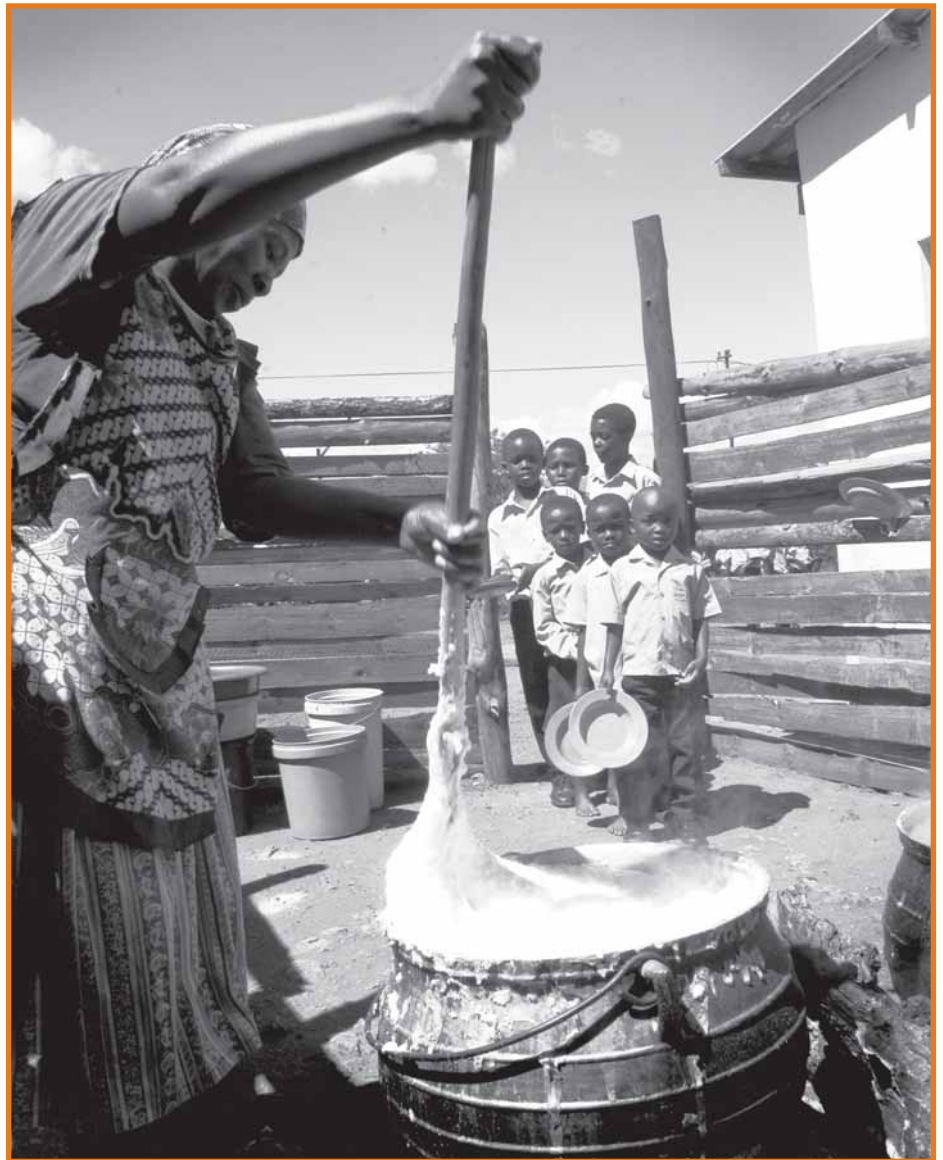


**CHAPTER 9**

**Food rights**



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## KEY WORDS

Access/Accessible	Ability to get, have or use something, eg access to food.
Adequate	Suitable and up to a good enough standard.
Discretion/ Discretionary	When a responsible person has the power to decide whether or not to do something, eg to give a grant.
Eligible	People who qualify for a grant.
Equitable	Fair and reasonable.
Famine	Widespread starvation, resulting in large numbers of deaths.
Food insecure	When you do not regularly get enough food of the right kind and quality.
Food secure/ Food security	Access to enough of the right kind and quality of food to live a healthy life.
Indicators	Signs or measures used for understanding and evaluating progress.
Labour tenancy/ Labour tenants	When people are allowed to live on and develop land in return for their labour.
Lobby	Influence or persuade policy-makers and law-makers, eg to prioritise the right to food in policies and planning.
Malnutrition	Undernourishment – not getting enough or the right kind of nutrition.
Nutrition	The value of food for health and well being, including taking in the right amount and quality of nutrients such as proteins, fats and vitamins.
Preservation	Keeping and maintaining in good condition.
Security of tenure	Giving people legally secure rights in land or housing.

Sharecropper      Person allowed by a landowner to cultivate part of land for his/her own profit, in exchange for a share in the resulting crop.

.....  
Subsistence farming      Farming aimed at survival, not profit.

.....  
Violate/Violation      Abuse or not respect, eg violate your right to food.  
.....

## 9.1

# Why are food rights important?

Everyone knows that if you do not eat for a long time, you will slowly waste away and die. Food is in the first place important for survival – we need it simply to live.

But food is important in other ways also. Hungry people do not only worry about surviving. Their ability to work, interact with people, perform physical tasks, educate themselves, and participate in their community is affected. Hungry children struggle to pay attention in school, they do not have the energy to study at home and sometimes their intellectual development is harmed by malnutrition.

Adults who do not get enough food spend their time, attention and energies on trying to find the next meal, so that they find it hard to look for a job. When they do find a job, they often cannot perform efficiently. Hungry people do not easily participate in social or political life, as their attention is devoted to finding food to eat. We do not only need food to live – we also need food to live properly as healthy human beings.

