

FEATURE

Food Security in the Human Rights Architecture of South Africa

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Introduction

It is a little-known fact that approximately one-third of the food grown, harvested, made, and sold in South Africa ends up in landfill sites, despite being in an edible state. This vast amount of food waste stands in sharp contrast to the reality that millions of South Africans face hunger and food insecurity every day. South Africa can ill afford to waste food on such a grand scale, particularly given the rising levels of poverty and hunger not only within the country but across the African continent.

According to data from the General Household Survey conducted by Statistics South Africa, it is estimated that out of almost 17.9 million households in South Africa in 2021, almost 80 per cent (14.2 million) had adequate access to food, while 15 per cent (2.6 million) had inadequate access and 6 per cent (1.1 million) stated that they have severely inadequate access to food. Various socio-economic factors fuel this crisis, including rapid population growth, high unemployment rates, and a stagnant economy. These factors have left many households struggling to afford necessities, particularly food. The combination of economic challenges and structural inefficiencies in food distribution perpetuates the cycle of hunger.

Increasing levels of joblessness in South Africa, particularly in low-income communities, exacerbate food insecurity. Many people lack the means to purchase sufficient food, let alone nutritious meals, to sustain their families. At the same time, the sluggish economy provides little opportunity for recovery, with limited job creation and rising inflation driving food

prices even higher. The result is that a growing number of households facing hunger, malnutrition, and food insecurity. This problem is not only a social and economic issue but a human rights crisis that must be addressed urgently.

The law

The Bill of Rights, as part of South Africa's Constitution, establishes a clear legal framework for food security, ensuring that the right to food is a fundamental human right. Section 27(1)(b) of the Constitution affirms that 'everyone has the right to have access to sufficient food and water'. This provision, however, is subject to the state's obligation to take 'reasonable legislative and other measures' to progressively realise this right, within the limits of its available resources. This approach of progressive realisation acknowledges that while the state might not be able to fulfill these rights immediately for all citizens, it is required to work consistently toward achieving them.

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Importantly, the rights of children in South Africa are not subject to the same conditional language. Section 28(1)(c) guarantees that ‘every child has the right to basic nutrition, shelter, basic health care services, and social services’. The fact that this right is not subject to progressive realisation means that the government is constitutionally obligated to provide basic nutrition to children without delay, regardless of resource constraints. This distinction reflects the prioritisation of vulnerable groups, especially children, in South Africa’s constitutional framework.

Further reinforcing these obligations, section 7(2) of the Constitution mandates that ‘the state must respect, protect, promote, and fulfill the rights in the Bill of Rights’. This places a positive duty on the government to ensure that the right to food, as well as other socio-economic rights, are actively safeguarded and realised. In failing to curb food wastage or ensure that food is available to those in need, the state risks breaching its constitutional duties.

Beyond the Constitution, international human rights law also plays a role in shaping South Africa’s approach to food security. South Africa is a signatory to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which, in article 11, recognises the right of everyone to an adequate standard of living, including adequate food. The ICESCR further obliges signatory states to ensure the availability, accessibility, and sustainability of food supplies. South Africa’s obligations under the Covenant complement its constitutional mandate and place additional pressure on the government to address food insecurity.

In practice, however, the realisation of these rights has been slow. While South Africa has made strides in legislating socio-economic rights, the gap between the law and its implementation remains significant. The state’s failure to address massive food wastage, as well as its inability to provide adequate food security for its citizens, highlights the gap between its constitutional obligations and the reality on the ground.

Public administration is also governed by constitutional values. Section 195(1) of the Constitution provides that ‘efficient, economic and effective use of resources must be promoted’, and that public administration must be accountable to the public. The current state of food wastage stands in direct contradiction to this constitutional mandate. Wasting food at such a significant level when millions of people go hungry reflects not only a failure in public resource management but also a broader disregard for the human rights of the country’s poorest citizens.

The problem

The widespread wastage of food in South Africa stands in direct violation of the constitutional rights of those who go hungry. Despite the country’s commitment to ensuring access to sufficient food under section 27 of the Constitution, the reality is that a staggering one-third of the food produced is lost to waste while millions of people face chronic food insecurity. This paradox (where ample food supply coexists with extreme hunger) underscores the systemic inefficiencies in the country’s food distribution mechanisms.

This stark contrast between food wastage and widespread hunger underscores the state’s failure to fulfil its constitutional obligations. While the Constitution mandates that the government take reasonable legislative and other measures to progressively realise socio-economic rights, this does not mean indefinite delay, especially when food wastage continues unabated, affecting vulnerable populations such as children. The government’s inaction in addressing this issue demonstrates a significant gap between policy and practice, which amounts to a breach of constitutional rights. The failure to manage food distribution effectively, ensuring that surplus food reaches those in need, constitutes a breach of the state’s human rights obligations under section 7(2) of the Constitution.



