, one-quarter of South Africans live in hunger and a further 28.3 per cent are at risk of experiencing hunger.

Many of those that do have access to food consume unhealthy food, or empty calories, which leads to malnourishment, obesity and other non-communicable diseases. Lack of access to food in South Africa was attributed mainly to poverty, while the lack of consumption of nutritious food was due to such food being cheap, readily available, particularly in large supermarket chains, and widely promoted in mainstream media. Furthermore, low rates of household agriculture, particularly in dense urban areas, has led to a decrease in access to fresh fruit and vegetables.

This paper concludes with recommendations to improve the management of the food system in South Africa and ultimately improve access for all to nutritious food.

Background

Although the right to food is protected under international and national law, about 870 million people are undernourished globally (FAO 2012), while in South Africa a staggering 23 per cent of people are either food-insecure or severely food-insecure (Statistics South Africa 2015). Of those who are undernourished, the vast majority live in developing countries, particularly in sub-Saharan Africa; nearly six million children die every year from malnutrition or related diseases (FAO 2012). The majority of those suffering from hunger and malnutrition are smallholders or landless people, and are mostly women and girls living in rural areas without access to productive resources (Sanchez et al. 2005).

The right to food is a human right protecting people's entitlement to access food and feed themselves. Food can be accessed via production or by purchase (Ziegler et al. 2011). The right to food is intrinsically linked to one's right to life and dignity, and requires that food be available, accessible, appropriate and adequate for everyone without discrimination. In South Africa, section 27(1)(b) of the Constitution declares that 'everyone has the right to have access to sufficient food and water'. This obligation on the state is amplified in section 27(2), which provides that 'the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights'. Section 28(1)(c) expands the right to food as a right to basic nutrition for children and, in section 35(2)(e), as a right for detainees and sentenced prisoners.

Despite a strong international and national legislative framework protecting and promoting the right to food, and a myriad national policies designed for the same purpose, access to food in South Africa remains of great concern, particularly for poor rural and peri-urban households. A lack of access to food strongly affects associated human rights such as the rights to health and to education. As such, there is an urgent need

to identify gaps in policy and other barriers to accessing of nutritious food to ensure that food insecurity is eliminated.

Methodology

In 2015, the Commission formulated a research plan on the right to access nutritious food, with two key objectives in mind: first, to assess if the NPFNS is adequate to ensure food security at a household level, and, secondly, to identify problems in current policies and their implementation that could be impeding access to nutritious food for families, particularly children, in South Africa.

Following a review of the NPFNS and other literature in late 2016, an interview guide was developed for use in discussions with state departments and civil society organisations (CSOs). It was slightly different for the two groups, with the one version asking about the state department's mandate in relation to the realisation to the right to food and the other inquiring into the CSO's activities in relation to food. Both questionnaires probed the respondents' views about barriers to accessing food. Interviews were conducted between January and March 2017.

Findings

The findings of these interviews, as well as of the literature review, are presented below.

1. The National Policy on Food and Nutrition Security

In 2008, the development began on a new NPFNS for South Africa. According to the policy, there is a need for a common conceptual interpretation and measure of food and nutrition security shared between 'government, the international community, research institutions and society' (NPFNS 2014). The NPFNS was also necessary for synergising the different strategies and

programmes that were being implemented by the state and civil society.

The Commission and CSOs found, however, that the NPFNS misses essential components of the food system and is vague on how the policy will be implemented. Subsequently, an implementation plan, frequently referred to by the Department of Health (DoH), was developed which had yet to be finalised. In November 2017, representatives from state departments tasked with the implementation of the NPFNS made a presentation to the Parliamentary Committee on Agriculture, Forestry and Fisheries on the implementation plan, which had been consolidated into six focus areas. However, the costs of implementation were still being established, and to date there has been little progress on the finalisation of the implementation plan.

The NPFNS clearly articulates the problems associated with the accessibility, availability and stability of the food supply and other factors, further to which it outlines a broad approach for dealing with these issues; yet while the NPFNS provides a high-level vision for the food system in the country, it falls short on concrete strategies to address problems with the food system.

In addition, there was little or no public engagement around the NPFNS, a complaint made by all CSOs that were interviewed. It is important to note that ideally policies should respond to problems being faced by rights-holders, especially the needs of those directly affected by such policies: a lack of consultation means that such policies are unlikely to respond to the problems and practical realities associated with the right or issues related to it. In this respect, lack of participation is fatal to the relevance of the policy and its ability to achieve the desired objectives.

2. A review of national access to food

South Africa is a food-secure country at a national level, meaning that it produces or imports

sufficient food to feed its population. Yet while hunger has decreased steadily in the country since 2002, the South African National Health and Nutrition Examination Survey (SANHANES-1) conducted by the Human Sciences Research Council estimates that approximately one-quarter (26%) of all South Africans are food-vulnerable and a further 28.3% are at risk of experiencing hunger (Shisana, et al. 2014). Most food-insecure participants in this survey were either from rural formal households (37%) or urban informal households (32.4%), while 36.1 per cent of informal urban dwellers were at risk of hunger (Shisana et al. 2014).