In South Africa, hunger and malnutrition threaten the capacity of a large number of people to live and to live properly. Roughly 14 million South Africans (37% of our population) are *food insecure*, meaning that they regularly do not get enough food of the right kind and quality.

*For this reason, we must understand the different rights related to food in our Constitution. If we understand what these rights mean and how they work, we can use them to ensure that the Government does everything possible to lessen our country's food crisis, and to ensure that the Government and our society in general does nothing to worsen this crisis.*



## 9.2

# History and current context

### 9.2.1 The impact of apartheid

South Africa's history gives an example of the close relationship between food rights and other rights. During the apartheid years, it was illegal for black South Africans to own and cultivate land in most parts of the country. This destroyed black agriculture and many black South African farmers were unable to produce food for themselves and others as they did before, resulting in hunger and malnutrition. Violations of the land rights of black South Africans led to violations of their rights to food.

Black South Africans were also prevented from participating in economic activities that enabled them to produce or buy food. Many black South Africans were, early in the 20<sup>th</sup> century, successful farmers through a practice called *sharecropping*. This happened when a white farmer allowed a black farmer to farm on part of the land in return for a share in the harvest. This practice was soon prohibited by law.

This meant that black farmers were legally prevented from continuing with sharecropping. It also meant that, where a white farmer made a sharecropping arrangement with a black farmer in spite of the prohibition, the black farmer could not use the law if the white farmer later broke his promises and took the whole harvest for himself.

#### CASE STUDY



#### BAN ON SHARECROPPING

In his book, *The Seed is Mine*, Charles van Onselen describes what happened to Cas Maine, once a self-sufficient and successful commercial farmer who in one particularly good season "... reaped a thousand bags of sorghum and five hundred and seventy bags of maize...". Through the prohibition on sharecropping and a series of dispossessions and forced removals, and thus the slow erosion of his rights to land, Cas was reduced to a pauper, who was unable to produce enough food even for subsistence and relied on the State for handouts.

Maine's own words describe perfectly how, even with all his personal resources, his ability to produce food depended on his rights to land:

*"The seed is mine. The ploughshares are mine. The span of oxen is mine. Everything is mine. Only the land is theirs."*

*Van Onselen, 1996, introductory quote*

### 9.2.2 The current situation

In South Africa today, 43% of households earn so little that they are in 'food poverty' – in other words, unable to afford enough food for basic subsistence. *De Klerk and others, 2004*

This food crisis affects physical development – of our children under the age of 9:

- 21,6% are stunted – they do not grow as quickly as they are supposed to.
- 10,3% are underweight – they do not weigh what they are supposed to.
- 3,7% experience wasting – while they are supposed to be growing, they actually lose weight. *Labadarios, 1999*



Certain groups of people are in a weaker position when it comes to food:

- 30% of black children under the age of 5 experience stunted growth caused by malnutrition, while the rate is only 5% among white children (*South African Human Rights Commission, 1999, 25*).
- More children have stunted growth in rural provinces such as the Northern Province (34,2%), compared to urban provinces such as the Western Cape (11,6%)

Black people, rural people, women and children experience hunger and malnutrition more than white people, city people, men and adults because special problems block their access to food. For example, in our society, women are most often the primary caregivers of children, meaning that they cannot work and earn an income as easily as men do. Many poor women do not have money to buy food and have to produce food for themselves through subsistence farming. Subsistence farming is also not easy for most women, as they do not have the money to pay for land, seed and water.

#### CASE STUDY



#### THE EXPERIENCE OF RURAL WOMEN

Joyce lives in a small rural community. She takes care of both her own and her daughter's children. She has no job and receives no income from relatives. Instead, she gets a very small income from building other people's houses. Her granddaughters also contribute financially by collecting wood that they sell for R10 a bundle. The girls are usually gone from 06h00 to midday, as the wood is heavy and they can't carry much at a time. Fetching for their own use and for selling means that they usually go three to four times a week.

Unlike some others, Joyce has no land to plough and no livestock:

*"I am nothing – I am just a person of God. My biggest problem is to have enough food for my children." NGO Matters, 1998*

## 9.3

# Your food rights in the Constitution

### 9.3.1 Specific food rights

South Africa's *Constitution (Act 108 of 1996)* protects these food rights:

Section	What is the right?	Who benefits?
27(1)(b)	The right to have access to sufficient food	Everyone
28(1)(c)	The right to basic nutrition	Every child
35(2)(e)	The right to adequate nutrition at State expense	Everyone who is detained, including every sentenced prisoner





Each of these rights is a right for a specific group of people (everyone, children and detained people). Although they seem to provide different levels of protection, we will discuss them together as one right: the right to food.

### 9.3.2 Linking food rights to other rights

As our discussion of the impact of apartheid on food rights shows, the right to food is closely interlinked with other rights:

- People need the right to food to enjoy other rights.
- How much they can enjoy the right to food depends on other rights.

#### EXAMPLES



#### LINK BETWEEN FOOD RIGHTS AND HEALTH CARE RIGHTS

*The right to food and the right to health care are closely linked:*

- *Undernourishment and malnutrition affect people's physical development negatively, causing them to become ill much more easily than others and to find it much more difficult to heal than others once they are ill.*
- *A person who is ill sometimes needs special kinds of food to eat, or is unable to get the same benefit from food as a healthy person.*

## 9.4

## International law and your food rights

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) is the most important international document dealing with the right to food.

Article 11 of the ICESCR places a duty on States to recognise the right of everyone to adequate food and requires States to avoid people going hungry. *General Comment No. 12* (1999) of the Committee on Economic, Social and Cultural Rights (CESCR) interprets the meaning of this right. The General Comment gives us important information about:

- The minimum duties under the right to adequate food.
- What would be possible violations of the right to food.
- Strategies for implementing the right to food.

