



# THE RIGHT TO FOOD AND NUTRITION



# MANUAL

for Activists and Legal Practitioners in Uganda

# The Right to Food and Nutrition

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# 1

## INTRODUCTION

The right to adequate food and nutrition (RtFN) is a fundamental right. Without food, human beings cannot survive, and all other rights will become meaningless. It is therefore crucially important to fully realise this right. The RtFN can be achieved through the enforcement of the various international, regional and domestic instruments which protect human rights in general. The achievement of the right to food and nutrition requires among others engaging in advocacy, research and capacity building.

The Committee affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all.

United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food, E/C.12/1999/5, para 2

The law has recognised the right to adequate food at various levels, starting from the international, regional up to the national levels. There are several instruments which recognise the right to food and nutrition. These include among others treaties, general comments, resolutions, guidelines, national constitutions and laws, etc... These instruments (legal frameworks) provide the basis for the enforcement of the right to food and nutrition. There are many organisations and agencies

using research, lobbying, advocacy and litigation to promote the right to food and nutrition using these instruments. In Uganda, it is nevertheless important for advocates of the right to food and nutrition to gain knowledge about the right to food and nutrition instruments and be equipped to ensure its full realization.

## **1.1. Purpose of Manual**

This Manual is designed for advocates of the right to food and nutrition in Uganda. It is intended to enhance the knowledge and skills of the advocates to enable them effectively to ensure the realization of the right to food and nutrition. The insurance of the full realization of the right to food and nutrition could be through among others litigation, advocacy and capacity building. Areas of information that could improve the knowledge and skills of the advocates and which form the content of this Manual include the following:

- I. Context of food, nutrition and livelihood
- II. International law and its role
- III. Human rights obligations of states
- IV. Human rights obligations of non-state actors
- V. Normative nature of the right to food and nutrition
- VI. Human rights and the right to food and nutrition in Uganda
- VII. Strategies for the protection and promotion of human rights
- VIII. Litigating the right to food and nutrition

# 2

## FOOD, NUTRITION AND LIVELIHOOD: THE CONTEXT

This chapter sets the stage for the broader discussion on the right to food and nutrition. It fleshes out the elementary concepts such as the definition of food, livelihoods, food scarcity, vulnerability and nutrition. These concepts are illustrated using examples drawn from all over the world, including Uganda.

### 2.2. Food definition



Food may be defined as any item that one consumes in order to provide the body with nourishment and/or energy. These items often contain nutrients such as proteins, carbohydrates, fats and vitamins which the body extracts and utilizes through the process of digestion. From a scientific perspective, human beings are considered omnivores, meaning that their diet is composed of a variety of food sources such as plants, animals and insects.

For purposes of food security and food sovereignty (elements which are part of the right to food and nutrition), food may be categorized into three classes. These are perishable foods, semi-perishable foods and non-perishable foods. Each of these classes is briefly discussed below.

(i) Perishable foods

These include plant-based foods such as fresh fruits and vegetables, as well as animal based foods such as milk, eggs, fish and beef. Fruits and vegetables provide vitamins, minerals and dietary fibre, while milk, eggs and meat are important sources of proteins and B-Vitamins.

(ii) Semi – perishable foods

This class of foods is primarily made up of plant-based foodstuffs. These include roots and tubers such as potatoes, cassava, yams and onions. There are also fats and oils, processed cereals and pulse products, as well plantains (matooke). This class of foodstuffs is rich in carbohydrates.

(iii) Non – perishable foods

These are also essentially plant based foodstuffs rich in carbohydrates which the body uses to provide it with energy. They include whole grain cereals, pulses, nuts, oil seeds and sugar.

## 2.2. Food and human livelihood

Livelihood refers to the various means that people use to obtain the necessities of life. Regarding food and nutrition, the earliest known livelihood for man is gathering. Pre-civilization mankind roamed the lands in search of fruits and other bounties of nature that were readily available for consumption. At the dawn of civilization, tools were fashioned with which they started fishing and hunting animals for food. However, the principal source of livelihood in contemporary times is agriculture. This takes on various forms such as crop growing and animal rearing.

In Uganda, agriculture is considered the main source of livelihood for the majority of the population. At independence in 1962, the country was perceived as being self-sufficient in food. During this period, agricultural production thrived, and the food produced exceeded that is consumed. However, the political instability that besieged the successive governments led to a slump in food production, causing widespread food insecurity and malnutrition. Although political stability was later restored, studies have shown that the current level of agricultural production does not meet the demand because the rate of population growth exceeds the productive capacity.<sup>1</sup>

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<sup>1</sup>Uganda's Initial State Report to the UN Committee on Economic, Social and Cultural Rights, paragraph 110.



Photo by: Ana Maria Suarez Franco

### 2.3. Hunger and food scarcity

There are situations where the available food in a country or part of it is so little that the people in such places suffer severe and prolonged hunger, leading to acute malnutrition and death by starvation or disease. Such situations are often referred to as famines. Famines last for given periods of time, although they may be recurrent in some areas. Places with recurrent famines among other things suffer from various things one of which is chronic food shortages.

In Uganda, one of the areas suffering from chronic food shortages is the Karamoja sub-region comprising of the districts of Moroto, Napak, Amudat, Nakapiriprit, Kotido, Kaboong, and Abim. Due to extreme poverty and prolonged droughts, many people often turn to tree leaves as a source of food. Not surprisingly, one study showed that in this area, chronic malnutrition (stunting) affects 45% of children under five years against a national average of 33%. Underweight amongst children under five years in Karamoja stands at 31.9% against a national average of 14%, while wasting stands at 7.1% against a national average of 5%.<sup>2</sup>

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<sup>2</sup> Peterson K. Kikomoko et.al, Assessing Chronic Food and Nutrition Insecurity in the Karamoja Region of Uganda: A Human Rights Perspective, Uganda Citizens Initiative for the Right to Adequate Food, Kampala, 2014.

Such food shortages are caused by either natural occurrences or human actions, or a combination of both. Natural causes include drought, flooding and diseases that wipe out entire crops or herds.

## **2.4. Food and vulnerability**

Vulnerable persons are those who are in need of special care owing to circumstances which actually or potentially disempower them. In the food rights context, these are persons who lack economic or physical access to food. According to a vulnerability profiling study conducted by the government of Uganda in 2004, there are 3 broad categories of vulnerable persons. These are based on conflict, demographics and poverty.

Under conflict related vulnerability, the identified groups included refugees, internally displaced persons, war orphans and traumatized civilians. The second category was based on demographics, and it included Persons Living with HIV/AIDS, child headed households and Persons with Disabilities. The final category was based on poverty and it included the unemployed, low paid workers and the landless. It is important to note however that women are in a special way at the core struggle towards just and fair food systems and are very important actors in the struggle for the right to food.

Such categorization is important because it helps the government design targeted responses in the course of discharging its human rights obligations to respect, protect and fulfil the right to food and nutrition. For instance, the sudden eviction of landless persons squatting on government land may deprive them of physical access to food and nutrition and hinder the enjoyment of this right. Eviction of fishing communities from their traditional fishing grounds in communities around Lake Victoria in the last 4 years for example has also denied many of them their right to food and nutrition and increased their vulnerability. The denial constitutes the violation of the respect obligation of the right to food and nutrition of the fishing communities. Similarly, interventions aimed at complying with the right food and nutrition obligations for such persons would vary according to the category each person falls in. For example, landless people need access to land and/or economic means (i.e incentives) to ensure that she/he can feed herself/himself, while refugees and internally displaced persons need to be fed and where possible provide them with land to produce food and be able to feed themselves and their families.

## **2.5. Food and nutrition**

Nutrients may be defined as components of food that are needed by the body in adequate amounts to grow, reproduce and lead a normal, healthy life. They include water, proteins, fats, carbohydrates, minerals and vitamins. The interaction of these components in the body to enable its optimum functionality is what is known as nutrition. Essentially, nutrition is a product of the kinds of foods supplied to the body and how the body utilizes them.



Malnutrition refers to a lack, excess or imbalance of nutrients in the diet. It manifests in either undernutrition or over nutrition. Undernutrition is a state of an insufficient supply of essential nutrients to one's body while over nutrition refers to an excessive intake of one or more nutrients, which creates a stress in the bodily function.

Malnutrition may manifest in an irritable personality, poorly developed body, abnormal body weight, small or flabby muscles, pale or sallow skin, too little or too much fat, dull or reddened eyes, lusterless and rough hair, poor appetite, lack of vigor and endurance for work and susceptibility to infections.

In conclusion, it is important to appreciate that the right to food and nutrition operates within a composite context. It brings together several disciplines such as among others, agriculture, social justice, health, culture, economics and legal frameworks. Understanding the various interactions amongst these disciplines provides a firm foundation for respecting, protecting and fulfilling the right to food and nutrition.

# 3

## INTRODUCTION TO PUBLIC INTERNATIONAL LAW

Any discussion of the enforcement of human rights cannot be complete without reference to public international law (PIL). PIL defines standards to which states have committed. Human rights law is part PIL. Among these are human rights standards which inform the obligations of states in dealing with these rights. Indeed, PIL has proven to be an important source of law in adjudicating human rights cases and has been relied on by judges across legal systems. It is therefore important to refer to principles of international law when arguing human rights cases. These principles are important sources of filling lacunas in the domestic law.

### 3.1. Definition of international law

[W]hen classified with respect to the external factors determining conduct, [international law] may be divided into the jural conception of the conduct of bodies which are not subject to the restraints of external political power, and the jural conception of the conduct of bodies which are so subject. Independent states have also been distinguished and described as the only bodies in the world whose conduct is not subject to external political power. International law, therefore, is that branch of law which relates to the conduct of independent states. ... [S]tates are living organisms having certain inherent powers and unrestrained by any exterior political power. The unrestrained exercise of this power would result in anarchy. Each state is in fact restrained by certain factors, and the exercise of restrained power by a state results in an appreciable amount of international order.

Roland R. Foulke Source Definition and Nature of International Law (1919) Columbia Law Review, pp. 429-466

In this shrinking world, states are increasingly interdependent and interconnected, a development that has affected international law. Early international law dealt with bilateral relations between autonomous states. The principal subjects until well into this century were diplomatic relations, war, treaties and the law of the sea. One of the most significant developments in international law during the twentieth century has been the expanded role played by multilateral treaties addressed to the common concerns of state. Often they clarify and improve rules of international law through the process of rendering them in binding written agreements. These treaties also promote the coordination of uniform state behavior in a variety of areas. They contribute to the coordination and facilitation of contemporary international relations on the basis of legal principles.

Jonathan I. Charney "Universal International Law" (1993) 87 The American Journal of International Law, pp 529 - 551

### 3.2. Sources of public international law

One of the cardinal principles in the application of any body of law is to determine its source, that is, where to find the law. Indeed, this will become relevant for lawyers and advocates indicating to enforce the right to food and nutrition. They need to know the sources to apply for the relevant principles. The sources could also help in deciding the appropriate forum to enforce the right.

The sources of PIL are defined in the Statute of the International Court of Justice (ICJ).

#### Statute of the International Court of Justice

38. *The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:*

*International conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations; (d) subject to the provisions of Article 59, judicial decisions and teachings of the most highly qualified publicists of the various nations, as subsidiary means of determination of rules of law.*

### 3.3. Obligations of states under international human rights law

States like human beings enjoy rights and have duties imposed on them. Traditionally, the duties of states have largely been towards other states. However, this has been changing. States now have international obligations towards all of its inhabitants. One area this is clearly seen is in the area of international human rights law. These and other duties are a matter of public international law.

Excerpt

**Draft Declaration on the Rights and Duties of States**

Adopted by the International Law Commission, taken note of by the UN General Assembly in resolution 375 (IV).

...

**Article 3**

Every State has the duty to refrain from intervention in the internal or external affairs of any other State.

...

**Article 6**

Every State has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms, without distinction as to race, sex, language, or religion.

**Article 13**

Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.

### 3.4. Place of human rights law

International human rights law can be traced in all the sources of PIL, including in customs, treaties, judicial decisions, writings of jurists and decisions of judicial and quasi-judicial bodies. This means that states have an obligation to protect, respect and fulfill human rights, and especially so as part of their international law responsibilities. However, the most authoritative sources of international human law are the international human rights treaties states have ratified. The treaties express the consensus of states regarding human rights norms and confirm the universality of these norms.

Customary international law is also a source of international human rights law. Through customary international law, states are bound to comply with certain principles whether they have formally ratified an international legal instrument or not. The latter includes, among others, general principles of law, the international principle of non discrimination, and rights recognized in the Universal Declaration of Human Rights.

International human rights treaties have however been complemented by several other instruments such as declarations, guidelines and general comments, among others. Also relevant are principles emerging from judicial and quasi-judicial decisions interpreting the various international instruments. All these, together with the treaty, form the body of human rights.

A series of international human rights treaties and other instruments adopted since 1945 have conferred legal form on inherent human rights and developed the body of international human rights. Other instruments have been adopted at the regional level reflecting the particular human rights concerns of the region and providing for specific mechanisms of protection. Most States have also adopted constitutions and other laws which formally protect basic human rights. While international treaties and customary law form the backbone of international human rights law other instruments, such as declarations, guidelines and principles adopted at the international level contribute to its understanding, implementation and development. Respect for human rights requires the establishment of the rule of law at the national and international levels. International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

United Nations Office of the High Commissioner for Human Rights International Human Rights Law, at

<<https://www.ohchr.org/en/professionalinterest/pages/internationalallaw.aspx>>

## International and Regional Human Rights Treaties and Status of Ratification in Uganda

INSTRUMENT	DATE OF RATIFICATION BY UGANDA
International Covenant on Civil and Political Rights (ICCPR)	21 September 1995
International Covenant on Economic, Social and Cultural Rights (ICESCR)	21 April 1987
Optional Protocol to ICCPR	14 February 1996
Convention on the Elimination of Racial Discrimination (CERD)	21 September 1980
Art 14 of CERD	Not ratified
Convention on the Elimination of Discrimination of Discrimination Against Women (CEDAW)	21 August 1985
Protocol to CEDAW	Not ratified
Convention on the Rights of Children (CRC)	10 September 1990
Protocol to CRC - Armed Conflict	06 June 2002
Protocol to CRC - Sexual Exploitation	18 January 2002

Genocide Convention	14 November 1995
Slavery Convention 1927	12 August 1964
Supplementary Slavery Convention 1956	12 August 1964
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	26 June 1987
Convention on the Rights of Migrant Workers and Members of Their Families	01 July 2003
Convention on the Rights of Persons with Disabilities (CRPD)	25 September 2008

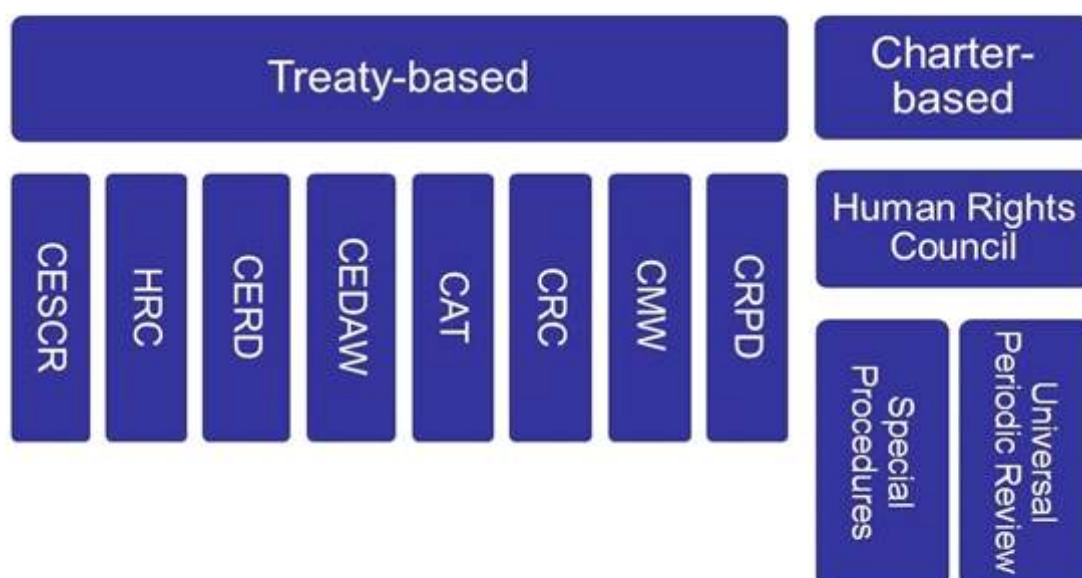
### 3.5. International and Regional Human Rights Mechanisms

The international human rights framework has an elaborate system for the protection and promotion of human rights. This system comprises mechanisms, procedures and institutions with mandates to promote and protect human rights. Some of the institutions have judicial or quasi-judicial powers and which can be invoked to enforce human rights.