Hunger was highest in the Eastern Cape and Limpopo, the only two provinces with a rate of hunger over 30 per cent. Black Africans experience the highest rate of hunger (30.3%), followed by coloured people (13.1%); these are also the two race groups that at highest risk of experiencing hunger. A large proportion of Indians were also in danger of experiencing hunger, with 28.5 per cent of them in the high-risk category.

The General Household Survey (GHS) conducted by Statistics South Africa showed similar trends in relation to food security, but in contrast to the provincial results in the SANHANES-1 study, the GHS found that the provinces with the lowest access to food were the Northern Cape, North West and Mpumalanga (Statistics South Africa 2015).

3. Poverty, inequality and unemployment

When asked why there are 14 million food-vulnerable people in South Africa, most respondents described it as a consequence of low employment and high poverty. This means people and families do not have disposable income for the purchase of food and are not producing, or are unable to produce, their own food. Furthermore, people with little or no income for food often make unhealthy food choices out

of necessity or due to a lack of education on healthy eating habits.

The HSRC's SANHANES-1 survey found that the majority of respondents surveyed in urban formal (27.7%), urban informal (38.0%) and rural informal (41.9%) households reported that they had no formal income. Within the nine provinces, Mpumalanga (46.8%), followed by the North West (43.8%), Eastern Cape (42.6%) and Northern Cape (41.4%), had the most people reporting no income (Shisana et al. 2014).

According to Statistics South Africa (2017), as at the fourth quarter of 2016, 26.6 per cent of South Africans were unemployed. The proportion of people actively seeking work had decreased by 92,000 people, an explanation for which could be that they had been unable to find work over a long period and had become disillusioned.

Given the high rates of unemployment and poverty in South Africa, it is important to note that access to food remains difficult unless food is grown or there is a supplement for the lack of income, such as a social grant. It is also important to note that unemployed people aged 18-59 have no relief in the form of access to social security. This remains a huge gap in terms of poverty alleviation and service delivery.

4. Culture and nutrition

It was argued by all respondents, as well as noted in the corresponding literature, that there is a strong focus on food production in South Africa but not enough on nutrition and cultural practices. Among those who do not have access to food, many are consuming nutrient-empty food, which contributes significantly to the prevalence of non-communicable diseases such as obesity, hypertension and diabetes. Furthermore, rates of malnutrition and stunting in South Africa are of great concern.

This view was shared by the former Special

Rapporteur on the Right to Food, Olivier De Schutter, who stated in his country report (2012) that

South Africa, like many other middle-income countries today, is experiencing what is referred to as a nutrition transition, characterised by a shift to more processed foods, generally higher in saturated fats, sugars and salt, and to diets low in fruits and vegetables.

Most respondents were candid in their views on the influx into South Africa of corporations such as fast-food outlets, a lack of education campaigns on nutrition, and market ownership by a few supermarket chains (discussed below). The Studies in Poverty and Inequality Institute (SPII) lamented the entry of franchises like KFC and McDonald's (SPII 2017), while the Department of Social Development (DSD) believed that the grant amounts provided to indigent households for buying food are not enough to enable them to make healthy food choices.

All of the respondents highlighted the National School Nutrition Programme (NSNP) as positive programme, one that feeds about 13 million children daily. Some schools have also expanded their NSNPs over the school holidays to ensure that children do not go without food during that period. However, the meals provided are not always nutritious or healthy. The DoH said that the DSD is advised on the type of meals children should get but the type of meal provided in practice depends on the budget available to the DSD; moreover, the DSD is not obliged to take the DoH's advice.

5. The role of the private sector

The role of the private sector is linked at many levels to health and nutrition. While the NPFNS recognises the need for proper nutrition, government decisions and programmes to date do not seem to resonate with this objective. Not only does South Africa allow about four or five large supermarket chains to dominate the food retail

sector, it also fails to limit the establishment of fast-food outlets in urban or rural areas and the advertising of these chains. Essentially, the proliferation of fast-food chains in residential areas should be mapped in local integrated development plans and other planning documents to ensure that access to such food is limited – if, that is, the state were serious about reducing unhealthy consumption.

The Cooperative and Policy Alternative Centre (COPAC) argued that the current South African food system reduces the right to food to just an ‘access’ issue. However, the right to food should encompass more than this. It should include access to affordable, nutritious food, and should ensure that people and their needs are at the centre of the food system (COPAC 2017). The DoH was also critical of the role of the private sector in the food system, especially of the vast distribution of fast-food outlets and the proliferation of food-chain advertising (DoH 2017).

6. Household agriculture

Despite the high number of households that are food-insecure or severely food-insecure, nationally only 16.9 per cent of households are involved in agricultural activities. This is remarkable, given the agricultural potential of even the smallest pieces of land. If one looks at the breakdown of agricultural activities by province, it is surprising that the Northern Cape and North West provinces have such low proportions. Furthermore, there were complaints by respondents that many agricultural colleges have been closed, which means there are no training facilities for aspirant farmers and extension officers, who are employed to provide technical support to farmers, particularly small-scale agrarians.

7. Media and advocacy

Given the vast resources owned and held by

the private sector, companies such as fast-food outlets are able to advertise widely on all media platforms. This, coupled with the lack of advertising on proper food and nutrition, is of great concern, particularly considering the rates of non-communicable diseases and concomitant burden on the public health care system.