At regional level, the right to food is usually not clearly guaranteed. Only article 12(1) of the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* of 1988 (Protocol of San Salvador) provides for a right to adequate nutrition. However, when there is no clear guarantee of a right to food, regional courts and tribunals have interpreted other clearly guaranteed rights to include the right to food.

#### CASE STUDY



#### INCLUDING THE RIGHT TO FOOD

In the 1996 case of *SERAC v Nigeria*, the complaint was that the Nigerian government had, with international oil companies, destroyed the farming land, crops and livestock of the Ogoni people in retaliation for opposing the development of oil fields in their tribal lands.

The African Commission on Human and Peoples' Rights (African Commission) interpreted the rights to life, to health and to development in the *African Charter on Human and Peoples' Rights* (African Charter). The African Commission directed State parties:

- Not to interfere with access to food.
- To protect access to food from interference by powerful third parties.

The right to food is also found in documents that deal with the rights of vulnerable groups or with human rights in specific circumstances. For example, the *Convention on the Rights of the Child* (CRC, 1989) says States must, in caring for children:

- "Combat disease and malnutrition ... through, *inter alia*, ... the provision of adequate nutritious foods...", and
- "Provide material assistance and support programmes, particularly with regard to nutrition..." in cases of need.

A number of documents also protect the right to food during armed conflict and natural disasters, and when dealing with refugees.

Other documents that are not treaties describe policies and practices on the right to food, or provide standards to test realising the right to food.

For more on using international law, see Chapter 3.

#### EXAMPLES



#### USEFUL INTERNATIONAL DOCUMENTS

*The World Food Summit Plan of Action*, adopted at the 1996 World Food Summit in Rome, translates commitments of world leaders on ending hunger and malnutrition into practice. The Plan of Action lists actions that must be taken by the international community, international civil society and individual States.

The Plan of Action says that steps must be taken to clarify the content of the right to food and freedom from hunger. This led to:

- *Drafting of the CESCR's General Comment 12 on the right to food.*
- *Voluntary Guidelines on the Progressive Realisation of the Right to Food*, adopted by member States of the UN Food and Agriculture Organisation in November 2004.

## 9.5

# Guides to interpreting the right to food

### 9.5.1 What does the right to food mean?

The right to food is realised if *food security* exists – this is when all people, at all times, can get enough of the right kind and quality of food to live an active and healthy life.

We will use the concept of ‘food security’ to explain what the right to food means.

#### a) Availability and accessibility

When people go hungry on a large scale or serious malnutrition exists, it is easy to say that food security has failed because there is not enough food. The solution is then to produce more food or get more food through trade.

However, people do not usually go hungry because there is not enough food available. Rather, they go hungry because they cannot get their hands on the food that is available.

#### CASE STUDY



#### BANGLADESH FAMINE

After the Bangladesh famine of 1974, economic analyses showed that there was more food available in Bangladesh in 1974 than in the five years before or after 1974. In the words of Dreze and Sen:

“And yet the famine hit Bangladesh exactly in that peak year of food availability. Those ... who died because of their inability to command food were affected by a variety of influences (including loss of employment, the rise of food prices, etc), and this occurred despite the fact that the actual availability of food in the economy of Bangladesh was at a peak.”

*Dreze and Sen, 1989, 28*

Achieving food security – and realising the right to food – therefore depends, on two things:

“The *availability* of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;

The *accessibility* of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.”

*CESCR, UNHCHR website*

The *availability* of food means that there must be enough food available in the country to meet the dietary needs of everyone.

The *accessibility* of food means that people must be able to get the food that is available for them. People can get access to available food if they are ‘entitled’ to that food, for example:

- They earn income by selling labour or other commodities that they use to buy food.
- They can receive monetary or in-kind social assistance from the State to get food.
- They exercise some form of legal control over land, tools and water so that they can produce food for their own use.

#### CASE STUDY



#### LINKING THE BAN ON SHARECROPPING WITH ACCESS TO FOOD

The life of Cas Maine illustrates how, without an entitlement to food, people are unable to get food even when food is available. In Cas's time there was, for a knowledgeable and hard-working farmer like Cas, arable land available to produce food.

When Cas could still exercise a legal entitlement to the arable land – when he could still legally enter into sharecropping agreements with white farmers – he was able to get food by producing it himself. But when that entitlement was taken away from him when sharecropping was prohibited, Cas's ability to get access to food was seriously limited (*Van Onselen, 1996*).

See the background to the story of Cas Maine on page 317.

### Economic and physical accessibility

People can also only get access to food if the food is both:

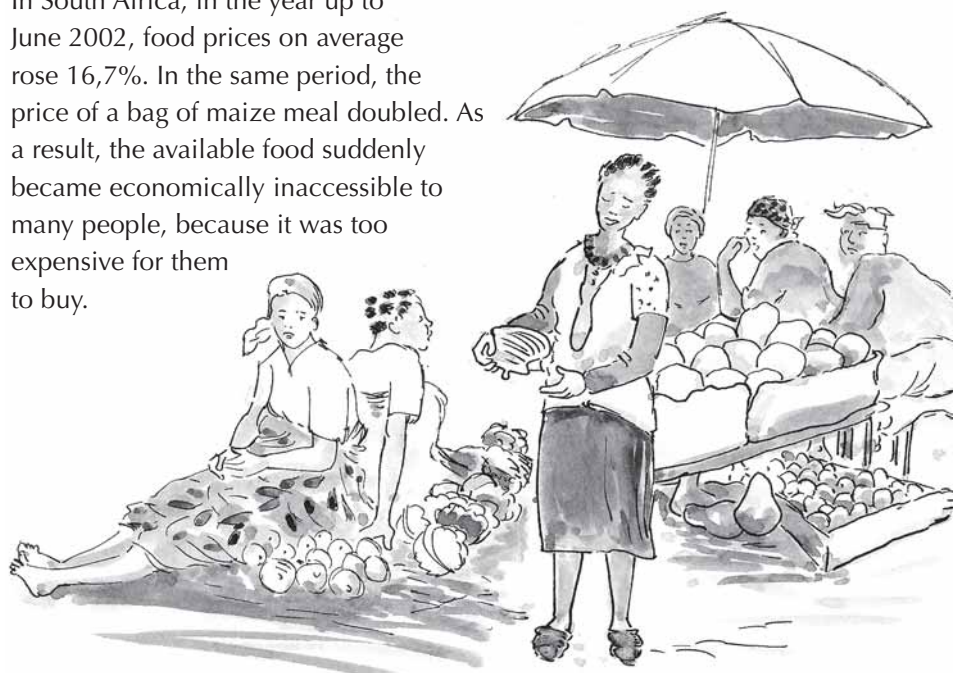
- Economically accessible – it is not too expensive for people to buy, and
- Physically accessible – it is distributed geographically so that there is food everywhere.

#### CASE STUDY



#### ECONOMIC ACCESSIBILITY

In South Africa, in the year up to June 2002, food prices on average rose 16,7%. In the same period, the price of a bag of maize meal doubled. As a result, the available food suddenly became economically inaccessible to many people, because it was too expensive for them to buy.



## CASE STUDY



## PHYSICAL ACCESSIBILITY

In the early 1990s, Somalia experienced widespread famine. The international community sent large amounts of food to Somalia. This food was never distributed across the country to the places where it was most needed, but rather remained in warehouses at the main airport, where it rotted. The available food was therefore not physically accessible to those who needed it.

### b) Sufficient food

Our Constitution speaks about “sufficient food”, “basic nutrition” and “adequate nutrition”. These terms all mean that a certain standard and quantity of food – what we will call *sufficient food* – must be available and accessible for us to say there is food security.

Food will meet this standard if:

- There is enough food, and
- The available and accessible food is nutritious, safe and acceptable.

### Enough food

*Enough* food refers to a basic amount of food – there must simply be enough food available and accessible so that people do not go hungry.

### Nutritious food

*Nutritious* food refers to the nutritional quality of food – there must be enough food available and accessible with the correct amount and balance of calories, proteins, fats, minerals and vitamins to enable a person to live a healthy and dignified life.

## EXAMPLE



## NUTRITIONAL QUALITY

*In South Africa, maize porridge (mieliepap) is a staple diet. Although mieliepap is a good source of carbohydrates, it does not contain enough vitamins, minerals or protein. People often eat more than enough mieliepap, but this is not sufficient to keep them healthy – it often leads to obesity, with its related health problems, while people are in fact malnourished. People have to be able to supplement their diet with vegetables and other foods in order for them to have sufficiently nutritious food.*

### Safe food

*Safe* food also refers to the quality of food – everyone must have access to food that is not only enough and nutritionally adequate, but that is also fresh enough and without any harmful substances, so that it does not endanger people’s lives or health.



### EXAMPLE



### UNSAFE FOOD

Every school day, the Government provides a nutritious meal to needy primary school children through the Primary School Feeding Scheme. In the past, the most popular meal to provide was a peanut butter sandwich, because peanut butter is particularly nutritious. However, in some cases the peanut butter that was provided contained poisonous substances due to incorrect production methods. The food that was provided to these children was perhaps enough and nutritious, but it was still not sufficient, because it was unsafe.

### EXAMPLE



### SPECIAL NEEDS OF PEOPLE LIVING WITH HIV

People who live with HIV often need antiretroviral (ARV) drugs to survive. These ARVs, although lifesaving, can cause a variety of diet-related problems. Some people gain weight around their stomachs and backs, while other people may lose a lot of fat. Their diets may need to be adjusted to counter these side effects.

Whether or not food is enough, nutritious and safe depends to a large degree on who is eating the food. Certain groups of people, because of special circumstances, have special food needs to make sure that all their nutritional needs are met.

### EXAMPLE



### CULTURALLY ACCEPTABLE FOOD

- People from the Hindu faith are not allowed to eat meat.
- Orthodox Jews are not allowed to eat pork or other foods that are not kosher.
- Muslims may only eat food that is halaal.

### Acceptable food

Acceptable food refers to the cultural aspect. Often people's culture or religion prescribes that they may not eat particular kinds of food. For food to be sufficient, it must also be culturally acceptable to the people eating it.

## 9.5.2 Duties linked to the right to food

The State's basic duty on the right to food, in section 27(2) of the Constitution, says that it must take reasonable steps, within its available resources, to realise the right to food over time.

When people go hungry or are exposed to malnutrition, there are many possible reasons why they are *food insecure* and many ways in which to ensure that they again become *food secure*. This is why it is not possible to say that the State must do specific things to meet its duties relating to the right to food. To meet these duties, the State must simply use whichever measures it sees fit that will lead to food security.

However, although it is not possible to say specifically which steps the State must take, it is possible to say *which kinds of things* it must do. In broad terms, the State must take steps to ensure that all of the aspects of food security are in place.

## **a) Available food**

The State must take steps to ensure that enough food for everyone is available:

- It must manage food production by farmers so that enough food is produced for the country.
- It must manage the importing of food where we do not produce enough food for our own use.
- It must ensure that natural resources to produce food, like land and water, are used in a way that they are not exhausted.
- It must monitor the food supply in the country so that it can know when it is necessary to act to avoid a crisis.