At the United Nations, the mechanisms are divided into **Charter-Based Mechanisms** on one hand and **Treaty-Based Mechanisms** on the other. The **Charter-Based Mechanisms** are the structures, procedures and systems that derive directly from the Charter of the United Nations. On the other hand, the Treaty-Based Mechanisms derive from the various multi-lateral human rights treaties.



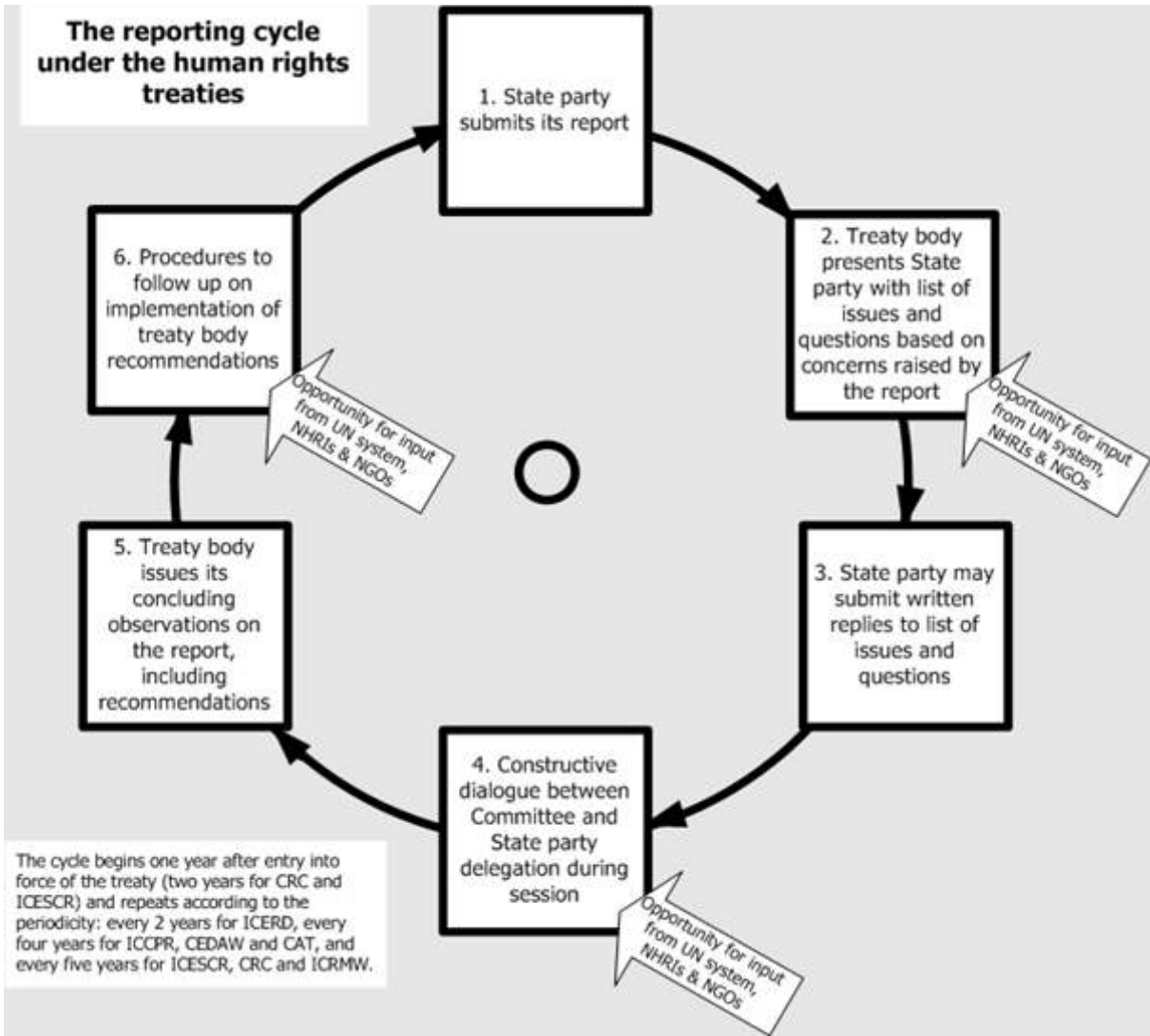
## International human rights mechanism



**The Charter-Based mechanisms** comprise mainly of procedures for the promotion of human rights and include peer review processes. The most far reaching in recent times is the Universal Periodic Review (UPR) mechanism, a mechanism of the Human Rights Council. This peer review mechanism allows member states of the Human Rights Council to assess each other's performance as far as upholding the international human rights standards are concerned. The process starts with the state to be reviewed preparing a report, which is submitted to a working group of a few states selected to study the report. The working group also receives reports compiled by UN Agencies and civil society organisations. The Group prepares a report with recommendations for discussion and adoption by the Council. The state under review has the right to accept all the recommendations. States have always accepted some and reject others. The state is then tasked to implement the recommendations it has accepted, through submission of a mid-review report, ahead of another round of review.



The Treaty based mechanism is comprised of treaty bodies, which are special committees of experts established by the multi-lateral treaties. These Committees have mandates to promote and protect human rights. Treaty Committees are the interpretative authorities of the respective international human rights treaties they are set out to monitor. In their protective mandate, the Committees receive and consider reports from states indicating measures in place to realise the rights and deal as well with challenges faced. The Committees after considering reports, issue recommendations called Concluding Observations. During the reporting process, CSOs have the opportunity to submit parallel reports, alternative to the state report, giving the committees supplementary information to help them fully appreciate the human rights situation in the country.



One of these is the power to entertain and consider complaints and issue quasi-judicial decisions in this regard. In this, CSOs have the opportunity to submit complaints in respect to those countries that have accepted the quasi-judicial mandates of the committees. With respect to the economic,

social and cultural rights, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights has allows the Committee on Economic, Social and Cultural Rights to receive and consider complaints.

The Optional Protocol includes three procedures:

- A complaints procedure
- An inquiries procedure
- An inter-State complaints procedure

### **1. The Complaints Procedure**

Provides an opportunity to seek remedy and compensation in individual cases when a State violates ESCR;

Provides the possibility to access a procedure to seek justice at the international level when access to justice at the national level has been denied;

Provides the CESCR with an opportunity to advance new jurisprudence (legal interpretation about the content of State's obligations) on ESCR;

Provides a legal mechanism within which contributions of claimants, States, third parties and the Committee itself can help to further define and clarify the nature and scope of the ESCR protected under the ICESCR.

#### **Who Can Present a Complaint?**

Individuals or groups of individuals, who allege to be victims of violations of the ICESCR and who have not found effective remedies within their own country, can file a complaint. In addition, third persons may file complaints on behalf of these individuals or groups of individuals with their consent.

Third persons may file complaints on behalf of presumed victims, without their consent, but must justify acting on their behalf.

### **2. The Inquiry Procedure**

When a State Party agrees to be bound by the inquiry procedure, the Committee will also be able to initiate and conduct investigations into grave or systematic violations of ESCR. This procedure adds to the complaints and periodic reporting procedures as it:

Allows the Committee to respond in a timely fashion to serious violations taking place within a State Party instead of waiting until the State's next periodic report to the CESCR is submitted:

Offers a means to adequately address systematic or widespread violations of ESCR in cases where individual complaints are not adequate to reflect the extent of the situation;

Addresses situations where individuals or groups are unable to submit complaints due to practical constraints or fear of reprisals.

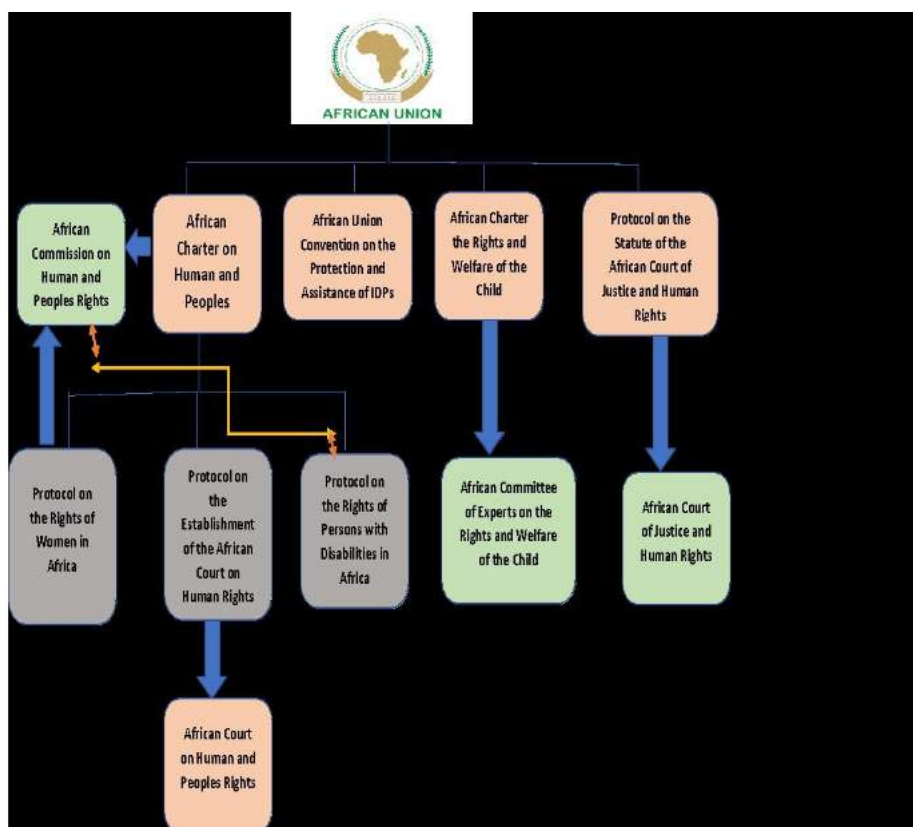
### **3. The Inter-State Complaints Procedure**

The OP-ICESCR also includes a second opt-in procedure, the inter-State complaints procedure. States that opt into this procedure can make complaints against other States Parties and have complaints made against them.

ESCR-Net What is the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, available at <https://www.escr-net.org/ngo-coalition-op-icescr/what-op-icescr>

A similar mechanism has been set out at the regional level. This is the African Union level for Africa (AU). The AU mechanisms can be used to promote and protect the right to food and nutrition. The main human rights instruments in Africa is the African Charter on Human and Peoples' Rights (ACHPR). Together with their instruments as elaborated in the Table below, indicate the status of their ratification by Uganda.

INSTRUMENT	DATE OF RATIFICATION BY UGANDA
African Charter on Human and Peoples Rights (ACHPR)	10 May 1986
African Charter on Children on the Rights and Welfare of the Child (ACRWC)	17 August 1994
Protocol to the African Charter on Human and Peoples on the Rights of Women in Africa	18 December 2010
Protocol on to the African Charter on Human and Peoples Rights on the Establishment of the African Court on Human and Peoples Rights	16 February 2001
Protocol of the Court of Justice of the African Union	Not ratified
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa	
Protocol to the African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities in Africa	Not ratified



### 3.6. International Human Rights Law in Domestic Courts

**PIL** is a source of law in domestic courts and can be invoked by lawyers handling human rights cases. However, the manner in which public international law is applied in domestic courts depends on the doctrine to which the country subscribes. There are two doctrines, **monism** and **dualism**. The doctrine of monism provides that international law part of domestic law. This means that once a state ratifies a treaty, such a treaty automatically become part of domestic law. On the other hand, the dualist doctrine maintains that international and domestic law are not the same. That for international law to become part of domestic law, it must be transformed through a process of domestication. This can be through converting the international principles into a domestic law.

The relationship between international law and domestic law is often portrayed in terms of the monism-dualism dichotomy. African civil law countries have traditionally been seen as monist and common law countries as dualist. However, ... courts in many traditionally dualist countries in Africa use international law to a larger degree than explicitly monist countries such as those of Francophone Africa. In fact courts in most civil law countries oppose the direct applicability of international law and make little use of international law in interpreting constitutional provisions.

...  
Monist theory provides that international law and national law are manifestations of a single conception of law. Municipal courts are bound to directly apply international law without any recourse to adoption by courts or transformation by the legislature. ... Upon ratification and publication at the domestic level, international treaties become part and parcel of the law of the land.

...  
Dualist theory provides that international law and domestic law are separate legal systems.<sup>51</sup> If international law is not transformed into national law through legislation, national courts cannot apply it. In Africa, dualism is generally associated with common law countries, the countries once colonised by Britain.

Excerpt from Magnus Killander & Horace Adjolohoun "Introduction' in Magnus Killander (ed) International law and domestic human rights litigation in Africa (2010) Pretoria University Law Press, pp 4 – 11

Although Uganda is a dualist country, the courts have applied an approach which is between applying only those instruments which have been domesticated to apply applying international human rights principles as if they are part of domestic law.

### 3.1 Judicial avoidance of questions of international law

One approach adopted by judges has been to simply avoid engaging with questions of international law which has taken the form of deciding cases on the narrowest possible grounds as long as they are perceived to be sufficient to dispose of the case at hand.

...

### 3.3 International law as a guide to constitutional interpretation

The above notwithstanding, one major application of international law by Ugandan judges has been as a guide to interpretation of the 1995 Constitution, following an approach that has been adopted by a number of other commonwealth jurisdictions.<sup>2</sup>

### 3.2 Advocates' case strategies

On other occasions the failure to deal squarely with questions of the application of international law has been a result of a deliberate choice by counsel to restrict their assertions to domestic law as opposed to judicial reluctance to engage with the relevant international law issues.