Respondents argued that it is vitally important that the state increase its commitment to media and advocacy in relation to a nutritious and healthy diet. Media and advocacy are among the key tools in reaching and educating the public about healthier eating habits. The DoH suggested that media houses should provide free airtime to the state for public advertising on issues such as healthy food choices and non-communicable diseases (DoH 2017).

Conclusion

The realisation of the right to access food is a complex issue, given the myriad components that fit together to form the food system. The complexity of this system can be reduced or heightened by the state’s policy choices and acknowledgment of the interconnectedness of the right. The NPFNS in its current form does not speak to the need for an interconnected system – one which ensures that state departments and other key role-players continuously engage on an equal level and that issues interconnected with the right to food are considered.

The findings of this research indicate that poverty is a major determinant of hunger in South Africa. Furthermore, the unchecked role of the private sector in advertising and making un-nutritious food widely accessible contributes to cases of malnutrition, obesity and other non-communicable diseases. A move away from household food gardening has also led to a decrease in access to fresh fruit and vegetables.

It was abundantly clear from this study that a rethink of the food system in its entirety is required, followed by overhauling the business and production-centred model currently in use

into a more consumer-centric model that places greater emphasis on access, nutrition, agriculture and assistance to the poorest and most vulnerable people in the country.

The recommendations can be summarised as follows:

- Develop comprehensive legislation that speaks to the entire food system.
- Limit media on and advertising of unhealthy food and give free advertising space to state departments for apolitical social messaging.
- The menu of the school nutrition programme must be designed by the DoH and implemented by the Department of Basic Education.
- Encourage household agriculture and support it through social development programmes.

Yuri Ramkissoo is a senior researcher in economic and social rights at the South African Human Rights Commission.

References

Cooperative and Policy Alternative Centre (COPAC) (6 February 2017). Personal communication

De Schutter O (2012) *Report of the Special Rapporteur on the Right to Food: Mission to South Africa*. Available at <https://bit.ly/2u7bBTh>

Department of Health (2 March 2017). Personal communication

Department of Social Development (18 January 2017). Personal communication

FAO (2012) *The State of Food Insecurity in the World: Economic Growth Is Necessary But Not Sufficient to Accelerate Reduction of Hunger and Malnutrition*. Rome: United Nations

FAO, IFAD, and WFP (2015) *The State of Food Insecurity in the World: Meeting the 2015 International Hunger Targets: Taking Stock of Uneven Progress*. Rome: Food and Agriculture Organization of the United Nations

National Policy on Food and Nutrition Security for the Republic of South Africa, No. 837, 22 August 2014

Pereira L and Drimie S (2016) 'Governance arrangements for the future food system: Addressing complexity in South Africa.' *Environment: Science and Policy for Sustainable Development*, 58(4), p. 26

Sanchez P, Swaminathan MS, Dobie P and Yuksel N (2005) *Halving Hunger: It Can Be Done*. UN Millennium Project Task Force on Hunger: United Nations

Shisana O, Labadarios D, Rehle T, et al. (2014) *South African National Health and Nutrition Examination Survey (SANHANES-1)*. Cape Town: HSRC Press

Statistics South Africa (2015) *General Household Survey: Statistical Release PO3018*. Pretoria

Statistics South Africa (2017) *Quarterly Labour Force Survey – QLFS Q4: 2016*. Available at <http://www.statssa.gov.za/?p=9561>

Studies in Poverty and Inequality Institute (SPII) (17 January 2017). Personal communication

Ziegler J, Golay C, Mahon C and Way S (2011) *The Fight for the Right to Food: Lessons Learned*. Palgrave Macmillan

CASE REVIEW

Judicial Overreach in Protecting the Right to Housing in South Africa? A Review of Fisher v Unlawful Occupiers, Erf 150, Philippi

Tinashe Kondo

On 30 August 2017, the Western Cape High Court dismissed an application by three owners of neighbouring properties to evict 60,000 people who invaded their land to establish what became known as the 'Marikana settlement'. The judgment in the case, Fisher v Unlawful Occupiers, is a landmark decision on the right to access to housing in South Africa. The Court had to balance two competing interests: the right to property of the owners, and the settlers' right to access to housing. This balancing exercise had to be undertaken mindful of the historical context in which the housing challenge arises, a challenge which is perhaps the largest social crisis in democratic South Africa.

The housing crisis in South Africa

The housing crisis has become one of the most pernicious issues in South Africa. Its origins are largely historical, stemming from the legacy of apartheid. Under this regime, black people were subjected to living in 'homelands' in terms of the Native Land Act 27 of 1913. The Act apportioned 92 per cent of the country's land to the white minority, whilst the black majority was relegated to the fringes in what land remained. This disenfranchised them, stripping them of the right to free and equal citizenship. While the percentage of land allocated for use by black people was increased in later years to 13 per cent by the Native Development and Trust Act 18 of 1936, this did little to ameliorate their living conditions or bring about justice.