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Furthermore, the hungry have a clear legal avenue to address this violation. Section 38 of the Constitution provides that any person, or group acting in the public interest, has the right to approach a competent court if they believe their rights under the Bill of Rights have been infringed or threatened. In cases like food wastage, the courts may grant appropriate relief, including a declaration of rights. This means that individuals or organisations acting on behalf of the hungry can sue the government for failing to prevent food wastage and for failing to uphold its constitutional duties.

Public interest litigation has been an important tool in South Africa for advancing socio-economic rights, and it offers a powerful means of holding the state accountable for its failure to address hunger and food insecurity. Given the magnitude of food waste in South Africa and its impact on human rights, such legal challenges are not only justified but urgently needed.

The failure of the National Development Plan (NDP) to adequately address food wastage worsens the problem. The NDP, adopted as South Africa’s long-term policy blueprint in 2011, outlines the country’s goals for development and poverty-reduction by 2030. While the NDP acknowledges the importance of food security, it falls short in addressing the critical issue of food wastage. The NDP states that ‘food security exists when everyone has access to sufficient, nutritious, and safe food at all times’, emphasising the need for food to be available and accessible to all. This definition is sound in theory, but lacks practical solutions when it comes to addressing the massive wastage of perfectly edible food that occurs across the country.

None of the NDP’s recommendations on food security explicitly address the waste of consumable food, nor do they offer concrete steps for reducing food wastage. The closest the plan comes to addressing the issue of hunger is its suggestion that ‘innovative measures,

such as procurement from small-scale farmers to create local buffer stocks and community-owned emergency services, could be explored’. However, this vague recommendation has not been meaningfully implemented, and there is little evidence to suggest that the government has taken any substantial steps to reduce food wastage or explore these ‘innovative measures’ since the NDP’s adoption in 2011.

The lack of progress on this front is deeply troubling, especially when one considers the scale of the problem. The fact that a third of all food produced in South Africa ends up in landfill sites is a glaring indication that little or nothing has been done to fulfill the state’s constitutional obligations regarding the provision of food.

The failure to address food wastage is particularly egregious when it comes to vulnerable children. The right to basic nutrition for children, as guaranteed under section 28(1)(c) of the Constitution, is immediate and non-negotiable. Despite this, children in South Africa continue to suffer from hunger and malnutrition, which not only affects their physical development but impairs their cognitive growth and long-term health. The government’s reliance on the ‘available resources’ and ‘progressive realisation’ clauses as justifications for its inaction on food wastage is deeply flawed, especially when applied to the rights of children. The Constitution clearly distinguishes between the rights of children and those of adults in this regard, and the state’s failure to ensure that children have access to basic nutrition constitutes a direct violation of its constitutional obligations.

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Yet despite this legal protection, many children in South Africa still go to bed hungry, leading to malnutrition, stunted growth, and long-term health problems. According to Statistics South Africa (2021), more than half a million (683,221) households with children aged

5 years or younger reported experiencing hunger in 2021. Children who do not have adequate nutritious food cannot develop as they should and are at a high risk of acute malnutrition. The state's inability to curtail food wastage, while failing to ensure children's access to basic nutrition, not only reflects poor governance but is a direct violation of their constitutional rights. This failure is particularly evident in the level of stunting among South Africa's children. Stunting is a consequence of chronic malnutrition, affecting more than 1.5 million children under the age of 5, representing more than a quarter of this age group, or roughly one in four children (Hall et al. 2024: 26). This condition severely impacts both the physical and cognitive development of these children, leading to reduced school performance and lower future productivity. Stunting not only undermines children's growth but also perpetuates cycles of poverty and inequality, making it harder for affected children to escape their socio-economic conditions.

Food wastage in South Africa exacerbates this issue. While section 28(1)(c) of the Constitution guarantees the right to basic nutrition for children, millions of them still lack adequate food. The food that is wasted could be redistributed to these vulnerable children, helping to reduce stunting and improve their chances of healthy development. The Covid-19 pandemic worsened the situation, with severe acute malnutrition increasing during this time (Hall et al. 2024: 26). According to the South African Early Childhood Review,

nearly 40% of children under age six now live in households below the food poverty line, and half a million more children are at serious risk of malnutrition than before Covid-19. Children in rural parts of the country have historically been the most vulnerable to poverty and poor nutrition, but now we are seeing a rise everywhere (Hall et al. 2024).

As the authors note, 'the COVID-19 pandemic erased gains made for young children in South Africa, presenting a massive setback we have not fully recovered from'. Thus, the failure to address food wastage represents a missed opportunity to combat these worrying trends.