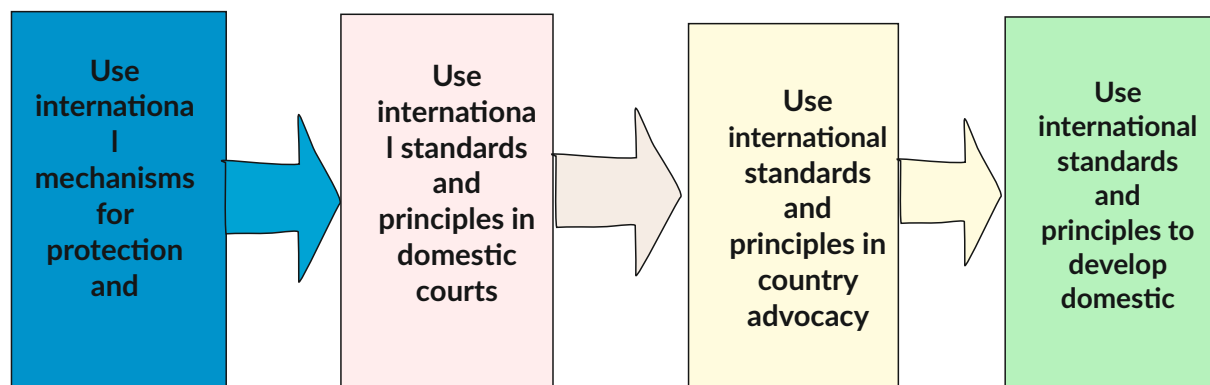
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Busingye Kabumba "The application of international law in the Ugandan judicial system: A critical enquiry" in Magnus Killander (ed) *International law and domestic human rights litigation in Africa* (2010) Pretoria University Law Press, pp 83 – 90

## 3.7. Using International law to enforce the right to food and nutrition

International law is a useful tool that could be used by advocates of the right to adequate food and nutrition. This body of law can be used in the following ways:



# 4

## THE RIGHT TO FOOD AND NUTRITION AND THE OBLIGATIONS OF STATES

The existence of a right on one hand, imposes a state obligation on the other. States have several obligations to discharge such that persons can be able to enjoy these rights, including the right to food and nutrition. First, the State has three obligations; the obligation to respect, to protect and to fulfil. The obligation to promote was subsequently added to the list and is now considered as part of the generic State obligations. A second category of obligations is those obligations defined by the specificity of their approaches and outcomes. These are the duties of conduct and duties of results. Finally, there are obligations which delimit what constitutes outright infringements of the right to food and nutrition, and these are the obligations related to violations and abuses. Underpinning the discharge of these various obligations is the concept of progressive realization. It is a recognition of the differences in the size of resources available to various States to discharge

In some parts of this Chapter, the case of *Baleke Kayira Peter, Sebwato Patrick & Mugerwa Antonio v. Attorney General, Kaweri Coffee Plantation Ltd & Eng. Emmanuel Bukkokayira* (the Kaweri case, Civil Suit No. 179 of 2002) has been used to illustrate most of these obligations since it touches on vital aspects of the right to adequate food and nutrition. The brief facts of this case are that sometime between 17 and 21 of August 2001, government security forces evicted the inhabitants of four villages in Mubende district to pave way for the establishment of a coffee farm by Kaweri Coffee Plantation Ltd. The evictees were brutally deprived of their farmlands without compensation. These evictees included the plaintiffs, who alleged several human rights violations and instituted a civil suit challenging their forceful eviction. In this case, they sought not only the restoration of their lands, but also compensation for the losses occasioned.

their obligations for the attainment of economic, social and cultural rights such as the right to food and nutrition. Each of these is discussed below.



#### 4.1. Origins of the Right

One of the first international legal instruments to articulate the right to adequate food was the UDHR of 1948<sup>3</sup>. Article 25 of the UDHR guarantees the right to an adequate standard of living, including adequate food. However, the UDHR mainly focused on civil and political rights and was found to be lacking in enforcement since it is considered to be soft law. As such, its provisions were largely looked at as a set of ideals to aspire to, not legal obligations States had to fulfil. Owing to this lack of enforceability, the ICESCR of 1966 was adopted by States as a legal instrument capable of enforcement.<sup>4</sup> The right to adequate food is provided for under article 11 of the covenant.

After the challenge of enforcement was addressed, another issue emerged. The ICESCR did not stipulate the normative content of the right to adequate food, hence posing difficulties in conceptualizing the right. Consequently, FAO organized the first World Food Conference in Rome in 1974 at which governments discussed the food crises at the time. This conference was significant because, by alluding to food security and nutrition, it set a precedent for fleshing out the elements constituting the normative content of the right to adequate food.

This conference was followed up by the World Food Summit of 1996, which culminated in the adoption of the Rome Declaration as well as a Plan of Action to achieve implementation of this declaration. During this summit, one of the recurrent challenges that was identified as hampering effective realization of the right to adequate food was its imprecision. Although some efforts had

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<sup>3</sup> Universal Declaration of Human Rights Charter, 1948, <https://www.un.org/en/universal-declaration-human-rights/>

<sup>4</sup> International Covenant on Economic, Social and Cultural Rights, 1966, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

been made to define it, a lot was still vague.

Food rights organizations such as FIAN International thus took it upon themselves and met shortly after this summit in Caracas, Venezuela to spearhead efforts to define the scope of the right to food as well as nature of obligations arising from it. They came up with a Code of Conduct on the right to food which subsequently informed General Comment No.12 of the United Nations<sup>5</sup>.

In 2002, the Second World Food Summit was held, and good progress was noted in global efforts to fight hunger and malnutrition. The summit, having seen to it that the right to adequate food had been defined, was then left with the challenge of having it implemented. This led to the adoption of the Voluntary Guidelines in 2004, providing practical guidance to States in their implementation of the right to adequate food.<sup>6</sup>

## **4.2. Obligations to respect, protect, promote and fulfill**

### **(i) Obligation to respect**

This duty obliges the State to refrain from any measures that may hinder the people's access to food and nutrition. It is both an acknowledgment of the pre-existing rights persons have to access food and nutrition, and an undertaking not to interfere with them. Considering that access to food and nutrition is either through physical or economic means, the State is obliged to ensure that all persons, women and men, have fair and continuous access to land so that physical access is guaranteed, or the unfettered opportunity to engage in various sources of livelihood so that economic access is possible for all without discrimination.

### **(ii) Obligation to protect**

Under this duty, the State is obliged to take deliberate measures to ensure that third parties such as business entities do not hinder the people's enjoyment of the right to food and nutrition. Unlike the obligation to respect which calls for a 'hands – off' approach from the State, the obligation to protect requires a 'hands – on' in order to safeguard the right against infringement by vested interests such as business corporations. For instance, Tanzania restricts business persons and entities from selling food stuffs to other countries during periods of scarcity. This is meant to ensure that both physical and economic access to food is guaranteed for its people and illustrates one of the ways the State does discharge its obligation to protect.

### **(iii) Obligation to promote**

The State is expected to go out of its way to promote human rights, including the right to food and

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<sup>5</sup> General Comment 12, the right to adequate food, file:///C:/Users/HATEGE~1/AppData/Local/Temp/G9942012.pdf

<sup>6</sup> Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, 2004, <http://www.fao.org/3/a-y7937e.pdf>

nutrition. It must make concerted efforts to raise awareness about the nature of the right, means for its realization, potential pitfalls in the quest to realize it as well as what recourse mechanisms are available to remedy infringements of the same. This obligation is further enshrined in Article 20(2) of the national Constitution of Uganda.<sup>7</sup> One of the ways the State is discharging this is through the Uganda Human Rights Commission, which carries out public sensitization campaigns to create such awareness among the general public.

**(iv) Obligation to fulfill:**

**Provide**

This duty obliges the State to provide food relief for those persons who are unable to do so themselves due to circumstances beyond their making. These circumstances may include natural disasters such as landslides and floods which hinder physical access to food sources, or the outbreak of pandemics which trigger lockdown measures hence closing out economic access. In recent years, for instance, Uganda has experienced various calamities that have obligated the government to directly provide food items to affected persons to mitigate hunger and ensure that they too enjoy the right to food and nutrition. This was witnessed in the Elgon region during the Bududa landslides of 2018, and more recently during the Corona Virus Disease (Covid-19) outbreak.

**Facilitate**

This obligation means that the State must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. It requires the State to “adopt all the requisite legislative, administrative and other types of measures that would enable rights holders to exercise their rights. For example, in order for peasants to exercise their land rights, the State must incorporate into its national legislation The Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, initiate an agrarian reform or establish strategies in order to ensure that peasants have access to water for their crops, especially during times of drought.”<sup>8</sup>

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<sup>7</sup> Constitution of the Republic of Uganda, 1995,

[http://statehouse.go.ug/sites/default/files/attachments/Constitution\\_1995.pdf](http://statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf)

<sup>8</sup> The Obligations of States in the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, 2017, page 3. Available at [https://www.fian.be/IMG/pdf/obligation\\_etats\\_eng\\_web.pdf](https://www.fian.be/IMG/pdf/obligation_etats_eng_web.pdf).

### 4.3. Obligations of conduct and obligations of results

#### (i) Obligation to conduct:

A duty of conduct is a human rights obligation that requires the State to undertake specific steps either through prescribed actions (positive undertakings) or refraining from proscribed actions (negative undertakings) in order to facilitate realization of the right. Depending on the circumstances, a failure to achieve undertakings under this duty can be blamed on the State as a violation of the right to food and nutrition.

In Brazil for instance, the State sought to realize the right to food and nutrition through deliberate policies and programs that culminated in the Zero Hunger Program. Under this program, the government provided a Family Grant (Bolsa Família) as a means of assisting persons that were unable to procure food for themselves so that their right to adequate food would be realized.

In Uganda, an example of a duty of conduct with regard to the right to food and nutrition can be found in the national Constitution where it is stated that the State shall establish national food reserves and also promote proper nutrition through mass education, among other means.<sup>9</sup>

#### (ii) Obligations of results

A duty of result refers to an obligation upon a State to attain a particular outcome through the active implementation of policies and programs. Oftentimes, these undertakings are in the nature of political statements expressing ideals that States aspire to, not legal obligations to which they may be held accountable.

This was seen at the first World Food Conference held in Rome in 1974 when States proclaimed that “every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop their physical and mental faculties”. The U.S representative, Henry Kissinger, went further and declared that “within 10 years no child will go to bed hungry”. As is typical of duties of results, the outcomes have been hard to quantify and realize.

In Uganda, within the food rights context, such a duty is reflected in the national Constitution where it is provided that the State shall take appropriate steps to encourage people to grow and store adequate food.<sup>10</sup>

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<sup>9</sup>Objective XXII (b) and (c) of the National Objectives and Directive Principles of State Policy

<sup>10</sup> Objective XXII (a) of the National Objectives and Directive Principles of State Policy.

#### 4.4. Obligations related to violations and abuses

A failure on the part of the State to discharge its obligations aimed at realizing the right to food and nutrition does not automatically translate into a violation or abuse of the right. There are well defined grounds that constitute violations or abuses of the right to food. The first of these grounds is where the State fails to ensure the satisfaction of the minimum essential level required to be free from hunger. The second is discrimination in access to food, or means of its procurement. Other grounds include regressive legislative measures, restriction of access to humanitarian food aid during emergency situations such as the economic hardship brought about by Covid-19 containment measures, and failure of the State to regulate the activities of individuals and groups that abuse the right to food of other persons, for instance through illegal evictions.

#### 4.5. Progressive realization

The concept of progressive realization may be defined as a rights implementation strategy which seeks to ensure the widest possible enjoyment of a right, in this case the right to food and nutrition, under the prevailing circumstances. It is a recognition of the fact that the economic strength of States differs, and so does the vastness of their resources. As such, a fixed standard of achievement would be unrealistic as there is no uniform size that fits all. The concept of progressive realization is not an excuse for inaction, but a flexible tool through which each State may customize its interventions aimed at realizing the right to food in accordance with the resources it has to achieve the same.

9. The principal obligation of result reflected in article 2 (1) is to take steps “with a view to achieving progressively the full realization of the rights recognized” in the Covenant. The term “progressive realization” is often used to describe the intent of this phrase. The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d’être*, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

**UN Committee on Economic, Social and Cultural Rights, General comment No. 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant).**

“Progressive realization” does not permit inertia. Rather, it requires states to move as expeditiously as is possible and to adopt concrete measures for this purpose. Under this concept, 'negative progress' is ordinarily not expected of States. The State is under obligation to ensure that there are no regressive developments such as the introduction of discrimination in access to food and nutrition.

In addition to the above, States are expected to realise the “minimum core obligation”, which implies the bare minimum of a right to which all individuals, in all contexts, and under all circumstances are entitled regardless of the adequacy or inadequacy of resources available to the State.

10. On the basis of the extensive experience gained by the Committee, as well as by the body that preceded it, over a period of more than a decade of examining States parties' reports the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources”. In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.

**UN Committee on Economic, Social and Cultural Rights, General comment No. 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant).**

Based on the above, states are expected to fulfil the minimum core obligation of ensuring freedom from hunger through guaranteeing access to essential food stuffs. This can be regarded as a default position.

14. The nature of the legal obligations of States parties is set out in article 2 of the Covenant and has been dealt with in the Committee's general comment No. 3 (1990). The principal obligation is to take steps to achieve progressively the full realization of the right to adequate food. This imposes an obligation to move as expeditiously as possible towards that goal. Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.

**UN Committee on Economic, Social and Economic, General comment No. 12: The right to adequate food (art. 11)**

Finally, the State is expected to make continuous improvement in realizing the right to food and nutrition through ever increasing food security, and food sovereignty for the general population over time.

#### 4.6. Content of the Right

According to UN General Comment No.12, the right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. From this definition, some of the constitutive elements of the right include notions of adequacy, availability, accessibility and sustainability. Each of these is discussed below.

##### Adequacy

This notion refers to different aspects of food that must be acceptable, like its dietary, safety, and cultural adequacy.<sup>11</sup>

7. The concept of adequacy is particularly significant in relation to the right to food since it serves to underline a number of factors which must be taken into account in determining whether particular foods or diets that are accessible can be considered the most appropriate under given circumstances for the purposes of article 11 of the Covenant. The notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations. The precise meaning of “adequacy” is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while “sustainability” incorporates the notion of long-term availability and accessibility.

**UN Committee on Economic, Social and Cultural Rights, General comment No. 12: The right to adequate food (art. 11)**

Dietary adequacy dictates that one's diet must contain the necessary variety and amount of food nutrients that their body needs for optimal physical and mental development at the various stages of their lives.

9. Dietary needs implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation. Measures may therefore need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breastfeeding, while ensuring that changes in availability and access to food supply as a minimum do not negatively affect dietary composition and intake.

<sup>11</sup> Cooking Up Political Agendas: A Feminist Guide on the Right to Food and Nutrition for Women in Rural Areas, 2020, page 20. Available at [https://www.fian.org/files/files/EN-TheCommonPot-21-WEB\\_\(1\)\(1\).pdf](https://www.fian.org/files/files/EN-TheCommonPot-21-WEB_(1)(1).pdf).

The notion of safety requires that food should be safe and free from adverse substances. Accordingly, naturally occurring toxins in food ought to be isolated and eliminated while for contamination resulting from adulteration or poor environmental hygiene during the various stages of food handling, there should be measures in place to ensure that this is minimized or prevented. This element is reflected in paragraph 9 of General Comment No.12.