After the dawn of independence, many of these structural inequalities persist. Black people are still trapped in communal lands, while white people own

vast tracts of farming land. Within urban areas, white people continue to predominate in the upmarket leafy suburbs, whereas black people are squashed into townships devoid of basic services and quality of life. Many in the townships live in backyards in depressing conditions, where they are unable to cope with continual rent increases. Although land and housing programmes have been initiated, these are slow and riddled with corruption and nepotism. As a result, a gap has emerged, one which the masses are now filling by means of land invasions.

General principles of law

At the heart of the matter in this case are two constitutional provisions. The first is section 25 of the Constitution, which concerns the applicant's right to property. Section 25(1) of the Constitution provides that no one may be arbitrarily deprived of property except in terms of the law of general application. Further to this, no law may permit the arbitrary deprivation of property. The second provision is section 26 of

the Constitution. It sets out in subsection (1) that everyone has the right to have access to adequate housing. Subsection (3) further provides that no one may be evicted from his or her home without an order of the court made after considering the relevant circumstances. Accordingly, the provision concludes that no law may permit arbitrary evictions.

However, to determine whether or not there was a violation of rights, the full constitutional matrix had to be considered. In other words, these provisions could not be read in isolation. As a point of departure, then, consideration had to be given to section 7(2) of the Constitution, which raises the state's constitutional obligation. It provides that the 'state must respect, protect, promote and fulfil the rights in the Bill of Rights'. Accordingly, this provision imposes an obligation on the state to respect the rights enshrined in both sections 25 and 26 of the Constitution.

Another provision falling within the purview of the Court's decision was section 38 of the Constitution, which lists the persons or entities that can approach the courts for relief. Its wide-ranging nature protects a large number of interests. Seemingly, section 38 is to be read in conjunction with section 7(2): while section 7(2) imposes an obligation to respect and give effect to the rights in the Bill of Rights, section 38 concerns those who can claim these rights.

The Constitution aside, various codes, policies and pieces of legislation also had to be considered. The first was the Housing Act 107 of 1997, section 9 of which denotes the functions of municipalities. It grants a municipality the power to expropriate any land it requires for purposes of housing development in terms of any national housing scheme. This is done by way of notice in the Provincial Gazette.

However, a number of preconditions have to be met. To begin with, expropriation may take place only where the municipality fails to purchase the land from the owner on reasonable terms. In addition, it can occur only after permission has been granted by the relevant Member of the Executive Council (MEC). This permission has to precede the publication of the notice in the Provincial Gazette. A final requirement is that the notice in the Government Gazette has to be published.

The second legal document considered was the National Housing Code. Chapter 13 of the Code

provides that municipalities may receive grants for upgrading settlements. To ensure the success of such a project, all members of the informal settlement are meant to benefit from it.

Thirdly, the National Housing Programme also deals with the issue of housing, and in similar terms. It provides in Chapter 12 for housing assistance in emergency situations. Pursuant to this provision, funds may be released to a municipality where it does not own alternative land for settlement. In this regard, the National Housing Programme provides a framework for the acquisition of land. It dictates that where land is required in emergency housing situations, such land should first be sought from land identified in Spatial Development Frameworks that supplement Integrated Development Plans.

Significantly, the Programme notes that when acquiring such land, preference should be given to state-owned land, with private land being acquired as a last resort. Where private land is indeed to be acquired, a market-related price is established by three independent evaluators. On this basis, the price is negotiated with the seller with a view to concluding a purchase. It is only upon the failure of these parties to reach an agreement that expropriation of the land can be considered in terms of the provisions and procedures of the Expropriation Act 63 of 1975.

The High Court decision

In coming to its decision, the High Court noted that the social and economic context of this matter could not be overlooked. As such, the Court had to be alert to the fact that the occupiers found themselves in the contested land after having been evicted from other areas where they had lived under desperate conditions. A main consideration was thus that these families, unlike many others in Cape Town, held such a low position in society that they were unable to exercise proper agency in choosing where they reside. Hence, it could be said that their occupation of the properties was borne of a desperate need to secure shelter for their families.

The Court then turned to the immediate issue of the presence or not of a constitutional infringement. It was of the view that, given the large number of people involved, the City had not advanced any plausible reasons why the land occupied by the

settlers could not simply be acquired. This was particularly important in the light of the City's own admission that there was nowhere else that the occupiers could be accommodated. On this basis, the Court made the interesting argument that under the circumstances it was only reasonable that the occupiers remained on the land in enforcement of their rights under section 26 of the Constitution.

It is at this point that the Court was confronted with a balancing dilemma. The central question was, How could the occupiers enforce their right to access to housing without encroaching on the right to property of the owners? Closely connected to it was the further question of how this balancing exercise could be accomplished without ordering the parties to perform in a certain manner – and thus without overstepping the boundaries established by the doctrine of the separation of powers. The Court was cautious to avoid such overstepping as occurred in the case of *Nokotyana & Others v Ekurhuleni Municipality*.

In view of this difficulty, the Court had to consider the arguments advanced in the matter at hand. It found that the City's position that they had placed the occupiers on lists for emergency housing, thereby fulfilling their constitutional obligations, was not reasonable as no indication had been given of exactly what that meant at a practical level, except that accommodation might be available to some of the occupiers in two years' time. Moreover, it was unlikely that the City would be, at any point in time, be able to accommodate all the occupiers – thus supporting the view that the City's position was not a reasonable one.

