

Knowing & claiming your right to food

Second edition



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1. Introduction



Food is a basic human need. Everyone needs it to survive. Hunger can lead to death. People also need food to lead healthy and active lives. Everyone needs food to be able to grow, learn, perform physical activities, work, and participate in social and political activities.

For children, food is essential to their development and realising their full potential. Malnutrition is responsible for most child deaths because it affects a child's life, health, physical and mental well-being, and development. Children who experience malnutrition in early childhood are usually unable to pay attention in school and may not do well. They also have difficulty finding employment. All in all, we need food not only to live, but also to have healthy and productive lives.

However, many people in South Africa are deprived of this basic human need. More than 14 million people in this country are food-insecure – meaning that they do not have enough good-quality food to feed themselves. The figures have probably gone up since the recent increases in food prices. Many households have been forced to adopt unhealthy eating habits because they can no longer afford good-quality food. The situation is very serious for those poor households that were already struggling to feed themselves even before the price increases.

High levels of poverty and unemployment are the main reasons for food insecurity in South Africa. Most people do not have access to the means of producing food, such as land and sufficient water. Many people do not have a regular income to buy food for their families. Some are so poor that they have to beg and depend on others for food, at the expense of their dignity.

South Africa recognises the importance of food. It has a Constitution that specifically guarantees the right to sufficient food. However, this right has received little attention compared to the other socio-economic rights (eg health, housing and water). Few people know that this right is protected in the Constitution. They also do not know what it means and how to claim it. Although it is one of the most violated rights, there has not been any court case on it yet.

The government has not yet passed legislation specifically on this right. However, it has adopted many policies and programmes to implement it. It is important that the beneficiaries of this right, especially the poor who lack food security, know about these programmes.



This updated version of the booklet

- explains what the 'right to food' means
- explains how it is protected in the Constitution and in international law
- describes the obligations it places on the state
- provides information about government policies and programmes and how to get access to them
- suggests ways and means to promote the right to food.

2. What are your food rights in the Constitution?

There are three sections of the Constitution that specifically protect the right to food for different groups.

- (a) Section 27(1)(b) states that everyone has the right to have access to sufficient food.
- (b) Section 28(1)(c) gives every child the right to basic nutrition.
- (c) Section 35(2)(e) protects the right of every detained person and prisoner to adequate nutrition.

Children and persons in prisons are given specific protection because they do not have the means to provide food for themselves. Children depend on their parents (or the government, where there is no parental care) for food. Likewise, prisoners rely on the state for food.

Everyone else is expected to obtain food through their own means. The government is only expected to ensure that the environment is favourable for people to have access to food (See below for further discussion on state obligations). Only when people cannot get food on their own does the government have to give them direct assistance.

3. How is your right to food linked to other rights?

The right to food is closely linked to other rights. To have food on the table, you must first have access to other basic resources and services. To obtain food, you must produce it yourself through farming, fishing or processing, or buy it from the market.

- To produce food, you need, among other things, land, water, and protection from eviction. In other words, you need to enjoy your rights to these services.



- To buy food, you need access to the means of earning money (through, for example, employment or self-employment or social grants). You must therefore enjoy your rights to trade, work and social assistance which ensure that you have the money to buy food.
- To fish, you must have access to the sea, dams, rivers and lakes.
- To have the right quality of food, you need to be educated about the nutritional value of food and how to prepare and preserve it – the right to education.
- If you do not eat, you will become sick, slowly waste away and die. Food is therefore closely linked to the right to health.

In addition, your right to dignity is violated if you become a beggar or eat from the rubbish bin. Your right to equality and not to be discriminated against will be violated if your means of producing food are destroyed, or you are barred from buying food from a particular shop on such grounds as race, sex, age and gender.

Therefore your right to food is linked to the enjoyment of a whole range of rights such as the rights to land, social security, trade and work, water, education, protection from eviction, equality, dignity and life.

4. How is your right to food protected in international law?

Your right to food is protected in international law. It is found in a number of international documents such as declarations, conventions, protocols, plans of action and guidelines. The most important one is the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). South Africa has signed the ICESCR but not ratified it. Article 11 of this treaty requires states to recognise the right of their people to adequate food and freedom from hunger, and to take action to implement it.