With regard to cultural adequacy, people should get to define their own food preferences and model of food production, determine the extent to which they want to be self-reliant and protect domestic food production and regulate trade in order to achieve sustainable food systems. It is essentially a recognition of the freedom of choice that persons inherently have when determining issues concerning their food. This is reflected in paragraph 11 of General Comment 12.

11. Cultural or consumer acceptability implies the need also to take into account, as far as possible, perceived non-nutrient-based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.

**UN Committee on Economic, Social and Cultural Rights, General comment No. 12: The right to adequate food (art. 11)**

If famine broke out in Kaabong district, and the government sought to mitigate the situation by supplying to every household pork for immediate consumption, as well as piglets to be raised and traded by the affected persons to deter hunger in the medium term, such an intervention would have to exclude Muslims and Seventh Day Adventists. This is because pigs are unacceptable in their faith. The government's respecting this social factor would be an illustration of cultural adequacy.

### **Availability**

For food to be available, one must be able to feed oneself either directly from land and natural resources, or from a dependable and efficient distribution, processing, and market system.<sup>12</sup> This is reflected in paragraph 12 of General Comment No.12.

### **Accessibility**

Access in the right to food context refers to both physical access as well as economic access.

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<sup>12</sup> Ibid.

Physical access refers to the means by which everyone – even physically vulnerable persons – can obtain adequate food, whereas economic access means that the costs of acquiring the food one needs for an adequate diet should be at such a level that it does not compromise the attainment of other basic needs. This is reflected in paragraph 13 of General Comment No.12.

### **Sustainability**

According to General Comment No.12, there is an intrinsic link between the notion of sustainability and food security. Food security is said to exist when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life. Thus, the above notions of adequacy, availability and accessibility ought to be met in a sustainable manner, meaning food will be accessible, adequate and available for present and future generations. This is reflected in paragraph 7 of General Comment No.12.

### **4.7. Obligations towards Vulnerable Groups**

A vulnerable person may be defined as one who is in need of special care owing to circumstances which actually or potentially disempower them. Both State and non – State actors have duties towards vulnerable people to ensure that they too enjoy the right to food and nutrition. The State has the obligation to fulfil, under which it has to provide food relief or similar interventions for such people. This is a legal obligation for which the State may actually be held accountable.

### **4.8. Duties of Individuals**

International human rights law does not impose obligations upon individuals or private actors. For instance, the ICESCR makes only one reference to an individual obligation to refrain from activities that are aimed at destroying or limiting any of the rights it contains – such as the right to food and nutrition. However, the ACHPR contains an entire chapter devoted towards duties of individuals.<sup>14</sup> The essence of all these duties is for one to exercise their rights and freedoms with due regard to those of others.

Either way, through international human rights instruments the states should oblige an individual to refrain from any conduct that may infringe upon the rights of others. In the event that an individual may cause an infringement, the State usually intervenes through its obligation to protect.

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<sup>14</sup> African Charter on Human and Peoples' Rights, Chapter 2.

For instance, Mzee Donazio of Ibanda sprayed his banana plants with a cocktail of pesticides in order to keep them healthy and ensure a bountiful harvest. However, these chemicals flowed downhill into Asimwe's vegetable garden, killing off his crops as if they were weeds. When Asimwe complained that he and his family were likely to start starving due to destructive pesticides, Donazio replied that he is only trying to feed his family. In this case, Mzee Donazio has violated his duty to refrain from conduct which may infringe on the rights of others and Asimwe can seek redress against him in the courts of law. Similarly, if the state for one reason or another would not protect Asimwe then it would be held to account for failing to comply with its human rights obligations.

This chapter looked at the various laws and policies in which the right to food is either directly mentioned or implied. It focuses on especially the national level legal framework but hints on other international obligations to which Uganda is party.

## **4.9. The Policy and Legal Framework on the Right to food and nutrition in Uganda**

### **4.9.1. The laws**

The 1995 Constitution of the Republic of Uganda. The 1995 Constitution of the Republic of Uganda provides for a range of fundamental rights and freedoms both under the National Objectives and Directive Principles of State Policy as well as under the Bill of rights. The State has a duty to respect, protect and fulfil those rights. In this regard, Objective XXII of the Constitution obliges the State of Uganda to "...a) take appropriate steps to encourage people to grow and store adequate food; b) establish national food reserves; and, c) promote proper nutrition through mass education and other appropriate means required to build a healthy State."

Food and Drugs Act. This Act makes it an offence to adulterate food items to the prejudice of consumers. Furthermore, it makes it an offence to label or advertise food items in ways that are calculated to mislead consumers as to their nutritional or dietary value. Most of its provisions are concerned with food safety and it thus takes on a criminal approach, not a human rights based approach.

Local Government Act. This Statute is of critical importance to realization of the right to food and nutrition because it empowers administrative units at the grassroots level to enact and implement laws that address their unique food needs. For instance, it is under its auspices that Arua district enacted The Local Governments (Arua District) (Food Security and Nutrition) Ordinance, 2011.

The Children's Act. The Statute obliges states and parents or care takers to ensure adequate care of children in Uganda, which care includes provision of adequate food. This is reinforced by the Penal Code Act, cap 120, which, under Section 157, makes it an offence for a parent or

offence is punishable by a one-year imprisonment or a fine, or both.

The Land Act. The Statute, in line with the national Constitution, recognizes four forms of tenure - that is - freehold, mailo, customary and leasehold. The first three forms of tenure are available to only citizens while the fourth enables non-citizens to acquire and utilize land. This way, physical access to land is guaranteed for all persons in Uganda and this is a crucial element of the right to food and nutrition. The Act also requires that spouses who reside and derive their sustenance from a piece of land ought to first consent before a transfer can be effected for such land. This requirement protects the right to food and nutrition for such persons whose consent is required.

There is a Statutory Instrument 278- 1, Marketing of Infants and Young Child Foods, Kampala, 2000. This instrument, which is by the Ministry of Health in collaboration with the Ministry of Trade, Tourism, and Industry (MTTI) and other stakeholders, regulates the Marketing of Infant and Young Child Foods in Uganda in recognition of the right of infants and children to breast milk.

Draft Food and Nutrition Bill 2009. In 2009, the Ministry of Agriculture, Animal Industries and Fisheries introduced a draft Food and Nutrition Bill 2009. This however did not make it to parliament and not traceable at the moment. The draft bill had provided among others, for the enjoyment of the right to food; establishment, functions and composition of the Food and Nutrition Council; establishment of food and nutrition committees at district and sub-county levels and for their functions; as well as the roles of the various public authorities in its implementation.

#### **4.9.2. Policy framework**

In terms of the policy framework, Uganda's Agricultural policies are increasingly tending towards growing of cash crops like sugarcane which cash crops take long to grow and cannot be used as food. Worse still, the rush for commercialization of agriculture has resulted into massive evictions of people in different areas of the country. More often than not, those who are displaced are left with no alternative means of livelihood, including land for subsistence food production.

Relatedly is the increasing exportation of quality food items like fish, milk and meat to foreign markets in preference of the revenue they generate. This has left the biggest number of the population in a situation where they can't access the same.

There are other non-supportive instruments that might instead compromise the right to food especially of certain segments of the population. These include: The Succession Act which marginalizes women's right to property, especially land by providing for an overly patriarchal structure for distribution of property under inheritance. Relatedly are customary practices/laws

which deprive women's access to land which is inherited through the male lineage. As such, women are limited in access and choice when utilizing land for food production. In worst case scenarios, women are totally precluded from any use of land at all by their male counterparts who prefer selling it off for quick income or hiring it out for commercial production.

#### **4.9.3 International instruments**

Under this, the right of infants and children to food and nutrition is also provided for under the Innocenti Declaration on the Protection, Promotion, and Support of Breastfeeding, and the Code of Marketing and Promotion of Breast Milk Substitutes, adopted by the World Health Assembly in 1981. Although not legally binding, the country has incorporated these in the Uganda Policy Guidelines on Infant and Young Child Feeding.

Uganda also voted for and adopted the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) which recognises the rights to food generally, and food sovereignty especially for the small scale producers. This resonates well with the fact that the majority of Ugandans involved in agricultural production are subsistence farmers and the provisions of this instrument have accordingly been reflected in the various agricultural policies.

Uganda also ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR), in 1987, thereby pledging to ensure the right to food in the context of food security and nutrition. ICESCR specifically recognizes the right to food in Article 11(1) and (2) while the Convention on the Rights of the Child, 1989 (CRC) does the same in Article 27.

# 5

## STRATEGIES FOR THE PROTECTION AND PROMOTION OF THE RIGHT TO FOOD AND NUTRITION

This chapter explores the various means through which food rights activists may protect or promote the realisation of the right to food. It discusses the strategies of advocacy, research, training and litigation.

### 5.1. Advocacy

Advocacy is defined as any action that speaks in favour of, recommends, argues for a cause, supports or defends, or pleads on behalf of others or even oneself. This can take various forms such as lobbying and the goal is to influence decision makers to adopt a certain policy position. The process of advocacy should be deliberate, well planned and based on demonstrated evidence. It is one of the strategies that activists and rights holders can use to protect and promote the right to food and nutrition.

They can do this through different approaches. One option is the insider approach (also known as the persuasive approach) whereby one operates within the decision-making system to influence change. This does not mean that one agrees with the position of the system, but rather an approach to influence from within. The other option is the outsider approach (also known as the confrontational approach) where one uses some persuasive means to compel the decision making body to adopt their policy position.

There are various types of advocacy that one can employ to protect or promote the right to food and nutrition. These include the following.

(i) **Self-advocacy:** This is a type of advocacy where an individual pushes for the acceptance of their personal views on the right to food and nutrition, and seeks to have their own needs addressed. Since one is fighting for only their interest, this advocacy is usually informal. For example:

In the central Ugandan town of Mubende, hundreds of people were brutally evicted from their land by government security forces because a foreign investor wanted the land for coffee growing. They were not compensated for their appropriated lands and many were pushed into a perilous existence.

While most of these victims resigned to their fate, a one Petero decided to stand up for his rights. Every Saturday morning, he participates in a political talk show at the local radio station where he keeps reminding the government that he was unjustly deprived of his 20 acres of land where he used to grow food for himself and his family. He calls upon the government to return to him his land which the investor is currently using for coffee growing.

(ii) **Individual advocacy:** This is a type of advocacy where one fights for the interests of one or two persons. Considering that more than one individual interest is involved in this case, the advocacy may take on formal or informal dimensions. From the above case, if Petero were not a victim himself but simply standing up for his helpless neighbour Mugerwa that had been a victim of land grabbing at the instigation of the State, then he would be engaging in individual advocacy.

(iii) **Citizen advocacy:** This involves identifying volunteers who are paired to support vulnerable persons. The role of the person undertaking such advocacy may be to expose the vulnerable person to new perspectives and give them information which they need. From the above example, if a local organization called the Centralized Organization for Land Defence (COLD) sent a technical volunteer to each of the families to train them on the various strategies they can employ to engage the government to restore them to their appropriated land, then it would be citizen advocacy.

(iv) **Group Advocacy:** This is the type of advocacy where persons with a similar challenge join together and push for their cause through a unified voice. From our example of the Mubende evictees, if Petero and the other evictees in Mubende formed an association with the evictees from the western district of Kiryandongo to act as a unified front in pushing for the restoration of respective lands, they would be engaging in group advocacy.

(v) **Peer Advocacy:** This is a type of advocacy in which support is provided by persons who have themselves gone through a similar experience. Assuming that Petero had successfully

engaged the government and his 20-acre piece of land had been returned to him. If he is called upon by the Kiryandongo evictees to champion their cause of restoration to their lands, then it would amount to peer advocacy.

(vi) **Systems and legislative advocacy:** This is a type of advocacy that seeks to influence structural change through altering systems and laws. It invariably takes on a formal nature considering the technicalities involved. If Petero had opted to deliver a petition to the parliament of Uganda asking the lawmakers to pass a progressive law called the National Expropriated Lands Act which nullifies all previous land transactions that had been effected against the free will and consent of the land owner, then this would be systems and legislative advocacy.

## 5.2. Research

Research simply refers to looking for knowledge. It can be defined as the systematic search for information on a given topic. The primary aim of research is to discover new truths or dimensions to a phenomenon, in this case the right to food and nutrition.

Such research can be conducted through various means. For example, library research can be conducted through analysis of historical records and other documents touching on the right to food and nutrition. Field research can be conducted through observation, use of surveys and questionnaires in order to assess the state of the right to food and nutrition in Uganda. Laboratory research can be conducted to determine the safety and quality of food being consumed by refugees in Yumbe for instance.

For purposes of protecting and promoting the right to food and nutrition, research studies can be conducted under any of the following:

- (i) **Exploratory research:** This is a study aimed at getting familiar with the nuts and bolts of the right to food and nutrition, or gaining new insights into it. It is more appropriate for individuals and organizations that have had little or no prior interface with the right. It can help them understand the basic concepts of the right or new developments touching on it.
- (ii) **Descriptive research:** This is a study whose aim is to accurately portray the constitutive elements of the right to food and nutrition. Just like exploratory research, it is concerned with the conceptual aspects of the right to food and nutrition. However, it is better suited for those with more background knowledge than that at the exploratory stage.
- (iii) **Diagnostic research:** Under this study, one seeks to pin point the cause of a problem impeding efforts to realize the right to food and nutrition. Some of these problems can

of enforceability, State compliance and public ignorance. Often times, the State as well as development partners engage in this kind of research as a precursor to designing interventions to address the impediment. For example, such a study could seek to establish why malnutrition and stunting are widespread in Western Uganda in spite of the apparent surplus of milk.

(iv) Hypothesis – testing research: This is a study that seeks to verify the presumed relationship between two or more issues touching on the right to food and nutrition. It is often undertaken by individuals and organizations that have comprehensive expertise in the right to food and nutrition. As such, they can understand and examine how various issues interact to shape the right to food and nutrition.

### **5.3. Training and Capacity Building**

The strategy of training can be used to protect and promote the right to food and nutrition through empowering individuals and organizations with the requisite skills and knowledge to advance the right. These are taught how to assess the state of enjoyment of the right, innovate means of furthering implementation, identify threats and violations, and seek remedies. Such training can be formal or informal.

Informal training may take on forms such as community sensitization to equip rights holders with basic knowledge and skills on how to defend the right for themselves or other community members.

Formal training may include incorporating the right to food and nutrition in the academic curriculum of disciplines such as social sciences, human rights and law. It may take on the form of a short course for technical persons such as nutritionists, policy makers and legal practitioners or simply a workshop lasting a couple of hours.

### **5.4. Litigation**

The right to food and nutrition can be protected or promoted through the use of litigation. This covers a wide range of legal actions, ranging from class actions to individual cases, against the state or non-state actors (i.e. private companies and elites. Of particular interest in this context is the mechanism of public interest litigation, which may be defined as legal action to establish a legal principle or right that is of public importance and aimed at social transformation.

There are 5 components of the litigation process which determine its efficacy as a strategy for advancing the right to food and nutrition. These are briefly discussed below.

(i) Voicing of claims: The first stage in the litigation process is the lodging of a petition

complaining of actual violations or perceived threats to the right to food and nutrition. This primarily involves those whose rights are compromised on one hand, and those taking the case to court on the other. The initiative to litigate may come from either set of actors, and in some instances its one actor wearing both hats.