The Court further noted that it was not reasonable for the City to argue that housing the settlers would disrupt its existing housing plans, as it was constitutionally bound to make provision for emergency situations as a matter of priority. The Court stated that the City could acquire land reactively in cases of unlawful occupation, thus steering away from an interruption of existing plans. This 'reactive land acquisition' would be set against the framework detailed in section 25(3) of the Constitution, in which market value is considered as a factor, among others, in acquiring the land. The Court noted, moreover, that there are many funds on which the City could draw for such acquisitions.

Importantly, the Court dismissed the argument that the land was not suitable for human settlement. It proffered a counterargument that the Emergency

Housing Programme did not require permanence. Furthermore, the City was already using land close by for its housing programmes. In a similar vein, the argument that it would be unfeasible to build noise-insulated housing, given that the land is within the airport's noise corridor, was also found to be without merit. The Court noted the existence of millions of people in adjacent townships who reside in the area. It then emphasised that the obligation to provide emergency accommodation remained in place on the City, and accordingly, even if the land were unsuitable for housing, it could still be used on a temporary basis.

The main finding of the Court relevant to this discussion was that the City had acted unreasonably. As a result, the state was in breach of its constitutional duty in terms of section 7(2) of the Constitution as read with sections 25 and 26. This constitutional breach could be cured only by an appropriate remedy.

In attempting to award such a remedy, the Court had to consider the relevant legal principles and judicial precedents. It relied heavily on the approaches adopted in *Fose v Minister of Safety and Security* (1996) and the *Ekurhuleni Municipality* case. It was noted that in terms of *Fose* there is an obligation on the Court to determine what 'appropriate relief' is on a case-by-case basis. It was further noted that, as per *Fose*, where such remedies do not exist, the Court has to forge new, more creative, and effective remedies in order to cure the infringement of a constitutional right.

In seeking to craft such a remedy, the Court sought to draw lessons from previous matters. It looked at the *Ekurhuleni Municipality* case, which dealt with the issue of destitute people and the failure of the local authority to address their plight timeously. The Court noted, however, that despite the similarities between the two cases, a number of factors distinguished them from each other.

The first was the number of people involved. The *Ekurhuleni Municipality* case dealt with a small group who were easily capable of being relocated to other housing programmes, but this did not seem feasible in the matter at hand. Secondly, in the *Ekurhuleni* matter, the provision of alternative accommodation was only speculated upon. However, in the current matter, it was clear that the City could not provide alternative accommodation. Finally, in the *Ekurhuleni*

matter, the issue of expropriation was not explored.

Given the fact that three separate properties had been invaded, the Court also applied its mind to the question of whether the relief granted in all three properties should be the same. In this regard, the Court proposed that the relief would be the same except in relation to the prices of the different properties of the applicants.

On the question of whether the relief granted should be different, the Court proposed that variances could be made only in negotiating the price of the different properties of the applicants. One of the properties at issue (that owned by a Mrs Fisher) had been inherited and was to be valued differently from the other two, which had been acquired for commercial use; with regard to the occupiers, though, the relief given had to be the same. As to the question of expropriation as an appropriate relief, the Court observed the arguments in the case of *President of the Republic of South Africa and Another v Modderklip Boerdery* (2005), where it was contended that such a remedy would violate the doctrine of separation of powers.

The Court then decided to fashion its own remedy. It reasoned that in order to give effect to the owners' rights in terms of section 25, as well as to the right of the first respondent in the case in terms of section 26 of the Constitution, the City had to enter into good-faith negotiations to obtain the land. The Fisher land negotiations had to be concluded within a month, while negotiations regarding the other two properties had to be concluded in two months.

With regard to the Fisher land, were the negotiations to be unsuccessful, the City had to report back to the Court and explain why it could not value her property, given that the land was vacant. For the other two properties, the City had to report back on whether expropriation in terms of section 9(3) of the Housing Act had been considered. The Court then ordered the National Minister of Housing and the Provincial Minister of Housing (Western Cape) to provide funds to the City should it exceed its budget. The applications for eviction were accordingly dismissed.

Exploring a case of judicial overreach

In addressing the two competing interests – the right to property of the owners, and the settlers'

right to access to housing – both interests had to be addressed delicately. In so doing, the Court was perhaps grappling with a broader question of judicial overreach. Judicial overreach occurs when courts act beyond their jurisdiction and delve into matters that fall in the purview of the executive or legislature.

In South Africa, there have been instances where the court has arguably overreached in its decisions. A recent case in point is *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* (2017). This case concerned the Nkandla judgement of the Constitutional Court and the failure of former President, Jacob Zuma, to implement the Public Protector's report after a lengthy period of time had passed since the report was released. The parties involved sought various orders, including: (1) an order declaring that the National Assembly had failed to put in place measures and processes to hold the President accountable for failing to implement the Public Protector's report; (2) an order declaring that the National Assembly had failed to hold the President accountable for the same conduct since the judgement of the Constitutional Court; and (3) an order compelling the National Assembly to establish a committee to assess whether the former President had participated in any impeachable conduct in terms of section 89 of the Constitution.