## **b) Accessible food**

The State must take steps to ensure that available food is accessible:

- It must ensure that food is not too expensive for ordinary people to buy – for example, exempt basic foodstuffs such as maize flour and bread from Value Added Tax, or subsidise the production of these foodstuffs, or introduce price-control.
- It should take steps to enable people to produce food for themselves – for example, sponsor community food gardens and support small farmers through subsidies and through providing access to land.
- Where people are unable to buy food for themselves, the State should step in directly. This can be because of a natural disaster such as a flood, or because people are too old or too young to work and earn money, or they are too poor to buy food and are unable to find employment. The State could provide food directly to people (eg during a natural disaster) or provide money so that people can buy food (eg through food stamps or through social assistance grants).

## **c) Sufficient, safe and acceptable food**

The State must take steps to ensure that available food is sufficient, safe and acceptable:

- It must ensure that producers of basic foodstuffs, such as maize flour and bread, supplement their products with vitamins and minerals.
- It must introduce basic standards for producing, preparing and storing food.
- It must put in place systems to monitor the safety and nutritional value of food.

It is true that the State's basic duty is limited. Although the State must take steps to realise the right to food, it can only be expected to do what is reasonable within the limits of resources and time.

This does not mean that the State can get away with doing nothing. The State must have a plan in place to realise the right to food – a plan that addresses all the different aspects of food security. The State must also actually carry out the plan and be able to show progress in implementing the plan.



The UN's CESCR suggests that States must adopt "national strategies", described in national "framework laws" in which they set out their plans for realising the right to food.

## 9.6

# Violations of the right to food

### EXAMPLES



### STARVATION AND FAMINE

- *If a large number of people in a country starve, it is possible that the State is violating the right to food, but only if the State can in fact be held responsible for the existence of the famine or for not responding properly to it.*
- *If a famine is caused by natural factors (eg drought) or by other factors out of the control of the State (eg a sudden and unfair trade blockage), you cannot say that the existence of a famine means that the State has violated the right to food.*

Generally speaking, the State violates the right to food if it does not maintain food security for everyone. However, there are many different reasons why food security might fail, not all of them in the control of the State. We can only say that the State is violating the right to food if the State in fact caused the failure in food security.

### 9.6.1 Not respecting the right to food

The State violates the right to food if it interferes with people's existing access to food, without providing them with some alternative access to food – in other words, if it does not respect the right to food.

### CASE STUDY



### ZIMBABWE EVICTIONS

For more detail, see the UN website on page 342.

In 2005, the United Nations found that Zimbabwe had violated the right to food of many Zimbabweans through large-scale evictions.

The Zimbabwe Government said that the programme of evictions, called Operation Murambatsvina (Restore Order), was meant to stop illegal land use – illegal structures, small businesses run from residential plots, and small food gardens on residential plots. 700 000 people lost their homes and livelihood, and in many cases their access to food. The people evicted were moved to rural areas where the Zimbabwe Government's plan was to provide them each with a new serviced plot on which to build a home.

However, a UN investigation found that this process was not properly planned and that local authorities in the areas earmarked for these placements would not be able to cope with the renewed demand for infrastructure and services (*Anna Kajumulo Tibaijuka, 'Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina'; UN website*).

## 9.6.2 Not protecting access to food

The State violates the right to food if it does not take appropriate steps to protect people's access to food against other people.

### CASE STUDY



### LABOUR TENANCY DURING APARTHEID

During the apartheid years in South Africa, many black farmers managed to produce food for themselves and their families through labour tenancy agreements with white farmers. The white farmers would allow them to farm on parts of their land in return for their labour.

However, the law allowed the white farmers to evict these labour tenants if they could simply show in court that they were the owners of the land and that the labour tenants had no legal right to occupy it. As labour tenancy agreements were not legally recognised, the law did not protect these farmers and their ability to produce food against white farmers wishing to evict them.

## 9.6.3 Not taking action to restore food security

The State would also violate the right to food security if it does not take steps that have a reasonable chance of realising the right to food. This would happen if it does not take steps to ensure that a sufficient supply of nutritious, safe and acceptable food is maintained, and that people have access to that food.

The State would then violate the right to food because it has not fulfilled the right to food. For example, the State, when faced with a food crisis of some kind, does not respond adequately to restore food security.



## COURT CASE



## RAISING LEVELS OF NUTRITION IN INDIA

In the 1985 case of *Kishnan Pattnayak and Others v State of Orissa*, the Indian Supreme Court decided that the State government had failed in its duty to raise the level of nutrition because it did not prevent people dying from starvation in Orissa State. The Court ordered:

- The State government to appoint qualified people from civil society on its committee dealing with the problem of starvation to make the committee more effective.
- The committee to try to solve the problems of poverty that caused the famine in the first place, rather than just focusing on immediate disaster relief.

## 9.6.4 Not properly providing for food security

The State would not fulfil the right to food if its programme for realising the right to food in some way falls short because it does not provide for an aspect of food security.

## CASE STUDY



## SOUTH AFRICANS IN FOOD CRISIS

Many South Africans live in food crisis, as their access to food is so insufficient that they experience serious health risks. The State assists some of these people with targeted social assistance grants, such as the Child Support Grant for children under 14, the Old Age Pension for men older than 65 and women older than 60, and the Disability Grant for people living with a disability.

However, for those able-bodied people older than 14 and younger than 60 (for women) and 65 (for men) in food crisis, the State provides no regular support. As the State is under a duty to provide access to food to people who, for reasons outside of their control, are unable to provide for themselves, the complete lack of any form of regular assistance to these people may violate the right to food.

## 9.6.5 Not implementing the right to food

The State would not fulfil and thus violate the right to food even when its plan to achieve food security is complete on paper, but is not implemented adequately.