- (ii) Responsiveness of courts: This refers to the willingness of courts to entertain social rights cases such as those seeking to protect or promote the right to food and nutrition. The responsiveness of courts depends on factors such as the social and professional background of the judges, their degree of sensitization to the right to food and nutrition as well as the public opinion on the right. All these have a bearing on whether the courts will entertain such cases once presented before them.
- (iii) Capability of judges: For the courts to effectively adjudicate on the right to food and nutrition, there is need for judges to have a firm grounding in economic, social and cultural rights as a starting point. They also ought to have access to the requisite jurisprudential and material resources to effectively discharge their mandate.
- (iv) Compliance by authorities: For litigation to be an effective tool in promoting or protecting the right to food and nutrition, the judgments of court should be respected and implemented by the other organs of the State. Compliance is always an issue of degree, and food and nutrition rights activists ought to discern whether the degree of response to a judgment amounts to compliance or non – compliance.
- (v) Propensity for change: Finally, litigation ought to have the ability to instigate the necessary structural changes to protect or promote the right to food and nutrition. It can trigger this change directly where the implementation of an existing policy or adoption of a new one is an aspect of compliance. Alternatively, it may indirectly influence policy formation by starting a conversation on the food and nutrition rights agenda within various circles such as policy makers, civil society and the general public.

The above strategies have been collectively employed in a number of public interest cases in Uganda. One of the most prominent is the CEHURD case<sup>15</sup> in which the petitioners sought to hold the government in breach of its obligations due to its failure to provide basic maternal health services and that health workers' negligence led to the death of expectant mothers during childbirth.

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<sup>15</sup> Centre for Health Human Rights and Development (CEHURD) & others v Attorney General of Uganda, Constitutional Petition No. 16 of 2011

Whereas public interest litigation was the primary strategy, CEHURD also employed individual advocacy in so far as it sought justice for Sylvia Nalubowa and Anguko Jennifer who had lost their lives due to the government's failure to fulfil its obligations on the right to health. Since the case was unprecedented in Uganda, a lot of effort went into exploratory, diagnostic and hypothesis - testing research. The organization also organized some capacity building trainings for judicial officers on the adjudication of economic, social and cultural rights.



Photo by: Ana Maria Suarez Franco

# 6

## LITIGATING THE RIGHT TO FOOD AND NUTRITION

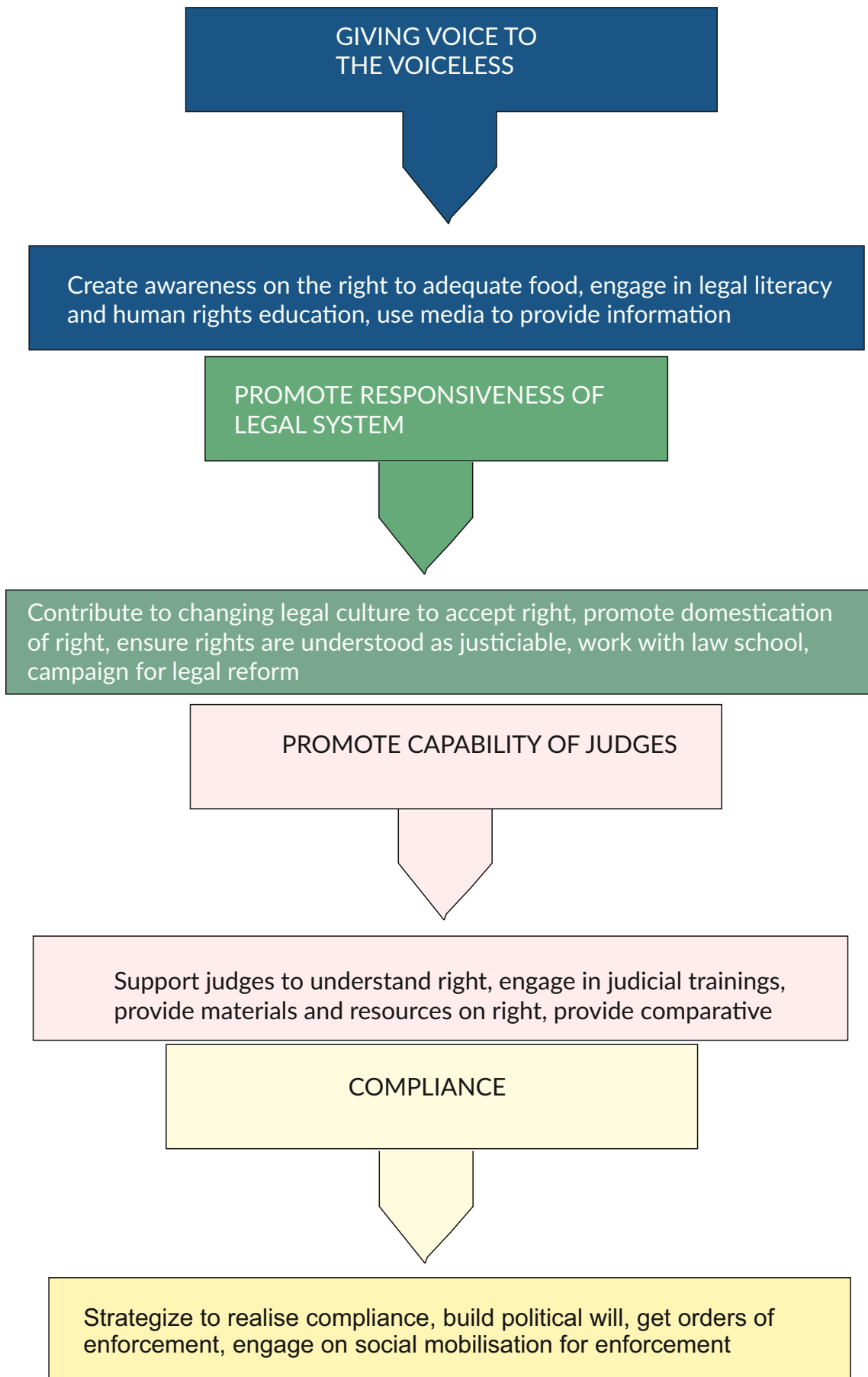
### 6.1. Understanding Litigation

There are various strategies for the protection of the right to food and nutrition and enforcement of claims related to the right. Litigation stands out as one of the viable strategies which has been used and as an important tool for giving voice to the voiceless. It is however only successful when the courts are responsive to these voices and the ability of the judges to address the claims and compliance through action, policy and legislation.

From the above, it means that a successful cycle for the litigation of the right to food and nutrition starts with giving the voiceless a voice and is only complete when the decisions of court is complied with.

The success or failure of social rights litigation depend on (a) the ability of groups whose rights are violated to articulate their claims and voice them into the legal system – or have the rights claimed on their behalf; (b) the responsiveness of the courts at various levels towards the social claims that are voiced; (c) the capability of the judges – that is, their ability to find adequate means to give legal effect to social rights; and (d) whether the social rights judgments that are handed down have authority in the sense that they are accepted, complied with and implemented through legislation and policy.

Siri Gloppen Social Rights Litigation as Transformation: South African Perspectives Chr. Michelsen Institute Development Studies and Human Rights Working Paper 2005: 3, at p 3



## 6.2. International and Regional Approaches

The international and regional mechanisms also provide avenues for the enforcement of the right to food and nutrition. These systems provide both judicial and quasi-judicial -mechanisms for the protection and enforcement of human rights, including the right to food and nutrition. The most prominent of these are the UN Treaty bodies and the commissions and courts of law.

### 6.2.1. The Treaty Bodies

The various human rights treaties create treaty monitoring bodies with mandates to monitor the implementation of the treaties. The committees, composed of experts in the areas relevant to the treaties, have powers to receive and consider reports by state on the steps they have taken to realise the rights. Most relevant to this Manual though is the mandate to receive and consider complaints from persons claiming violation of their rights by state parties. All core United Nations treaties have these committees, which such mandates, the most recent addition in terms of getting the mandate to consider complaints being the Committee on Economic, Social and Cultural Rights. The regional treaties also create the committees, as seen through the African Commission on Human and Peoples' Rights created by the African Charter on Human and Peoples' Rights.

While all the treaty bodies can be approached to enforce the right to food and nutrition in relation to their mandate, the most relevant in the context of this manual is the Committee on Economic, Social and Cultural Rights. This is because this Committee enforces economic, social and cultural rights. Also relevant is the African Commission on Human and Peoples' Rights with its wide mandate which includes enforcement of economic, social and cultural rights in the African Charter on Human and Peoples' Rights.

#### Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

##### Article 1 Competence of the Committee to receive and consider communications

1. A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications as provided for by the provisions of the present Protocol.
2. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

##### Article 2 Communications

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

### Article 3 Admissibility 1

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted. This shall not be the rule where the application of such remedies is unreasonably prolonged.
2. The Committee shall declare a communication inadmissible when:
  - (a) It is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit;
  - (b) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date;
  - (c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
  - (d) It is incompatible with the provisions of the Covenant;
  - (e) It is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media;
  - (f) It is an abuse of the right to submit a communication; or when
  - (g) It is anonymous or not in writing

### Article 8 Examination of communications

1. The Committee shall examine communications received under article 2 of the present Protocol in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications under the present Protocol.
3. When examining a communication under the present Protocol, the Committee may consult, as appropriate, relevant documentation emanating from other United Nations bodies, specialized agencies, funds, programmes and mechanisms, and other international organizations, including from regional human rights systems, and any observations or comments by the State Party concerned.
4. When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant.

#### Article 9 Follow-up to the views of the Committee

1. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.
2. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.
3. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under articles 16 and 17 of the Covenant.

...

#### Article 12 Follow-up to the inquiry procedure

1. The Committee may invite the State Party concerned to include in its report under articles 16 and 17 of the Covenant details of any measures taken in response to an inquiry conducted under article 11 of the present Protocol.
2. The Committee may, if necessary, after the end of the period of six months referred to in article 11, paragraph 6, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

#### Article 13 Protection measures

A State Party shall take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

### 6.3. The African Regional System

The African Commission is the quasi-judicial body responsible for promoting and protecting human rights in the African region, and was established under Article 30 of the African Charter. Its mandate and functions include the promotion, protection and interpretation of the rights contained in the African Charter. In executing its mandate, the African Commission can receive communications concerning violations of the African Charter by a state party. Anybody (individuals, groups, NGOs) can, on their own behalf or on behalf of someone else, submit a communication to the African Commission. As with the other mechanisms examined, before a communication can be considered, it has to comply with a number of admissibility criteria, including exhaustion of domestic remedies. The African Commission is also responsible for submitting cases to the African Court of Human and Peoples' Rights (African Court). A number of ESC rights, including the rights to health, work, and education are explicitly enshrined in African Charter. In addition to these explicit rights, as note..., the African Commission has acknowledged that there are other 'implicit' ESC rights, such as the right to food. . The African Court has been operational since 2006 and was established by the African Union to complement the mandate of the African Commission. The African Court's jurisdiction extends to all cases submitted to it concerning the interpretation and application of the African Charter

and its Protocols as well as “any other relevant human rights instrument ratified by the states concerned.” As with the Inter-American system, individuals generally do not have direct access to the court: only the African Commission, member states and African intergovernmental organizations can take a case to the court. However, states can make an optional declaration accepting the competence of the court to receive communications from individuals and NGOs with observer status before the African Commission.

International Development Law Organisation and Irish Aid Realizing the Right to Food: Legal Strategies and Approaches, at p 34.

### African Charter on Human and Peoples Rights

(Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986)

...

#### Article 30

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

#### Article 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.

2. The members of the Commission shall serve in their personal capacity.

...

#### Article 56

Communications relating to human and peoples' rights referred to in 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter request anonymity,
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. Are not based exclusively on news discriminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,

6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and

7. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

#### Article 57

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

The African Commission has exercised its mandate above and considered some communications relevant to the right to food and nutrition. Although the right is not expressly contained in the Charter, the Commission has read the same into the instrument. Indeed, the Commission has included the right in its Principles and guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights.

#### **The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, African Commission on Human and Peoples' Rights, Comm. No. 155/96 (2001).**

##### Summary of Facts:

1. The Communication alleges that the military government of Nigeria has been directly involved in oil production through the State oil company, the Nigerian National Petroleum Company (NNPC), the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC), and that these operations have caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People

..

7. The Communication alleges that in the course of the last three years, Nigerian security forces have attacked, burned and destroyed several Ogoni villages and homes under the pretext of dislodging officials and supporters of the Movement of the Survival of Ogoni People (MOSOP). These attacks have come in response to MOSOP's non-violent campaign in opposition to the destruction of their environment by oil companies. Some of the attacks have involved uniformed combined forces of the police, the army, the air-force, and the navy, armed with armoured tanks and other sophisticated weapons. In other instances, the attacks have been conducted by unidentified gunmen, mostly at night. The military-type methods and the calibre of weapons used in such attacks strongly suggest the involvement of the Nigerian security forces. The complete failure of the Government of Nigeria to investigate these attacks, let alone punish the perpetrators, further implicates the Nigerian authorities.

...

64. The Communication argues that the right to food is implicit in the African Charter, in such provisions as the right to life (Art. 4), the right to health (Art. 16) and the right to economic, social and cultural development (Art. 22). By its violation of these rights, the Nigerian Government trampled upon not only the explicitly protected rights but also upon the right to food implicitly guaranteed.

65. The right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation. The African Charter and international law require and bind Nigeria to protect and improve existing food sources and to ensure access to adequate food for all citizens. Without touching on the duty to improve food production and to guarantee access, the minimum core of the right to food requires that the Nigerian Government should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' efforts to feed themselves.

66. The government's treatment of the Ogonis has violated all three minimum duties of the right to food. The government has destroyed food sources through its security forces and State Oil Company; has allowed private oil companies to destroy food sources; and, through terror, has created significant obstacles to Ogoni communities trying to feed themselves. The Nigerian government has again fallen short of what is expected of it as under the provisions of the African Charter and international human rights standards, and hence, is in violation of the right to food of the Ogonis.

### 6.3.1. The African Court on Human and Peoples Rights

In a bid to have a judicially binding institution, the African Union in 1998 established the African Court on Human and Peoples' Rights. Unlike the Commission, the Court has powers to make binding pronouncements. The Protocol indeed makes provision for the enforcement of its decisions. One shortcoming though is that the Court can only proceed against states which have by declaration accepted the jurisdiction of the court. The only exception is with respect to cases which are filed by the African Commission. The Seat of the Court is in Arusha, Tanzania. Unfortunately however, Uganda has not recognised the jurisdiction of the Court by making a declaration to this effect.

Note: On 1st July 2008, the African Union adopted the Protocol to the Statute of the African Court on Justice and Human Rights, combining into one court the African Court on Justice and the African Human Rights Court into one court, the African Court on Justice and Human Rights. Once the Statute comes into force, the African Court on Human and Peoples' Rights will cease to exist.

## **Protocol to the African Charter on Human and Peoples Rights on the Establishment of the African Court on Human and Peoples Rights**

Adopted by the Assembly of Heads of State and Government of the African Union on June 10, 1998

### **Article 1 ESTABLISHMENT OF THE COURT**

There shall be established within the Organization of African Unity an African Court on Human and Peoples' Rights (hereinafter referred to as "the Court"), the organization, jurisdiction and functioning of which shall be governed by the present Protocol.

### **Article 2 RELATIONSHIP BETWEEN THE COURT AND THE COMMISSION**

The Court shall, bearing in mind the provisions of this Protocol, complement the protective mandate of the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Commission") conferred upon it by the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter").