The majority judgment found that there were no rules governing the section 89 process and that the National Assembly was duty-bound to place proper rules. The Court also held that that the National Assembly, in failing to properly evaluate whether the former President had breached section 89(1), had failed to discharge its duty under section 43(3) of the Constitution to scrutinise and oversee the actions of the executive. The Court then directed the National Assembly to initiate a process under section 89(1) in terms of the newly developed rules.

In a dissenting judgement, Chief Justice Mogoeng characterised the majority judgment as a textbook case of judicial overreach – a constitutionally impermissible intrusion by the judiciary in the exclusive domain of parliament. Mogoeng argued that the matter at hand was a complex, controversial one. This case is significant in that it has a judge on record confirming the existence of a practice so often said not to exist.

Bearing these points in mind, one must consider whether the Court found itself overreaching in the

matter under review. The question is of fundamental importance because judicial overreach signifies unaccountable judicial power. The power to govern is inherent in decision-making. If political decisions are made by courts, this usurps the power of government organs – whereas the separation of powers is the cornerstone of South Africa's democracy. As Montesquieu observes in *The Spirit of the Laws*:

[T]here [is no] liberty if the power of judging is not separate from legislative power and executive power. If it were joined to legislative power, the power over the life and liberty of the citizens would be arbitrary, for the judge would be the legislator. If it were joined to executive power, the judge could have the force of an oppressor.

Against this backdrop, one could make a case that the majority judgement in this matter tied the power to judge with legislative power by ordering the City Council to acquire the land via negotiations or expropriate it. As sensible as this argument might be, in my view it can be easily overridden by one which asserts that there was neither judicial activism nor judicial overreach, but rather an enforcement of the law by the Court. It is the duty of judges to evaluate the facts of a matter and furnish appropriate remedies. Importantly, therefore, it is vital to note that a court does not overreach its powers in each and every matter where it finds the conduct of the state to be unlawful or unreasonable.

To my mind, what is instead at issue in this instance is a question of what a just and equitable order is. There is a need to develop jurisprudence on just and equitable orders in cases of breach of rights. This is because, where an order is made, as in this case, that seems far-fetched relative to what the norm is, it is then viewed as an overreach by the courts, rather than as an exceptional remedy to an extraordinary circumstance.

Significance of the decision

This case is significant for a number of reasons. First, it clarifies the extent of the municipality's obligation to provide for housing. It prescribes a clear responsibility to municipalities to be proactive in acquiring housing, particularly in emergency housing situations. Secondly, it extends the existing

understanding of what can be considered a just and equitable order when there is a violation of rights.

Furthermore, it sheds light on the issue of compensation by reinforcing the principle that the use of a plot of land is vital in determining its value. The case also provides insight into the tensions in the various organs of state. In this regard, it continues the debate on the powers of judges and when they could be said to have violated the doctrine of separation of powers.

Finally, the case highlights the key role judges are playing in society by giving priority in their decision-making to the historical and social context of the people of South Africa. This approach sets the stage for deliberation on humanities considerations that could be incorporated in legal decisions.

Tinashe Kondo is a lecturer at the Mercantile Law Department, Faculty of Law, University of the Western Cape. This work was conducted as part of his postdoctoral fellowship with the Centre for Humanities Research, funded by the Andrew Mellon Foundation.

References

Economic Freedom Fighters and Others v Speaker of the National Assembly and Another (CCT76/17) [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (29 December 2017)

Fisher v Unlawful Occupiers (Erf 150, Philippi) (297/2014) [2014] ZAWCHC 32; 2014 (3) SA 291 (WCC)

Fose v Minister of Safety and Security 1997 (3) SA 786 (CC)

Nokotyana & Others v Ekurhuleni Metropolitan Municipality & Others [2009] ZACC 33; 2010 (4) BCLR 312 (CC)

President of The Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd (Agri SA and Others, Amici Curiae) 2005 (5) SA 3 (CC)

Rugege S (2004) 'Land reform in South Africa: An overview.' *International Journal of Legal Information*, 32

UPDATES

Report of the United Nations Special Rapporteur on the Right to Food on Her Mission to Zambia

At the invitation of the government, the Special Rapporteur on the right to food, Hilal Elver, undertook a mission to Zambia from 3-12 May 2017 to assess the progress made and challenges faced in realising the human right to adequate food.

During her stay, she met with representatives of the ministries of Foreign Affairs, Agriculture, Fisheries and Livestock, Health, Gender and Child Development, National Planning, Commerce, Trade and Industry, and Community Development and Social Services. In addition to meeting the Disaster Management and Mitigation Unit of the Office of the Vice President, she met with the Human Rights Commissioner as well as various traditional authorities, international organisations, and national civil society actors.

Zambia is a landlocked country with fertile soil and water-rich farmlands. While it values its peace and social cohesion, increasing land tensions could have a detrimental effect on this. Over the past decades, the country has enjoyed political stability and consistent economic growth, but it nonetheless faces numerous challenges in the form of food insecurity, undernutrition, chronic poverty and natural disasters. Like many southern African countries, it suffers from increasingly unpredictable weather patterns affecting communities and their food security. Situations of poverty are closely linked to food insecurity. Gaining access to adequate and nutritious food is a challenge across most of the country, with women and children in rural areas faring worst.