In the past, the Social Relief of Distress Grant could be given to people, often through a food parcel. Before the *Social Assistance Act 13 of 2004* and *Draft Regulations* published in the Government Gazette in February 2005, the Social Relief of Distress Grant was a discretionary grant. Applications for the grant were made to the Director General of the Department of Social Development, who exercised a discretion to award the grant. However, according to the Social Assistance Act and Draft Regulations, this discretion is now given to the Minister of Social Development, who may now make monies available for payment by the new South African Social Security Agency (SASSA) to assist the many people who experience temporary crises of food insecurity, hunger and malnutrition.

For more on developments with the Social Relief of Distress Grant, see Chapter 11 on page 392.

## COURT CASE



## SOCIAL RELIEF OF DISTRESS GRANT

In the 2003 case of *Kutumela v Member of the Executive Committee for Social Services, Culture, Arts and Sport in the North West Province*, people had applied for the Social Relief of Distress Grant, but in spite of clearly qualifying, did not receive it. Their complaint was that:

- Under the Social Assistance Act and its regulations, provincial governments had to provide the grant to eligible individuals applying for the grant.
- Although money had been allocated from the national Government for this purpose, the North West province had not allocated the necessary human, institutional and financial resources for the grant to be provided. As a result, the grant was available on paper but not in practice.

The case resulted in a settlement order directing the North West provincial government to:

- Plan a programme to ensure the effective implementation of the Social Relief of Distress Grant.
- Put in place the necessary infrastructure for the administration and payment of the grant.

## 9.6.6 Reversing progress towards food security

The State also does not fulfil the right to food if it acts in a way that reverses progress achieved in realising food security.

## CASE STUDY



## EXCLUDING POOR PEOPLE FROM AGRICULTURAL LAND SUBSIDIES

The national Department of Agriculture distributes agricultural land to black farmers through a system of State subsidy. Before 2001, qualifying households received a Settlement/Land Acquisition Grant (SLAG) of R16 000 to help them buy land. Municipalities were also empowered to make communal land available to poor people for grazing and cultivation. At this stage, the aim was clearly to enable poor people to produce food for their own subsistence needs and additional income.

The programme was reconsidered in 2000 and replaced with a new programme – Land Redistribution for Agricultural Development (LRAD) – in 2001. LRAD aims more to enable access to the commercial agriculture sector for black full-time, medium- to large-scale farmers. To qualify for a SLAG subsidy, a recipient household had to fall under a maximum monthly income of R1 500. To qualify for a grant under the LRAD, a recipient has to put up at least R5 000 before qualifying for a subsidy.

This requirement means that the poorest of the poor, who previously could benefit from the SLAG-programme and start producing food for themselves, are effectively excluded from the LRAD Grant. In this sense, the Government has taken a step backwards in facilitating access to food.

## 9.7

# Policies, legislation and programmes to implement your food rights

South Africa has a national food policy framework in place – the *Integrated Food Security Strategy for South Africa* (IFSS). Efforts have also been made to draft a food framework law to further address the coordination and management of a national nutritional strategy, although it is not clear what progress has been made on this.

Within this framework, the State runs a variety of programmes. Although various initiatives are in place to ensure that South Africa maintains an adequate food supply, we focus here on the steps the State has taken to ensure that people have access to food.

### 9.7.1 Steps to respect and protect the right to food

The State has taken a number of steps to ensure that there will not be a repeat of the large-scale interference during the apartheid years in people's access to the resources to produce food. The laws enabling apartheid dispossessions, such as forced removals, have been repealed. New laws have been put in place to prevent these practices from happening again.

#### EXAMPLE



#### NEW LAWS ON EVICTIONS

*In the past, it was easy for a property owner to obtain an eviction order from the Magistrates' Court – the owner only had to prove ownership of the land and that the occupier had no legal right to occupy it. New laws now regulate eviction, most notably the **Land Reform (Labour Tenants) Act 3 of 1996**, the **Extension of Security of Tenure Act 62 of 1997 (ESTA)**, and the **Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE)**.*

*These new laws direct the courts to:*

- *Look at all the relevant circumstances before deciding whether or not to grant an eviction order, including the hardship that the occupiers would experience if the order was granted. Where the land is used to produce food, this is relevant to the court's decision whether or not it should grant an eviction order.*
- *Consider whether or not alternative accommodation is available to farm workers or labour tenants before granting an eviction order.*

For more on evictions, see Chapter 6 on page 214 and Chapter 7 on page 247.



## EXAMPLE



### NEW LAWS ON TAKING LAND

*Section 25 of the Constitution says that the State may now only take land only if it is to be used for a public purpose, and if just and equitable compensation is paid. The specific circumstances will determine things like what amount of compensation must be paid, and the time and manner in which it must be paid to people losing their land.*

*Where the State takes land from people that they use to produce food for themselves, the fact that this land was used for people to exercise their constitutional right to food will be very relevant to the question of what fair compensation would be.*

These new steps prevent the State from interfering unfairly in people's access to food and also protect people's access to food against interference from other private parties.

## 9.7.2 Steps to fulfil the right to food

### a) Facilitating access to food

The State has taken a number of steps to make it possible for self-sufficient people to gain access to food for themselves. These steps help to facilitate access to food, either by people producing food for themselves or earning an income to enable them to buy food.