### **Article 3 JURISDICTION**

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned. 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

...

### **Article 5 ACCESS TO THE COURT**

1. The following are entitled to submit cases to the Court

- a. The Commission;
- b. The State Party which has lodged a complaint to the Commission;
- c. The State Party against which the complaint has been lodged at the Commission;
- d. The State Party whose citizen is a victim of human rights violation;
- e. African Intergovernmental Organizations.

2. When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.

3. The Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.

...

### **Article 34 RATIFICATION**

...

6. At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party

7. Declarations made under sub-article (6) above shall be deposited with the Secretary General, who shall transmit copies thereof to the State parties.

...

#### **Article 27 FINDINGS**

1. If the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.

#### **Article 28 JUDGMENT**

1. The Court shall render its judgment within ninety (90) days of having completed its deliberations.

2. The judgment of the Court decided by majority shall be final and not subject to appeal.

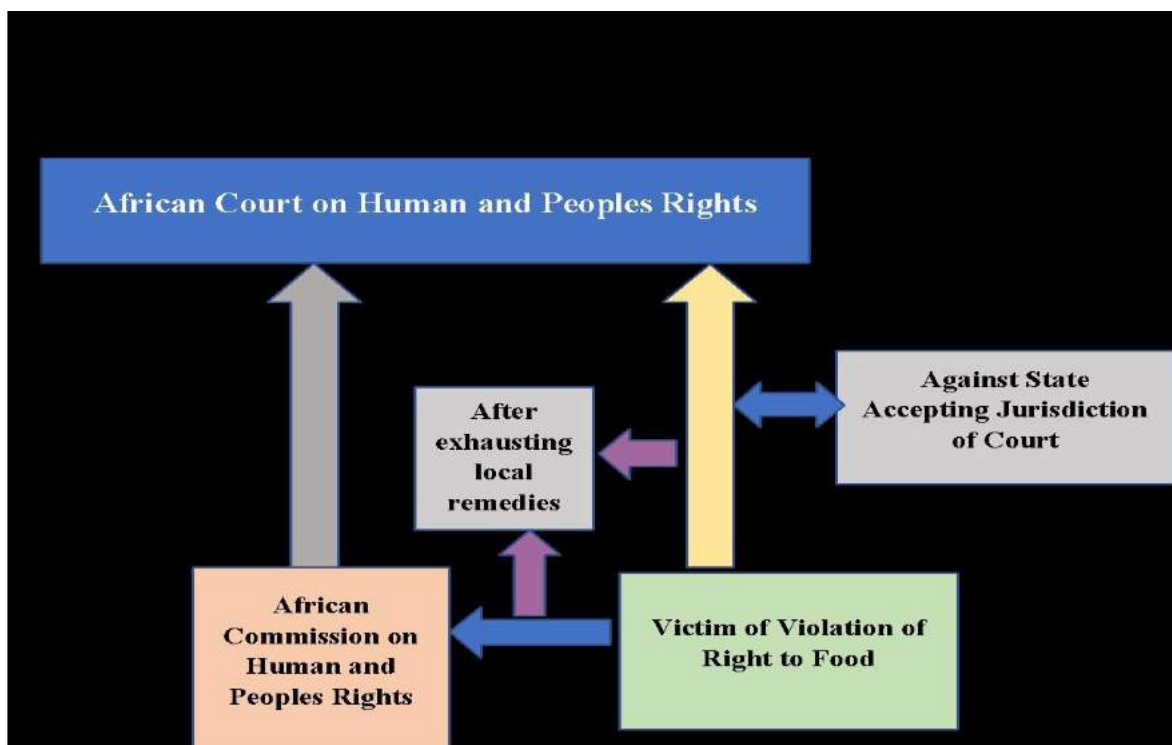
3. Without prejudice to sub-article 2 above, the Court may review its decision in the light of new evidence under conditions to be set out in the Rules of Procedure.

4. The Court may interpret its own decision.

5. The judgment of the Court shall be read in open court, due notice having been given to the parties.

6. Reasons shall be given for the judgment of the Court.

7. If the judgment of the Court does not represent, in whole or in part, the unanimous decision of the judges, any judge shall be entitled to deliver a separate or dissenting opinion.



## 6.4. Comparative approaches

It is important to draw lessons, best practices, strategies and principles from comparative case-law. Although the right to food and nutrition has not attracted so much litigation in domestic courts, there are some few cases from which lessons can be drawn. In aggregation, some jurisdictions have jurisprudence which though not relevant to the right to food and nutrition has principles relevant to enforcement of the right. Jurisprudence here has addressed such issues as the following:

Justiciability of the economic, social and cultural  
Rights are judiciary enforceable international law is relevant in their enforcement,

Obligations of States  
States have to take reasonable measures, measures must be concrete and within available resources

Remedies  
Injunctions, including mandatory and structural injunctions

### 6.4.1. Justiciability of Economic, Social and Cultural Rights

**Government of the Republic of South Africa & Ors vs Grootboom & Ors 2001(1) SA 46 (CC), Constitutional Court of South Africa, available at <[https://www.escr-net.org/sites/default/files/Grootboom\\_Judgment\\_Full\\_Text\\_%28CC%29\\_0.pdf](https://www.escr-net.org/sites/default/files/Grootboom_Judgment_Full_Text_%28CC%29_0.pdf)>**

[20] While the justiciability of socio-economic rights has been the subject of considerable jurisprudential and political debate, the issue of whether socio-economic rights are justiciable at all in South Africa has been put beyond question by the text of our Constitution as construed in the Certification judgment. During the certification proceedings before this Court, it was contended that they were not justiciable and should therefore not have been included in the text of the new Constitution. In response to this argument, this Court held:

“[T]hese rights are, at least to some extent, justiciable. As we have stated in the previous paragraph, many of the civil and political rights entrenched in the [constitutional text before this Court for certification in that case] will give rise to similar budgetary implications without compromising their justiciability. The fact that socio-economic rights will almost inevitably give rise to such implications does not seem to us to be a bar to their justiciability. At the very minimum, socio-economic rights can be negatively protected from improper invasion.”

Socio-economic rights are expressly included in the Bill of Rights; they cannot be said to exist on paper only. Section 7(2) of the Constitution requires the state “to respect, protect, promote and fulfil the rights in the Bill of Rights” and the courts are constitutionally bound to ensure that they are protected and fulfilled. The question is therefore not whether socio-economic rights are justiciable under our Constitution, but how to enforce them in a given case. This is a very difficult issue which must be carefully explored on a case-by-case basis. ...

...

#### E. Obligations imposed upon the state by section 26

##### i) Approach to interpretation

[21] Like all the other rights in Chapter 2 of the Constitution (which contains the Bill of Rights), section 26 must be construed in its context. The section has been carefully crafted. It contains three subsections. The first confers a general right of access to adequate housing. The second establishes and delimits the scope of the positive obligation imposed upon the state to promote access to adequate housing and has three key elements. The state is obliged: (a) to take reasonable legislative and other measures; (b) within its available resources; (c) to achieve the progressive realisation of this right. These elements are discussed later. The third subsection provides protection against arbitrary evictions.

[22] Interpreting a right in its context requires the consideration of two types of context. On the one hand, rights must be understood in their textual setting. This will require a consideration of Chapter 2 and the Constitution as a whole. On the other hand, rights must also be understood in their social and historical context.

[23] Our Constitution entrenches both civil and political rights and social and economic rights. All the rights in our Bill of Rights are inter-related and mutually supporting. There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights enshrined in Chapter 2. The realisation of these rights is also key to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their full potential.

[24] The right of access to adequate housing cannot be seen in isolation. There is a close relationship between it and the other socio-economic rights. Socio-economic rights must all be read together in the setting of the Constitution as a whole. The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Their interconnectedness needs to be taken into account in interpreting the socio-economic rights, and, in particular, in determining whether the state has met its obligations in terms of them.

Ibrahim Sangor Osman v Minister of State for Provincial Administration & Ors, Constitutional Petition No. 2 of 2011, Kenya High Court , available at < [Ibrahim Sangor Osman v. Minister of State for Provincial Administration and Internal Security | Global Health & Human Rights Database \(globalhealthrights.org\)](http://globalhealthrights.org) >

The Constitution of Kenya entrenches both civil and political rights and also social and economic rights, and makes both justiciable. It is an acknowledgment of the fundamental interdependence of these rights. The interdependence is out of the realization that people living without the basic necessities of life are deprived of human dignity, freedom and equality. Democracy itself is enhanced when citizens have access to the basic necessities of life. Article 19 (2) indicates that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to build a society which is based on social justice and in which the potential of each person is freed.

Article 20 provides that the Bill of Rights of the Constitution applies to all law and binds all State organs and all persons, and by article 21 (1), it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights. Under article 21 (3), all State organs and all public officers have the duty to address the needs of vulnerable groups within the society. These groups include women, older members of society and children. Under article 28 every person has inherent dignity and to have that dignity respected and protected. Article 29 provides that every person has the right to freedom and security of a person, and that includes the right not to be subjected to any form of violence from either public or private sources.

The Petitioners were evicted from unalienated public land which they had occupied since the 1940s and on which they had their residences. The eviction was violent and forceful as the police and the youths were using bulldozers, came in riot gear and used tear gas when the Petitioners sought to resist these actions. The Petitioners were left without any alternative place to reside. They were left in the open without any shelter, food, water, sanitary facilities or health care. The Petitioners were not accorded any opportunity to salvage any of their property, building materials and household goods before and after the demolitions. The Petitioners included women, children and the elderly. The education of the children was interrupted.

#### 6.4.2. Select Comparative Jurisprudence on the Right

##### Argentina

Through an amparo procedure, the national ombudsman (defensor del pueblo de la nación) requested the Supreme Court to order the federal government and the government of the Chaco Province to adopt urgent measures to improve the living conditions of the Toba indigenous communities and ensure their access to food and safe drinking water. The complaint was founded both on domestic legislation and on regional and international provisions in the American Convention, the American Declaration, the Universal Declaration, the ICESCR (including Article 11), and CEDAW. Members of the Toba community were living in extreme poverty, suffering malnutrition and undernutrition, and their most basic needs, including food, were not being met. Eleven deaths were reported as a consequence of what the

Argentinean Supreme Court termed a “food and health crisis.” The Supreme Court attributed this situation to the government's inaction and failure to discharge its obligations under national and international law. On this basis, the court ordered that the communities' right to food, among other rights, had to be secured. The Supreme Court therefore ordered the national government and the government of Chaco Province to adopt emergency measures for immediate distribution of food and safe drinking water to the indigenous communities. It also ordered a series of detailed structural measures (discussed in greater detail in section 3.2). In the judgment, the Supreme Court also addressed the proper role of courts in tackling such issues and issuing specific remedial actions. The court stated that the role of judges as “guardians of constitutional rights” entails ensuring the effectiveness of rights and avoiding their violation, especially in cases of such urgency and gravity, where life and physical integrity are at stake. Therefore, the court's intervention was not improper interference on the part of the judiciary vis à vis other branches of the state. Such judicial responses to state inaction in Argentina are not unique to this case, and other judgments may provide useful examples. For instance, though dealing with water and health rather than specifically with food, in the case of Menores Comunidad Paynemil, an amparo action was filed by the Public Defender of Minors of Neuquén (Children's Public Defender) to protect the health of indigenous children and youths exposed to drinking water contaminated with lead and mercury. The Neuquén Provincial Court of Appeals ordered that 250 liters of drinking water per person were to be delivered each day to the community until the government resolved the contamination problem. The decision hinged on the acknowledgement that the government, although fully aware of the problem, had not taken reasonable measures to address it. The court stated that: “even though the government has performed some activities as to the pollution situation, in fact there has been a failure in adopting timely measures according with the gravity of the problem.”

International Development Law Organisation and Irish Aid Realizing the Right to Food: Legal Strategies and Approaches, at p 37 – 8.

### Argentina case before the Inter-American Court of Human Rights Lhaka Honhat Association vs Argentina

Summary by FIAN in the State of Right to Food and Nutrition Report, 2020, available at < [State-RtFN-Report\\_2020\\_ENG\(1\).pdf \(fian.org\)](#) >

For the first time in its over 40 years of existence, the Inter-American Court of Human Rights (IACtHR) declared on February 6, 2020 the direct violations of the rights to food, to water, to a healthy environment and to cultural identity of the Indigenous communities members of the association Lhaka Honhat in a case against Argentina.

The Court additionally recognized the inter-dependency of these rights, explicitly defending a holistic approach to human rights. The association includes the Indigenous Peoples Wichí (Mataco), Iyjwaja (Chorote), Komlek (Toba), Niwackle (Chulupí) and Tapy'y (Tapiete). Their struggle for the formal recognition of their ancestral territories started many years ago. In 1984, with the support of the Argentinean human rights organization CELS, they initiated requests for the identification of their territories by national authorities. Without success, and after presenting the case to the Inter-American Commission of Human Rights (IACHR) in 1998, the case was brought to the Inter-American Court in 2018, where over 10,000

members of the Lhaka Honhat Indigenous association began a new endeavor in holding the State accountable. This case undoubtedly consolidates the Court's jurisprudence on cases involving Indigenous Peoples: the decision declared the violation of their right to collective territorial property, systematically violated by the State, that allowed for the deforestation of the area, carried out interventions in their territories without their free, prior and informed consent, and historically denied their right to judicial protection and to a fair trial. The judges also established a direct connection between the violation of their right to collective territories and its direct impact on the realization of their right to food, water, healthy environment and cultural identity. Although the recognition of the violation of such relevant economic, social, cultural and environmental rights (ESCER) comes very late in the Court's history, it sets an important legal precedent not only for the Inter-American Human Rights System, but also for the UN and African Human Rights Systems. This milestone decision, even if not unanimous among the current members of the Court, is a 'one-way ticket' and should benefit many other cases involving the violation of ESCER in the region.

## India

The People's Union for Civil Liberties v Union of India [(2003) Writ Petition (Civil) No 196 of 2001 and Interim Order of 2 May 2003],

<https://www.casemine.com/judgment/in/5609ad2be4b0149711410b10>. The case came before the Indian Supreme Court and concerned recurrent famines and starvation deaths in drought-affected regions of the country, including the state of Rajasthan. In 2001, following the third consecutive year of drought and protracted state failure to provide minimum food requirements to affected communities, the human rights organization People's Union for Civil Liberties filed a public interest petition with the Supreme Court. The petitioners argued that the right to life under Article 21 of the Constitution includes the right to food, as recognized in the court's jurisprudence, which in turn entails a state obligation to provide food to people in drought-affected areas who cannot purchase or produce it themselves. In practical terms, the People's Union for Civil Liberties sought enforcement of existing food distribution schemes and policies and of legislation that provided for the release of grain stocks in times of famine. The petition noted that the government's failure to address hunger and starvation was particularly serious in light of surplus grain supplies which remained unused and deteriorated in warehouses due to inadequate storage conditions. The Supreme Court famously acknowledged that “[p]lenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent.” The court acknowledged that inefficiencies and failure to implement existing legislation and policies, rather than lack of resources, were the root causes of the problem. It added that “[m]ere schemes without any implementation are of no use” and stressed that “[w]hat is important is that the food must reach the hungry.” To tackle this situation, pending a final judgment, the Supreme Court issued several interim orders requesting the government to implement existing policies, schemes and legislation, and detailing measures to be taken, especially in relation to vulnerable groups, to ensure implementation. Through interim orders, the court transformed the government food schemes in question into legal entitlements provided by a constitutionally protected right to food and the beneficiaries of these programs into “stakeholders of justiciable rights.”