The Special Rapporteur observed that the

current dual land tenure system in Zambia lacks certain protection mechanisms to secure access to land for smallholder farmers. The government's policy to turn export-oriented large-scale commercial agriculture into a driving engine of the economy, in a situation where land protection is weak, risks pushing peasants off their land. This will force them out of production, impacting severely on people's right to food. The effect of such policies is particularly worrying, considering that smallholder farmers account for almost 60 per cent of the population and are dependent on land for their livelihoods; at the same time, they feed about 90 per cent of the Zambian population.

The Special Rapporteur said the main groups requiring special attention are women and agricultural workers, including child labourers and people living in refugee camps. She noted that because gender discrimination is pervasive in Zambia, women have limited opportunities to have access to land, education, credit and other productive assets, which creates a power imbalance preventing women and girls from taking full control of their lives.

It was noted too that the poorest and most vulnerable people in rural Zambia tend to be agricultural workers, who work for less than \$2 a day on other people's farms. Such low wages, combined with the labourers' consequent

inability to work on their own farms, leave them trapped in intergenerational cycles of poverty.

The Special Rapporteur also observed that, despite its own high levels of poverty, Zambia has shown commendable hospitality in hosting refugees; nevertheless, there is room for improvement.

The Special Rapporteur recommends accordingly that Zambia

- improve the mainstreaming of gender perspectives in the institutional, legal and legislative framework with regard to adequate strategies and programmes on food and nutritional security and the right to rural development, and support women farmers with additional incentives, access to credit, and other agricultural resources;
- take urgent measures to address the root causes of child labour in the agricultural sector; and
- implement international standards in national laws that guarantee refugees and asylum seekers the rights to seek work, to have access to health care and education, and to enjoy freedom of movement.

In order for the country meet its human rights obligations, especially the right to food, the Special Rapporteur made several further recommendations:

- Zambia should prepare and adopt a human rights-based national framework law on the right to food, with effective benchmarks and implementation plans for each region. The framework should include a financial structure that contains the necessary budgetary and taxation measures for supporting smallholder farmers as well as gender-sensitive budgeting. It should protect the long-term sustainability of agricultural production; establish authorities and agencies responsible for implementation; provide for proper supervision and



Zambia should prepare and adopt a human rights-based national framework law on the right to food, with effective benchmarks and implementation plans

accountability mechanisms to promote the full and active participation of all interested parties, including those most vulnerable; and enact impending legislation, including laws on social protection.

- Zambia should continue to support small-scale food producers, particularly women and young people, and increase incomes by ensuring fair access to land and other productive resources.
- Zambia should extend the coverage of school meals to cover 100 per cent of children, giving priority to rural areas, and adopt a simplified system for purchasing agricultural produce from family farms and local producers.

References

Report of the Special Rapporteur on the right to food on her mission to Zambia, UN Doc. A/HRC/37/61/Add.1 (25 January 2018). Available at <https://bit.ly/2EZU0AR>

EVENT

National Colloquium on Access to Food for Students in South African Tertiary Institutions: Challenges of Hunger among Students in Higher Education in South Africa (13–14 August 2018)

Oluwafunmilola Adeniyi, Jacob Nthoiwa and Gladys Mirugi-Mukundi

Student hunger on university campuses has gained prominence ever since the #FeesMustFall movement spread across South Africa's tertiary institutions in 2015. Although there are no definite statistics on the extent of the problem, university administrators are paying increasing attention to students' lack of the basic needs of food and shelter.

To sustain the conversation about access to food for students in South African tertiary institutions, the Dullah Omar Institute hosted a two-day national colloquium (13–4 August 2018) in conjunction with the University of the Western Cape and University of Pretoria, with the support of the Ford Foundation.

The colloquium was guided by four questions. First, who has the obligation to realise the right to food of students in tertiary institutions? Secondly, what are the roles of different stakeholders in realising the right in such a context? Thirdly, do non-state actors such as private corporations have any duty to address food insecurity and hunger among tertiary-level students? Fourthly, what is the best approach to addressing food insecurity among these students?

The colloquium brought together a variety of stakeholders involved in enabling access to food for students in tertiary Institutions, among them government officials, policy-makers, student leaders, academics, human rights activists, and representatives of civil society organisations.

In her goodwill message, Prof. Pamela Dube, the Deputy Vice Chancellor responsible for Student Development and Support at the University of the Western Cape, welcomed participants to the colloquium, which was the first of its kind in the Western Cape. She said South Africa is one of the most unequal societies in the world, and because of this, food insecurity among students at universities across South Africa is a very real concern, given that the majority of students affected by it come from a society with a high level of poverty.

Prof. Dube said that, taking into account 'the politics of giving and taking' and 'the challenges of dependency', there was a recognition of 'the need to empower students as part of a comprehensive upskilling programme to address self-dependency'. She emphasised that 'we cannot have students who come to university to learn stressing about not having food to eat and

compromising themselves just so they can have a meal’.

In the keynote address, Dr Stephen Devereux, the South Africa-United Kingdom (SA-UK) Bilateral Research Chair in Social Protection in Food Security (SARChI), based at the Centre of Excellence in Food Security, noted that although the National Student Financial Aid Scheme (NSFAS) plays a major role in the student food insecurity crisis, it had become dysfunctional.