## EXAMPLES




### PROGRAMMES ENCOURAGING ACCESS TO FOOD


- *The Department of Agriculture's Food Security and Rural Development Programme provides agricultural starter packs and food production information packs to food insecure rural households.*
- *The Department of Agriculture's Land Redistribution and Development Programme provides financial assistance for small farmers.*
- *The Department of Public Works' Community-Based Public Works Programme creates jobs through community involvement in public works programmes, so that people can earn money to buy food*
- *The Department of Social Development's Poverty Relief Programme provides:*
  - *Support for rural community food gardens.*
  - *Skill development to create employment opportunities for youth.*
  - *Local economic development projects for poor rural women to generate income.*
- *In 2001, in reaction to very sharp rises in the prices of basic foodstuffs, the State made agreements with food retailers to provide food to the poor at special low prices, thus making it easier for poor people to buy food.*

## b) Providing access to food

There are also a variety of programmes that more directly provide access to food to people who cannot access food for themselves. The State is under a duty to provide food or the means with which to buy it to people who cannot look after their own needs, such as children, the elderly, people living with disabilities, people hit by natural disasters, and people who are indigent and unable to find work.

EXAMPLES	
	
ASSISTING VULNERABLE GROUPS	<ul style="list-style-type: none"><li>• <i>The State provides cash social assistance grants to children, the elderly, people living with disabilities, foster children and war veterans. These grants are meant to enable the recipients to buy food.</i></li><li>• <i>The State provides food directly to children through:</i><ul style="list-style-type: none"><li>- <i>The Primary School Feeding Scheme – a nutritious meal is given to needy primary school children once every school day.</i></li><li>- <i>The Programme targeting children with acute Protein Energy Malnutrition (the PEM Programme) – seriously malnourished children are admitted to hospital where they are treated and provided with an intensive diet until they recover.</i></li></ul></li><li>• <i>In 2002, in response to sharp rises in food prices that made food economically inaccessible to poor people, government introduced a programme to provide food parcels and agricultural starter packs to destitute families for three months at a time.</i></li></ul>

## c) Ensuring nutritious and safe food

EXAMPLE	
	
IODISATION OF TABLE SALT	<p><i>In response to studies that showed that unacceptably high numbers of children in South Africa suffered from iodine deficiency, the State passed legislation requiring the iodisation of table salt. For example, this means regulating food production and sale to include:</i></p> <ul style="list-style-type: none"><li>• <i>Adding micronutrient supplements.</i></li><li>• <i>Providing nutritional information on packaging.</i></li></ul>

The State also runs programmes to ensure that food is nutritious and safe. The most important is the Department of Health's Integrated Nutrition Programme, providing nutritional education and addressing the lack of micronutrients in some foods.

## d) Monitoring food security

There are also programmes to monitor national and household food security in South Africa. An important recent addition to these programmes is the appointment of the Department of Agriculture's National Food Pricing Monitoring Committee (for a period of one year) to investigate and advise government on food prices in South Africa.



## 9.8

# Evaluation of steps taken

Our description of the State's strategy to realise the right to food shows that the State has done many things to meet its duties to do with the right to food. As required by international law, it has created a national strategy to realise the right. This strategy contains at least some programmes to meet all the duties related to the right to food. However, there are important areas in which the State still fails to give effect to its duties around the right to food.

### 9.8.1 Problems with scope and implementation

Many of the State's programmes aimed at realising the right to food are much too small to deal with the problem of food insecurity.

#### EXAMPLE



#### LIMITED IMPACT

*The State runs a number of programmes to make it possible for people to produce food for themselves or to earn an income to use to buy food for themselves. By 2001 these programmes reached a total of only 120 000 people. More than 14 million people in South Africa are food insecure and 11 million of these people receive no social assistance grants from the State.*

*Many of the State's programmes that look good on paper fail in practice because they are not implemented properly. This is often due to a lack of money or of people skilled in implementing these programmes.*

#### EXAMPLE



#### FARM WORKERS AND LABOUR TENANTS

*The protection provided to farm workers and labour tenants against eviction through ESTA and the Land Reform (Labour Tenants) Act is important to help ensure food security, as many of them rely on small farming on the land on which they live as a source of food. However, both these laws are not implemented properly:*

- *In most areas, there is no legal assistance for farm workers and labour tenants to help them rely on the protection of these laws.*
- *Magistrates often do not know about these laws and do not apply them.*
- *Most farm workers and labour tenants do not know about protections under these laws.*
- *As a result, many people are evicted from farms without the protection of these laws.*

### 9.8.2 Gaps in the State's strategy

We have seen that so many people in South Africa do not enjoy food security and are in a desperate situation. They are unable to afford even a basic subsistence diet for themselves and their families. These people do not go hungry through any fault of their own – South Africa's high unemployment rate means that, for most of them, it is simply impossible to find a job.

The State has a duty, under both international and South African law, to take steps to give these people access to food. This means that the State must provide food or the means with which to buy food directly to people in need. If we think about this duty, the State's current food security strategy simply has a very big gap.

Most of the State's food security programmes facilitate access to food through capacity-building and income-generation. State programmes that do provide food or money to buy food directly to people benefit only specific groups:

- The Primary School Feeding Scheme – primary school children.
- The PEM Programme – severely malnourished children treated at public health facilities.
- The Child Support Grant – children under 14.
- The State Old Age Pension – men older than 65 and women older than 60.
- The Disability Grant – people living with a disability.

The State's existing programme thus does not make any provision for the basic food needs of a large number of South Africans who find themselves in long-term food crisis.

## 9.9

# Protecting and advancing your food rights

The responsibility to advance, protect and defend the right to food rests both on the Government and on people who have the right. People who benefit from the right to food must make use of existing programmes to exercise their right to food. To do this, they must know about these programmes and their rights under these programmes.

Organised civil society and individuals can lobby government to ensure that the right to food is properly prioritised in policy and planning, and can assist people to make use of their food rights.

### 9.9.1 Making use of existing opportunities

There are many existing programmes that people can use to realise their own access to food. These programmes provide training in food use and production, access to food production opportunities and, in some cases, direct provision of food. Some of these measures also protect people against interference with their access to food.