## Uganda

### Salvatori Abuki & Anor vs Attorney General [Constitutional Petition No. 2 of 1997]

The Petitioner, Salvatori Abuki and one Richard Obuga brought this petition challenging their convictions under the Witchcraft Act. They were tried separately in the Grade II Magistrate's Court of Aduku in Lira District. Salvatori was charged in one count with practising witchcraft on Albatina Agol, Okai Alisandoro and David Ongola contrary to section 3(3) of the Act. He pleaded guilty, was convicted and sentenced to 22 months imprisonment. In addition, he was banished from his home for 10 years after serving the sentence of imprisonment. Clearly, he should have been charged in three separate counts, one for each of the complainants. Richard Obuga was convicted of being in possession of articles used for witchcraft, contrary to section 5(1) of the Act in the first count and with practising witchcraft contrary to section 3(3) of the Act in the second count. He was sentenced to 36 months imprisonment on the first count and 24 months imprisonment on the second count. The sentences were to run concurrently. An exclusion order for 10 years was also made against him.

...

Turning to the case at hand, the petitioner's case was that exclusion order is inhuman and therefore violates articles 24 and 44 of the constitution. Article 24 provides that, "No person shall be subjected to any form of torture, cruel; inhuman or degrading treatment or punishment".

That article prohibits any torture or treatment or punishment which is inhuman or degrading. This aimed at upholding the birth right to dignity and freedom from torture, cruel or inhuman treatment or punishment of citizens as human being.

Article 44 of the constitution provides that,

"Notwithstanding anything in this constitution, there shall be no derogation from the enjoyment of the following rights and freedoms:

- (a) freedom from torture cruel, inhuman or degrading treatment or punishment.
- (b) freedom from slavery or servitude.
- (c) the right to fair hearing.
- (d) the right to an order of habeas corpus".

That article noticeably reinforces article 24 by prohibiting derogation of those rights and freedom. That shows the importance the legislature took to ensure the dignity of mankind.

It was submitted by Mr. Emoru that exclusion order is inhuman. What is "inhuman". There is no judicial definition of that word. The shorter Oxford English Dictionary definition of the word "inhuman" includes not having the qualities proper or natural to human being, destitute of natural kindness or pity, brutal unfeeling. Because of the difficulties in ascertaining the exact meaning of the word, courts in other jurisdictions have resorted to illustrate the meaning by referring to some kinds or modes of punishments which were historically prohibited in England for being inhuman or cruel. They included the use of racks, thumbscrew, stretching limbs etc. Use of rack was also practiced in some parts of Uganda to punish witches or Witch-Doctors (Night Dancers). The common feature in this punishment is the causing of severe pains and suffering to the victim either physically or mentally. These may include cutting of one hand of a thief and castration which is often called for by some women Rightists in this country to punish Defilers. These are cruel and inhuman punishments. In my view these are the types of punishments which Articles 24 and 44 seek to prohibit. What is the effect of exclusion order? Mr. Emoru submitted that it leaves the petitioner homeless without any

body in the area from which he was banished. All these are apt to cause the petitioner anguish.

...

There can be no doubt that the effect of an exclusion order is to deprive the convicted person of access to his or her property – which is prohibited in express terms by the clear provisions of Article 26(2) of the Constitution except where a citizen's property may be acquired or taken possession of, compulsorily in public interest, that is, for public use, interest of defence. Public safety, public order, public morality or public health I suppose this is the provision that permits the state to nationalize private property in public interest. Needless to say, there are conditions attached to the nationalization therein; the state shall pay adequate compensation prior to the taking, and the affected citizen shall be accorded a right of access to court, presumably, in connection with the property, for compensation and other matters concerning- the affected property.

It is not so with an exclusion order. The convicted person is denied access to his or her property for up to 10 years, after serving a term of imprisonment as in the present case. Let us not forget that the greatest number of consumers of this legislation will come from the peasantry whose only tools of production seldom go beyond the hoe and the panga, men and women whose skills are primarily not developed beyond the needs of a pitiable subsistence economy. Consequently, a person against whom an exclusion order is imposed cannot easily change his or her occupation so as to gainfully engage in any activity for a living once the order has been enforced. He or she would need to acquire land for subsistence in a new area where he or she may not be accepted, or land availed (if it can be afforded after serving a term of employment); the alternative is to look for employment in a country where jobs are scarce by virtue of underdeveloped industry. Since this judgment is not a study in poverty, I need not to delve into the question whether even money- for traveling outside his or her area of residence might not be difficult to secure, after serving the sentence. Be it as it may, the effect of the exclusion order is void for offending against Article 26 (2) of the Constitution. I do not think the argument that imprisonment is constitutional and that an exclusion order is in the same category is tenable. In prison the state provides means of subsistence that is food, shelter, clothing and some social amenities. An attempt is made to instruct inmates in skills such as tailoring, carpentry, modern farming etc. in a world an endeavor is made to rehabilitate the inmate and equip him or her with capacity to lead a meaningful life after discharge. It is not so with an exclusion order. The effected person is left to the vagaries of nature and unknown social environment as he or she is not allowed access to his relatives or neighbors in the traditional area of residence. I must say this exclusion order is antisocial and may serve only to brutalise the offender and deny him or her opportunity to be rehabilitated which leads me to the final issue that is whether the exclusion order should be pronounced void for being cruel, inhuman or degrading.

...

It cannot be contended that deprivation of one's means of subsistence is not a threat to one's life. And of course, as a matter of axion, a threat to life is cruel and inhuman. Once one is deprived of subsistence one can only survive by the grace of God as the mercy of His people will no longer be available, except, perhaps, through begging-very degrading indeed.

## Pakistan

### Muhammad Ahmad Pansota and others vs Federation of Pakistan Writ Petition No.840 of 2019

4. The Petitioner No.1 in person along with Ms. Eamaan Noor Bandial Advocate submits that this writ petition has been filed seeking directions to the Respondents to legislate on preservation, conservation and management of food in Pakistan. She submits for enforcement and protection of fundamental rights guaranteed under Article 4 (Right of individual to be dealt in accordance with law), Article 9 (Right of liberty) and Article 14 (Right of dignity).

...

12. In the instant public interest petition, the Petitioners have sought directions to the relevant ministries, departments and other authorities of the Provincial or Federal Government under Article 199 of the Constitution to take positive steps towards preservation, conservation and management of waste food in Punjab. The Respondents departments and authorities have presented their oral and written arguments; in which they have undoubtedly admitted the importance and need to manage preserve and conserve food in Punjab and Pakistan; and have highlighted their performance in this regard.

...

21. The right to life can only be enforced if certain ingredients are present, food being the first and foremost. Pakistan's Courts have repeatedly held the right to food a necessity of life and thus an extension of the right to life. Its interpretation has been stretched to the extent of it being labelled an economic right. Such fundamental, economic, constitutional rights must be interpreted in light of the remaining Articles contained in the Constitution. Our Honourable courts in the following judgments have interpreted the right to life to include the right to food, which was the subject matter of the petition.

...

August Supreme Court in its Suo Moto Case no. 13 of 2009 reported at PLD 2011 SC 619 has held that: "23 ... right to life...implies the right to food, water, decent environment, education, medical care and shelter..." 22. Furthermore, the Supreme Court in "Messrs Al-Raham Travels and Tours (Pvt.) Ltd" case reported at 2011 SCMR 1621 has held that: "31....a man cannot think for individual or collective development when he cannot meet the basic necessities life such as minimum food, clothing and housing. The right to those basic necessities of life are basically and fundamentally economic rights..."

...

23. Providing its citizens with food, especially those who do not have access to it and/or cannot afford it is a primary obligation of the State, violation of which will not just breach the right to food but also the right to life, security and dignity.

...

25. Moreover, the Indian Supreme Court has also recognized the state's duty to enforce the right to food as a constitutional right in its judgment of Swaraj Abhiyan v. Union of India case reported at (2016) 7 Supreme Court Cases 498 in following words: "...There is undoubtedly a distinction between a statutory obligation and a constitutional obligation but there can be no doubt that the right to food is actually a constitutional right and not merely a statutory right. (See for example: Shantistar Builders v. Narayan Khimalal Totame [Shantistar Builders v. Narayan Khimalal Totame, (1990) 1 SCC 520] .) In any event, even if the right to food is a statutory right , it would be the obligation of the State to make all possible efforts and some

more to ensure that to the extent possible, adequate foodgrains are available to all and particularly to those in drought affected areas. There can hardly be any dispute on this. In this context, it would be worth recalling the Preamble to the NFS (National Food Security) Act 2013 which states that it is “An Act to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto.”

...

26. Eamaan Noor Bandial, Advocate in her written arguments has referred some verses of Holy Quran and Ahadith regarding wastage of food which ordains a balanced approach to food management and towards attaining sustainable food security. This approach includes many social, spiritual, resource supply, security, and institutionally related perspectives. Thorough study of Islamic teachings depict that the right to food is accepted as a basic human right in Islam. Regarding concept of right to food, Imam Sarakhsi (R.A.) says: o “Allah (S.W.T) has created the sons of Adam (A.S.) in such a way that his body cannot live without four things, i.e., food, water, clothes and house.”[22 (2Abi Bakr Muhammad bin Ahmed al Sarakhsi al Hanafi, al-Mabsut, Vol. 30 (Cairo: Maktabaha alSahadha,1324-31/1906-13), 123)].

...

36. Ms. Hafsa Ahmad in her written arguments has highlighted that the human right to food is a universally recognised right. It was first recognised as a fundamental human right in 1948. It is an entitlement which derives from the assertion that society has enough resources both economic and institutional to ensure that everyone is adequately nourished. Under international law the right to food is recognised as an intrinsic human right. The Universal Declaration of Human Rights of 1948 first recognised the right to food as a human right, it was then incorporated in the International Covenant on Economic, Social and Cultural Rights, (Article 11) adopted in 1966 and ratified by 156 states, including Pakistan in 2008, making its provisions binding on all parties.

...

37. The Government bears a responsibility to ensure equitable distribution of food within its borders and has committed to preventing food wastage in all forms.

...

42. Pursuant to the order dated 13.02.2019, Secretary Food Department, Government of Punjab and Director General, Punjab Food Authority were directed to constitute a committee to draft Regulations on disposal of excess food, after consultation with experts, social workers, legal fraternity, academics and other stakeholders. As per directions of this Court, meetings were convened by Secretary Food and D.G. PFA on 19.02.2019, 23.02.2019, 25.02.2019 and finally last meeting was held on 30.10.2019 in order to finalize Draft Regulations on disposal of excess food. On 29.10.2019, Assistant Director (Legal), PFA appeared and stated that Secretary Food Department has constituted the committee and sub-committee.

including the Petitioners and other stakeholders to finalize Draft Regulations and under Section 57 of the Punjab Food Authority Act, 2011, the Punjab Food Authority has made the “Draft of Punjab Food Authority (Disposal of Excess Food), Regulation, 2019.

...

52. Thus if one violates the right to food, the enjoyment of other human rights, such as the right to health, education, life, adequate housing, work and social security may be marred and vice versa. The crux of the idea behind the right to food is that no citizen of a country should go hungry and at all times, they must have access to or the means to acquire adequate nutritious food. Thus the enforcement of the right to food, which claims a minimum quantity of food of a certain quality, should protect against deprivation of means of subsistence and should provide sustenance to those who are unable to do so at their own.

53. The Punjab Government Rules of Business, 2011 allocates the business of policy and planning of food security to the Food Department and the Punjab Food Authority. Laws may be explored to tackle the matter of food wastage including the Punjab Pure Food Ordinance 1960, Punjab Pure Food Rules 2011 and Punjab Food Authority Act 2011. These laws may be amended to incorporate a mechanism to check the amount of food being wasted by the entities involved in the food businesses; be it the producers, storage facilitators or distributors. These sources primarily focus on the maintenance of food quality, so these laws may be amended to create a check and balance on the wastage of food and to make arrangements for consumption of excess food by those who are in need. Management of this food may properly be administered employing the relevant provisions of the Punjab Bait-ul-Maal Act, 1991 and the Punjab Charities Act, 2018...

54. This Court has taken up the matter in hand because of issue of „Justiciability“ which refers to the right of people to have a recourse to a judicial or other effective remedy when their rights have been violated. In Pakistan, justiciability is effected through case laws and our Superior Courts have played an important role in the recognition/interpretation and implementation of the fundamental rights of people. As a result, people would be in a better position to seek a remedy for violations against their right to food, if the right to food is justiciable in Pakistan.

55. Pakistan has ratified international human rights treaties which enshrine the right to food. The language of these agreements signifies that Pakistan has agreed to work within an international human rights framework and has an obligation to take steps to respect and fulfill such rights. This creates moral, legal and ethical imperatives to bring this human right framework home by developing a domestic food policy infrastructure based on the right to food. As signatory to the above conventions and treaties, Pakistan is bound to honour its international commitments...

...

56. International conventions to which Pakistan is a signatory that address economic, social and cultural rights could be interpreted as legally binding according to our own Constitution. Importantly, provisions in the Constitution such as those guaranteeing equality and freedom from discrimination would appear to protect economic rights including the right to food.

...

60. In view of the above, this Court allows this writ of mandamus under Article 199(1(a) (i) of the Constitution and directs the Government Departments performing their functions within the jurisdiction of this Court in connection with the affairs of the Federation and the Province of Punjab and other local authorities under the respective laws, mentioned in this judgment to do anything, they are required by law to do **IN ORDER TO PRESERVE, CONSERVE AND MANAGE EXCESS OF FOOD AND WASTAGE OF FOOD**. he draft Regulations finalized by

The draft Regulations finalized by PFA, as informed to this Court, shall be notified expeditiously and once it is notified, the same shall be implemented in stricto sensu by the concerned Authorities. The following directions are issued to the concerned Authorities which are as follows: (1) All the applicable laws and the relevant directions and judgments of the Hon'ble Supreme Court and High Court mentioned herein above, shall be implemented in letter and spirit in order to ensure fulfillment of the obligation under Article 189 and 201 of the Constitution. (2) All the Respondents shall take steps to preserve, manage and conserve the food wastage in Pakistan and the Punjab. (3) The Concerned Departments shall, through the media and other means, inform and apprise the public and all the stakeholders (i.e. NGOs and Hotel Associations etc) regarding importance of preserving, conserving and managing excess food and the Regulations, once notified. (4) The Concerned Departments shall ensure establishment of a management system whereby food can be channelized to persons in need through strict compliance of the relevant provisions of the Punjab Bait-ul-maal Act, 1991 and the Punjab Charities Act, 2018. (5) The Punjab Government shall revise and amend the Existing laws if so required i.e. Punjab Pure Food Ordinance 1960, Punjab Pure Food Rules 2011 and Punjab Food Authority Act, 2011 with respect to keep a check on the amount of food being wasted by persons/organizations dealing with food businesses i.e. the producers, storage facilitators or distributors (restaurants, transporters etc.).

### South Africa

Equal Education & Ors vs Minister of Basic Education & Ors Case Number: 22588/2020,  
[High Court of South Africa, Gauteng Division]

...