‘If you think about the food part of the bursaries that students at UWC get,’ he said – referring to a retail supermarket voucher for six months, with a total value of R2,000 – ‘it is clearly inadequate in a country which is faced with rapid and high food-price inflation.’

Dr Devereux emphasised that it is a myth that if you can afford to go to university, you can afford basic needs. He said there is growing evidence to suggest that food insecurity among students in universities is indeed even higher than in South Africa’s households. Referring to studies in the United States and Australia on food insecurity among tertiary-level students, Dr Devereux pointed that students are more likely to be food insecure than others in the population.

‘[S]tudents are ashamed and embarrassed to come forward,’ he noted, ‘so the problem is even worse than what we are measuring.’

He recommended thus that the ‘invisible crisis’ of student hunger should be prioritised at the highest policy level.

Testimonials and presentations by Student Representative Council (SRC) delegates from UCT, UWC, Stellenbosch University and Cape Peninsula University of Technology (CPUT) confirmed that students are often hungry as they have little to no food to eat, and that when they do eat, they have unhealthy eating habits.

This was especially true of those from poor backgrounds, those who are first-generation



Students are ashamed and embarrassed to come forward, so the problem is even worse than what we are measuring

students in their families, and those who in demographic terms are black or coloured – SRC delegates emphasised that ‘race is the strongest predictor of student food insecurity’. They also underlined the importance of factors such as the availability of food, food prices, food quality, and the availability of funds to purchase food.

Discussing the recently revised NSFAS, Dr Diana Parker of the Department of Higher Education and Training said it is clear the government is committed to free higher education for poor and working-class students

In turn, Laetitia Permall, Director of the Centre for Student Support Services, said the effect food insecurity has on students can be very serious. A reduced ability to concentrate on studies can lead to impaired academic performance; poor performance in exams, for instance, could then result in students dropping out. Student hunger may also compound mental health problems such as anxiety and depression and so lead to thoughts of suicide. Mrs Permall observed that there thus is a link between a lack of nutritionally adequate food and student attrition.

As to how the policy space could be influenced to guarantee access to food for tertiary students, Mondli Mbhele, Deputy Director in charge of food and nutrition security coordination at the national Department of Social Development (DSD), said that for the DSD to set up a food bank similar to those in vulnerable communities, it first had to understand the extent of the problem before

appropriate interventions could be devised.

He stressed that while short-term emergency solutions such as food banks and food pantries may be useful, upstream solutions to address the basic needs of vulnerable students are imperative.

On the question of how tertiary institutions can realise the right to food, Prof Ebenezer Durojaye, Dr Bright Nkrumah and Dr Emma Lubaale emphasised the role of advocacy and mobilisation in addressing food insecurity among students, as had happened when the #FeesMustFall protests in 2015–2016 brought the issue of student hunger to the fore. There was also the agreement that NSFAS can play a more significant role in addressing student hunger than just providing a bursary loan for students.

It was noted, too, that non-state actors, among them private corporations, have a duty to address food insecurity and hunger among students in tertiary institutions. In a discussion panel, Nokuthula Zama of the Moshal Foundation, Karuna Singh of Wits Citizenship and Community Outreach, and Enver Moothoosamy of the Foundation for Human Rights, acknowledged that philanthropy has played a crucial role in the tertiary education sector.

As to what is the best approach to addressing student food insecurity, the colloquium concluded that, whatever it is, academics and university staff should not be responsible for feeding their students. Regarding current gaps in research, participants were interested in the gender dimension of food insecurity and whether female students are engaging in transactional sex for financial gain or food products as a coping mechanism.

Oluwafunmilola Adeniyi is a doctoral researcher within the Socio-Economic Rights Project (SERP) at the Dullah Omar Institute.

Jacob Nthoiwa is Communications Manager at the Dullah Omar Institute.

Gladys Mirugi-Mukundi is a researcher at the Dullah Omar Institute, where she focuses on socio-economic rights.

About The Access to Food for Students Project

In 2017, the Socio-Economic Rights Project at the Dullah Omar Institute embarked on a project known as 'Access to Food for Students in South African Tertiary Institutions' (Access to Food for Students Project). It tackles food insecurity among tertiary-level students, an issue requiring urgent attention by all stakeholders.

The project is subdivided into an exploratory and implementation phase. The exploratory phase involved taking a fact-finding approach, while the implementation phase involves advocacy to address systemic issues through policy review. The two-day national colloquium was part of this latter phase.

Further reading

Adeniyi O (16 July 2018) 'Food insecurity among students a lingering after-effect of apartheid.' Cape Times. Available at <https://bit.ly/2uHrDEb>.

Devereux S (27 August 2018) 'South Africa's university students face a crisis: Nearly a third go hungry.' The Conversation. Available at <https://bit.ly/2RBxXuo>

Contact

Socio-Economic Rights Project

Dullah Omar Institute for Constitutional Law,
Governance and Human Rights

University of the Western Cape
New Social Sciences Building
Private Bag X17, Bellville, 7535



Tel: (021) 959 2950



Fax: (021) 959 2411



Email: serp@uwc.ac.za



Website: www.dulahomarinstitute.org.za