Programme	What it does	Who is responsible	How to make use of it
Primary School Feeding Scheme	Provides a nutritious snack to primary school children	Department of Education	Operates at about 80% of primary schools – contact Department of Education
PEM Programme	Inpatient treatment of severely malnourished small children	Department of Health	Contact local hospital or provincial Department of Health
Community Based Nutrition Project	Provides education on food use and small-scale food production	Department of Health	Contact provincial Department of Health
LRAD Grant	Provides financial and other assistance to set up small farmers	Department of Agriculture	Contact Department of Agriculture or local agricultural extension officer
ESTA and Land Reform (Labour Tenants) Act	Says that a court may only grant an eviction order against farm workers or labour tenants if it is just and equitable in all relevant circumstances	Department of Land Affairs	Contact local police station, Magistrates' Court, local authority, or local office of the Department of Land Affairs



## 9.9.2 Influencing laws and policies

Civil society should lobby the Government to prioritise implementing the right to food in its budgeting, planning and policy.

### GUIDELINES



### TAKING ACTION

For more on a basic income grant, see Chapter 11 on page 388.

1. Persuade the Government to introduce some kind of general social assistance, such as a basic income grant, so that people currently not receiving social assistance from the State will be covered and will be able to buy food.
2. Pressurise the Government to improve implementing programmes aimed at realising the right to food, such as providing the Social Relief of Distress Grant and properly applying the security of tenure laws, like ESTA.
3. Lobby the Government to introduce regulation of the food industry that will address dangerous rises in the price of basic foodstuffs.

A lesson can be learnt about this from the experience of Brazil, a country similar in many of its problems to South Africa.

### CASE STUDY



### CIVIL SOCIETY LOBBYING IN BRAZIL

In Brazil, political pressure from civil society organisations resulted in creating a special government body to coordinate government policy on issues relating to the right to food. It works in partnership with Brazilian and international non-governmental organisations (NGOs). The result has been that Brazil has developed a coordinated policy dealing with all aspects of the right to food, and has been successful in reducing its levels of hunger and malnutrition.

### 9.9.3 Information, training and assistance

People and organisations working on advancing the right to food should also focus on educating people on the right to food and assisting them to exercise their right to food.

#### GUIDELINES



#### INFORMATION AND AWARENESS WORK

Training workshops and programmes can:

1. Inform people about the different training and financing programmes provided by government to help you to provide for your own food needs.
2. Advise people about the best ways to use and prepare food to get the best nutrition out of the food.
3. Train people in land use and conservation, including agricultural training and environmental awareness programmes, to enable them to make best use of opportunities to produce their own food.
4. Inform farm workers and labour tenants of their rights under security of tenure laws, and of ways of claiming and enforcing these rights.
5. Give legal assistance to farm workers and labour tenants when they are threatened with eviction.

### 9.9.4 Monitoring by NGOs

Problems in realising the right to food and cases where the State violates the right to food can only come to light if information is available about the nutritional status of people in South Africa and about progress with implementing government food security programmes.

#### GUIDELINES



#### MONITORING

NGOs monitor different issues relating to food security. This monitoring can:

1. Focus on progress with implementing existing government programmes, such as the Primary School Feeding Scheme, the PEM programme, LRAD and the security of tenure laws.
2. Point out areas where existing programmes do not address the problems of people who are food insecure.
3. Identify groups of people who are particularly vulnerable to food insecurity and the reasons for their specific vulnerability.



## Discussion ideas



### TALKING POINT 1

*Divide into two groups to discuss and share experiences on:*

- *How to use existing programmes that open access to food production. Are there problems with these programmes?*
- *How to provide and produce food for own use (eg food gardens).*
- *How to conduct small-scale commercial farming for profit.*
- *How to obtain access to agricultural land (eg credit facilities, land redistribution programmes, security of tenure programmes).*
- *How to use and conserve land to enhance food production.*

## TALKING POINT 2

*Divide into two groups to discuss and share experiences on:*

- *Which foods that are available to you are the most nutritious?*
- *What are the special food requirements of different groups, such as children, the elderly, pregnant and breastfeeding mothers, or people living with HIV?*
- *What are the safest, most nutritional ways to prepare the food that is available to you?*
- *How can you store food so that it lasts longer?*

## TALKING POINT 3

*In a big group, read and comment on this point of view:*

*“People must be made aware that realising food rights depends on realising other rights, such as land rights and rights to education. They must also be made aware that realising all these rights very often depends on the socio-economic position of people. This will help people understand the causes of hunger and malnutrition.”*

- *Do you agree with this point of view?*
- *What problems in your area, besides the simple availability of food, affect the access of people around you to food?*
- *Whose responsibility is it to try and change these factors?*
- *How can these factors be changed?*





## TALKING POINT 4

You notice that the price of the basic food that you buy every week, such as maize flour, bread and potatoes, is suddenly much higher than before.

*Discuss these questions in pairs and then in a big group:*

1. *Is this a violation of the right to food?*
2. *If this is a violation of the right to food, why, and who is responsible for it?*
3. *What can you do about this problem and who will you ask for help?*

## TALKING POINT 5

You and your family have lived on a farm your whole lives, working for the farmer. You have always planted some maize, potatoes and pumpkins, and raised some chickens and sheep for extra food. The farmer sells his land to a big company that wants to establish a game farm on the property. As a result, they notify you that you and your family must leave the farm.

*Break up into two groups and discuss these questions:*

1. *If the company evicts you from the farm, does this violate your right to food?*
2. *If it is a violation of your right to food, why, and who is responsible for it?*
3. *What can you do and who can you approach to try to prevent the company from evicting you from the farm?*



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