[2] The applicants are on an urgent basis seeking declaratory orders against the Minister of Basic Education [the Minister] and the MEC's of Education of eight provinces of South Africa [the MEC's] declaring that they are in breach of their constitutional and statutory duty to ensure that the National School Nutrition Programme [NSNP] provides a daily meal to all qualifying learners whether they are attending school or studying away from school as a result of the Covid-19 pandemic.

No relief is sought against the MEC of the Western Cape, the ninth province because the Western Cape provincial government had publicly committed and directed to immediately provide a daily meal to all qualifying learners, whether they have returned to class as Grade 7 or 12 learners. The breach in this application is from 8 June 2020, the date the schools were to be reopened and not for the entire period the schools were closed. [3] The applicants also seek an order against the Minister and the eight MEC's that they without delay ensure that the NSNP is implemented in such a manner that it provides a daily meal to all qualifying learners.

[4] The applicants further seek a supervisory interdict effectively seeking judicial supervision against the Minister and the MEC's with a step by step plan as to how the NSNP will be implemented with such plan to be submitted to the Court within 5 days and with follow up reports every fifteen days until the order is discharged by the Court. The applicants also seek an order that on the same papers, supplemented if necessary, they may approach the Court again on whether the plans comply with the respective duties and whether there was compliance with this Court order.

...

[20] In the months since the outbreak of the Covid-19 pandemic Courts have extensively pronounced on what the pandemic is, the devastation thereof and what the government did to address the COVID-19 pandemic. Enough being said, all that remains to be said is that in this matter Covid-19 had the devastating effect of denying 9 million school going children at least one nutritious meal a day, leaving many, many children hungry and unfed while attempting to learn.

[21] In South Africa the schools were closed for a period of 12 weeks of which 2 weeks were holiday weeks, prior to this application. The children do not receive food over holiday periods. The children were encouraged to in the time of closure learn remotely through the use of broadcast and online resources made available by the Department.

[22] The effect of the close of the schools and the NSNP not having been rolled- out during the COVID-19 period lockdown up to the date of hearing was demonstrated with reference to the Seekings report. The purpose of the report is to provide an analysis of the efficacy and reach of the governments emergency expansion of social protection during the lockdown. Despite the criticism that the report did not take into account that the children do not receive food in the holidays the effect and reach of the government's emergency expansion of social protection was undisputed. [23] The Government announced measures to mitigate the loss of employment, income and suffering due to the lockdown. Although the Child Support Grant was increased to R300 in May and R500 per month from June to October, government later explained that the amount is not raised per child, but per caregiver. The old age pension was increased by R250 per month from May 2020 to October 2020. The Covid-19 Social Relief of Distress Grant is a new grant that will be paid to anyone who is unemployed but is not receiving any other form of grant or unemployment insurance. The reach of this grant was to be 8 million unemployed people but only 38 000 has received this grant.

[24] Feeding schemes were implemented and after two months of lockdown the Government stated that 788 000 food parcels were delivered. It is undisputed that the NSNP would have on its own provided 45 million meals per week rendering the generous estimate of 788 000 food parcels bleak in comparison. There is, and was, no viable substitute for the NSNP for the children.

...

[43] Section 28(1) of the Constitution is only qualified with the word “basic” and no internal qualifier. The failure to roll out the NSNP is thus justifiable only in terms of the criteria and proportionality analysis required by the general limitation clause of section 36. The rights to basic nutrition can thus also not be progressively realised.

[44] Furthermore, the State is a bearer of positive obligations in respect of the rights contained in the Bill of Rights. But, the Constitution also creates a negative obligation not to impair the right of access to the rights in our Constitution. The State accordingly has a duty to respect and protect entitlement to basic nutrition and education as fulfilled by the NSNP.

...

[46] The Minister and MEC's cannot take away the pre-existing right of basic nutrition of at least a meal a day during school terms. Any deliberate retrogressive measure needs to be fully justified upon careful consideration with reference to the totality “of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”

[47] The learners thus have an entitlement to receive basic nutrition which they have always received in terms of the NSNP. The Department, as part of the State, accepted the obligation to provide meals to learners who need the nutrition and benefit from the programme. By discontinuing the NSNP the State is depriving the learners of this right to nutrition.

[48] The learners may not be deprived of such right unless there is compelling justification. The Minister and MEC's proffered no justification whatsoever. The Department did submit that they suspended the programme because the Conditional Grant does not permit the provision of meals other than when schools are open. Whether this could constitute justification is not for this Court to decide because this application only addresses the situation when the schools were opened on 8 June 2020. No justification has been proffered for not rolling out the NSNP from 8 June 2020.

...

[49] It would seem that the Minister and MEC's seek “justification” on them not having a primary obligation to provide basic nutrition. The applicants have never suggested or argued that the Minister and MEC's must feed the children “morning, noon and night” as set out in the Department's answering affidavit. The applicants and the amicus curiae both acknowledge that parents have a duty to maintain and care for their children, but that the state has a duty to provide appropriate care in the absence of parental or family care as a supplementary duty. The Minister and MEC's have done so by providing one nutritious meal a day to poor learners, i.e. to learners whose parents cannot provide sufficient nutrition to their children. Suspension of the programme left this duty unfulfilled. As a matter of fact; the relevant children have been receiving at least one nutritious meal a day during school terms, as a matter of law; the Minister has through the NSNP fulfilled this right to provide basic nutrition.

...

[52] The State remains responsible to provide families with other socio-economic rights to enable them to provide for their children.

...

[62] This Court accepts that the COVID19 pandemic caused severe unknown crises never before having to be dealt with by the Department. I am also sympathetic to Government officials whom are working long strenuous hours to solve these crises.

...

[82] I am satisfied that declaratory relief must be granted in this matter because the dispute as to whether the Minister and MEC's have a constitutional duty requires the same. If a constitutional or statutory duty has been found to exist, then the noncompliance with that duty also needs to be declared.

## 6.5. Using quasi-judicial

The Constitution of Uganda creates quasi-judicial bodies with mandates to enforce the rights in the Bill of Rights. This includes the Uganda Human Rights Commission (UHRC) and the Equal Opportunities Commission.

### Constitution of the Republic of Uganda, 1995

#### 32. Affirmative action in favour of marginalised groups.

(1) Notwithstanding anything in this Constitution, the State shall take affirmative action in also if you favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.

(2) Parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to clause (1) of this article.

...

#### 51. Uganda Human Rights Commission.

(1) There shall be a commission called the Uganda Human Rights Commission.

(2) ...

#### 52. Functions of the Human Rights Commission.

(1) The commission shall have the following functions— (a) to investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;

#### 53. Powers of the commission.

(1) In the performance of its functions, the commission shall have the powers of a court—

(a) to issue summons or other orders requiring the attendance of any person before the

commission and the production of any document or record relevant to any investigation by the commission;

(b) to question any person in respect of any subject matter under investigation before the commission;

(c) to require any person to disclose any information within his or her knowledge relevant to any investigation by the commission; and

(d) to commit persons for contempt of its orders.

(2) The commission may, if satisfied that there has been an infringement of a human right or freedom, order—

(a) the release of a detained or restricted person;

(b) payment of compensation; or

© any other legal remedy or redress.

#### Equal Opportunities Commission Act, No 2 of 2007

(2) Without prejudice to the generality of subsection (1) the Commission may—

(a) investigate or inquire into, on its own initiative or on a complaint made by any person or group of persons, any act, circumstance, conduct, omission, programme, activity or practice which seems to amount to or constitute discrimination, margin

....

# 7

## ORGANISATIONS AND AGENCIES WORKING ON FOOD ISSUES

This chapter examines the institutional framework at both national and international levels dealing with the right to food and nutrition. It starts with State institutions since the State is the primary duty bearer when it comes to realizing human rights. Thereafter, non – governmental organizations at both international and national levels are also examined, albeit briefly.

### 7.1. Government Institutions

#### 7.1.1. Ministry of Agriculture, Animal Industry and Fisheries

The Ministry of Agriculture is one of the lead government agencies charged with a mandate touching on the right to food and nutrition. It designs policies at a national level to guide agricultural activities throughout the country. The ministry uses a top – down approach whereby these ministerial policies are passed down a chain of command until they reach the grassroots officials like production officers at the sub county level. It has under its wings a number of entities aimed at discharging the State's duties in relation to the right to food and nutrition. For instance, there is the National Agricultural Research Organization (NARO) as well as the former National Agricultural Advisory Services (NAADS) whose overall aim was boosting agricultural production in the country.

### 7.1.2. Ministry of Health

Another line ministry that enables the State to discharge its obligations under the right to food and nutrition is the Ministry of Health. Its focus is primarily on the element of nutrition. Just like the ministry of agriculture, it designs and implements policies aimed at alleviating the national malnutrition burden as well as promoting interventions and programs such as those aimed at supporting lactating mothers. Some of these policies include the National Health Plan as well as the Food and Nutrition Policy of 2003.



### 7.1.3. Ministry of Disaster Preparedness

This ministry is under the Office of the Prime Minister. Its primary role is to coordinate humanitarian disaster response, including the provision of food relief to vulnerable persons. Of the 3 traditional State obligations, this ministry's mandate is tailored towards the duty to fulfil. This was, for instance, seen in its food assistance intervention alongside the International Red Cross Society following the 2018 Bududa landslides which left many gardens and crops destroyed.

### 7.1.4. Uganda Food and Nutrition Council

This is an ad-hoc, inter-sectoral government agency that is meant to coordinate the activities of both State and non - State actors involved in advancing food and nutrition in Uganda. It

consists of technocrats from the Ministry of Agriculture, Animal Industry and Fisheries; Ministry of Health; Ministry of Gender, Labor, and Social Development; Ministry of Finance, Planning, and Economic Development; Ministry of Education and Sports; Ministry of Local Government; Uganda National Bureau of Standards; Ministry of Trade, Tourism and Industry; Institutions of Higher Learning; Civil Society Organizations; Farmers groups; and the Private Sector.

### **7.2.1. Food and Agriculture Organisation (FAO)**

FAO is a specialized agency of the United Nations that leads international efforts to defeat hunger. Its goal is to achieve food security for all and make sure that people have regular access to enough high-quality food to lead active, healthy lives. With over 194 member states, FAO works in over 130 countries worldwide. We believe that everyone can play a part in ending hunger. FAO has been at the forefront of championing the right to food at the international level. It organized the first World Food Conference of 1974 at which the constitutive elements of the right to adequate food were set out. It also organized the World Food Summit of 1996 which further defined the right. FAO continues to engage governments around the world to advance the food rights agenda. Website: [www.fao.org](http://www.fao.org)

### **7.2.2. World Food Programme**

The World Food Programme (WFP) is also a Rome-based, sister organization to FAO. It has been at the helm of humanitarian interventions across the world by delivering food assistance in emergency situations and working with communities to improve nutrition and build resilience. It is championing the global goal to ending hunger, achieving food security and improved nutrition by 2030. In its work, WFP partners with over 1000 national and international NGOs to provide food assistance and tackle the underlying causes of hunger. Website: [www.wfp.org](http://www.wfp.org)

### **7.2.3. United Nations International Children's Emergency Fund**

UNICEF focuses primarily on nutrition interventions for children across the world. It is a key partner in the major global initiative of Scaling Up Nutrition (SUN) movement, which is bringing much needed focus and investment for nutrition in a number of countries. The program areas revolve around infant and young child feeding, micronutrients, nutrition security in emergencies, as well as nutrition and HIV/AIDS. UNICEF partners across all sectors of society with governments, UN agencies, the private sector and civil society. Website: [www.unicef.org](http://www.unicef.org)

### **7.2.4. UN Committee on Economic, Social and Cultural Rights**

The Committee on Economic, Social and Cultural Rights is a monitoring body of the UN for the

ICESCR. Following the World Food Summit of 1996, the Committee developed an interpretive instrument known as General Comment No.12. This instrument has since become the international benchmark for understanding the right to adequate food. The Committee also receives and considers reports on the state of economic, social and cultural rights from various countries, including the right to food and nutrition.

Website: <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>

### 7.2.5. UN Human Rights Council

The Human Rights Council is an inter-governmental body within the United Nations system made up of 47 States responsible for the promotion and protection of all human rights around the globe. Within the special procedures, the Council has an expert namely a Special Rapporteur on the right to food usually appointed to carry out independent monitoring of the state of the right to food in various parts of the world and support the work of other actors such as the Committee on Economic, Social and Cultural Rights.

Website: <https://www.ohchr.org/en/hrbodies/hrc/pages/home.aspx>

## 7.3. Non-Governmental Organizations

### 7.3.1. FIAN Uganda



FIAN Uganda is a newly registered Non-Governmental organization working on the right to food and nutrition in Uganda. It champions the cause of social justice in food production, equitable distribution of resources to enable people to feed themselves, fairness in access to food, and advocating for the rights of the affected communities by violation and abuse of human rights. In Uganda, for instance, it has provided support to evictees with respect to pursuing justice in the case of Baleke Kayira Peter, Sebwato Patrick & Mugerwa Antonio v. Attorney General, Kaweri Coffee Plantation Ltd & Eng. Emmanuel Bukkokayira. It is also currently supporting the right to food of fisher communities.

### 7.3.2. Food Rights Alliance



The Food Rights Alliance is a coalition comprising of civil society organizations focusing on sustainable agriculture and food security in Uganda. In 2013, it was mandated with coordinating the activities of the Alliance Against Hunger and Malnutrition in Uganda and the East African Region by FAO. It is also currently implementing a Five-Year Strategic Plan (2019 – 2023) to promote the right to food through sustainable agriculture.

### 7.3.3. CEFROHT



Founded in 2018, the Center for Food and Adequate Living Rights set out to advance the right to adequate living through a human rights based approach to food security

and nutrition, among others. This was inspired by persistent challenges such food insecurity in various parts of the country, malnutrition as evidenced by the magnitude of stunting as well as economic disparities which have left large sections of the population without the means to enjoy their rights to adequate food.

One of its recent interventions was the filing of a public interest case at the East African Court of Justice in which it seeks a declaration that the failure by the governments of Uganda and Rwanda to provide food to petty traders at Katuna in the aftermath of the border closure amounted to a violation of their food rights.

### 7.4.. Uganda Citizens' Initiative for the Right to Adequate Food

UCIRTF is a not for profit organization that was registered as a company limited by guarantee in 2011. The idea of forming UCIRTF was initiated by nutrition professionals who wanted to contribute to the fight against malnutrition in Uganda using a human rights-based approach in contributing to the progressive realization of the human right to adequate food.

UCIRTF's work is grounded in international human rights law and draws from international and country based human rights instruments. UCIRTF's mandate is broadly centered in right to adequate food advocacy and training; legislation and accountability; assessment and monitoring.

Other important actors worthy noting include but not limited to;

- The World Committee on Food Security" (CFS). The Committee on World Food Security (CFS) <http://www.fao.org/cfs/home/about/en>

- IFAD (International Fund for Agricultural Development). The International Fund for Agricultural Development (IFAD) <https://www.ifad.org>
- The Global Network for the Right to Food and Nutrition (GNRTFN) <https://www.righttofoodandnutrition.org> ,
- La Via Campesina <https://viacampesina.org/en/>
- Global Convergence of Land and Water Struggles in West Africa- <https://www.righttofoodandnutrition.org/files>
- Civil Society and Indigenous Peoples' Mechanism (CSM) for the CFS <http://www.csm4cfs.org>