The solution to food wastage crises

The solution to South Africa's food wastage crisis lies in a multifaceted approach that combines urgent government intervention, comprehensive policy reform, and a strong framework for legal accountability. South Africa's food wastage problem is not just a logistical issue, but a violation of human rights enshrined in the country's Constitution. As such, immediate and concrete actions must be taken by the government to prevent the continued wastage of edible food. Failure to act puts the state at risk of facing significant legal consequences, particularly as nearly half of the population experiences some degree of food insecurity.



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One of the most critical aspects of this issue is the role of public interest litigation in compelling the government to fulfill its constitutional obligations. Sections 27, 28, and 7(2) of the Constitution clearly outline the state's responsibility to ensure that citizens have access to sufficient food and water, with a specific emphasis on children's right to basic nutrition. Public interest litigation has historically been a powerful tool in holding the government accountable when it fails to meet its constitutional duties, particularly in areas of socio-economic rights.

This legal mechanism provides citizens and civil society organisations with the opportunity to challenge the state's inaction and demand immediate measures to prevent food wastage. Through court interventions, the government can be compelled to take proactive steps to address food insecurity and food wastage, ensuring that its constitutional obligations are upheld.

One of the most immediate actions the government could take is to establish systems for the diversion of surplus food away from landfills and into the hands of those in need. Expert advice on food recycling and redistribution should form the basis of these initiatives.

FoodForward SA: a case study

A practical model for such an effort already exists in the work of organisations such as FoodForward SA. Since 2009, FoodForward SA has successfully facilitated the recovery of surplus food from the consumer goods supply chain, diverting it to vulnerable communities. More than 80 per cent of the food recovered is nutritious food. During the 2022/2023 financial year, it distributed 88 million meals and reached 985,000 people daily through a network of 2,750 beneficiary organisations, across South Africa. This was achieved at a cost per meal of only R0.56 due to tremendous support from donors, partners, and volunteers (FoodForward SA 2023).

To create meaningful change, the South African government must scale this model to a national level. This would require strong political will, active engagement from the private sector, and substantial involvement from civil society. The government can incentivise businesses to participate in food recovery programmes by offering tax deductions for donations of surplus food. At the same time, penalties for businesses that contribute to excessive food wastage could encourage more responsible practices across the supply chain. Legislation that regulates food donations, protects businesses from liability, and promotes surplus food redistribution should be enacted as part of a comprehensive policy framework aimed at reducing food waste.

Moreover, legal avenues must be explored to ensure that the government complies with its constitutional obligations. It needs to be put on notice that unless it takes urgent steps to rectify the criminal wastage of

food in a time of hunger for half of the population, it will be sued for appropriate relief that will effectively bring an end to the waste and hunger reported in the land, as reflected in the investigation report of the South African Human Rights Commission on hunger in the Eastern Cape. Declaratory, mandatory, and supervisory relief can be sought based on expert advice on the recycling of food that is surplus to the requirements of its primary buyers.

Such legal actions would not only address the immediate issue of food wastage but also create long-term solutions to ensure that food security is prioritised in public policy. The goal would be to create a framework where food recovery becomes an integral part of South Africa's food system, ensuring that surplus food is diverted from landfills and into the hands of those who need it most.

It is essential to recognise that civil society alone cannot bear the responsibility of ending hunger and food wastage in South Africa. While organisations like FoodForward SA and other non-governmental groups have made substantial contributions, the government bears the ultimate duty to fulfill its constitutional mandate. Section 237 of the Constitution emphasises that all constitutional obligations must be performed 'diligently and without delay', and this includes ensuring that children are provided with basic nutrition as required by law. The current state of food wastage, which persists while children grow up stunted or, worse, die from malnutrition, is a breach of this obligation.

Reducing food wastage could alleviate stunting and malnutrition among children, breaking the cycle of poverty and ensuring a healthier, more productive future for South Africa. As the rights of children to basic nutrition enshrined in section 28(1)(c) of the Constitution are not subject to progressive realisation, they must be fulfilled immediately, and the state violates these rights every time food is wasted while children go hungry.



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Conclusion

The issue of food waste in South Africa transcends being a mere logistical or environmental problem; it is a profound moral and legal failure in a country with deep-rooted inequalities. While the Constitution guarantees the right to food, millions of South Africans still go hungry, and food that could alleviate this hunger is discarded. This disconnect between constitutional promise and lived reality highlights the urgent need for systemic reform.

Addressing food waste requires more than just short-term interventions. It demands a fundamental shift in how food security is approached, ensuring that the state's obligations are met through a collaborative effort between government, private entities, and civil society. Initiatives to recover and redistribute surplus food, legal mechanisms to enforce accountability, and policies that prioritise the efficient use of resources are essential for meaningful change.

The challenge, however, extends beyond mere compliance with the law. It is about redefining national priorities, fostering a culture of accountability, and ensuring that the most vulnerable, especially children, are no longer left to suffer.

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