The meaning of article 11 has been clarified in General Comment 12 (1999) of the United Nations Committee on Economic, Social and Cultural Rights – the body that supervises the implementation of the ICESCR. General Comment 12 provides useful information on

- the duties and responsibilities that the right to food brings
- ways in which the right to food can be violated
- strategies for implementing and monitoring the right.

These issues are explained later in this booklet.



Children's right to nutrition is protected in articles 24 and 27 of the Convention on the Rights of the Child, 1989 (CRC). South Africa has ratified the CRC. Other documents protect the right to food during armed conflicts and natural disasters and when dealing with refugees.

The right to food has been further clarified in the Voluntary Guidelines on the Progressive Realisation of the Right to Adequate Food in the National Context (Voluntary Guidelines). These guidelines were adopted in 2004 by the member states of the Food and Agriculture Organisation to shed light on how this right can be implemented in practice.

States can use these guidelines to develop appropriate policies and programmes to realise the right in their territories. In a statement adopted by the United Nations Committee on Economic, Social and Cultural Rights on 16 May 2008, the Committee urged states to address the structural causes of the recent world food crisis by applying and reinforcing the Voluntary Guidelines.

The right to food is not recognised explicitly in the African Charter on Human and Peoples' Rights 1981 (African Charter). South Africa has ratified this treaty. However, the African Commission on Peoples' and Human Rights – the body that monitors the implementation of the African Charter – has held that the right to food is implicitly protected by the African Charter through a combined reading of the rights to life, health and development. This decision was taken in the case of *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v the Government of Nigeria* (Communication No 155/96, 2001 AHRLR 60). The African Commission found that Nigeria had violated the right to food by failing to prevent the pollution of the environment by oil companies and by allowing its military personnel to destroy the crops and farm animals of the Ogoni community.

This decision means that you can now claim the right to food under the African Charter.

5. Why is international law important to you?

There are three reasons why international law is relevant to you in relation to the right to food. Firstly, international law played a key

role in the drafting of the South African Constitution. There are a number of rights in the Bill of Rights that are similar to those found in international treaties. The right to food is just one of them.

Secondly, our Constitution also gives international law a special role in interpreting all the rights in it. Section 39 of the Constitution says that our courts must consider international law when interpreting all the rights in the Bill of Rights. This means that when interpreting the right to food, our courts are obliged to consider, for example, General Comment 12. It also means that the government will have to consider the Voluntary Guidelines and other documents when formulating policies concerning the right to food.

Thirdly, though South Africa has not yet ratified the ICESCR, the fact that it has signed the document means that it has committed itself to realising the rights in it. In addition, as stated above, South Africa has ratified the other documents that protect your right to food. For example, the fact that South Africa has ratified the CRC means that it has an international duty to ensure that children's right to nutrition is realised.

Important point

If you do not know what your right to food means and what the South African government needs to do to implement it, you can read General Comment 12 and the Voluntary Guidelines.

6. What does the right to sufficient food mean?

To understand what the right to food means in South Africa, we use mainly (but not only) General Comment 12, the Voluntary Guidelines and decisions of our courts on other key socio-economic rights.

To understand this right, you first need to understand the difference between 'charity' and 'a right'. Charity involves benevolence. The giver of charity does not have an obligation to give and the recipient is not entitled to what is given. Therefore a charitable approach to food means that hungry people are passive recipients of food parcels or cash for food from the government, civic groups and individuals. In other words, the providers of the food are not morally compelled to provide it. This seriously undermines the dignity of the recipients of the food.



By contrast, a right is something you are entitled to simply because you are a human being. It can be legally enforced. When it is said that every person has a right to food, it means that the state has an obligation to provide food to the hungry and the food-insecure. Recognising food as a right has the effect of restoring the respect and dignity of the poor, who may be recipients of food parcels. This is so because they are entitled to receive such food as a right. Recognising this right also helps to get rid of the perception that food insecurity is mainly caused by human beings themselves (apart from natural disasters). Therefore it starts from the premise that it is immoral for the government to do nothing when its people are dying of hunger and malnutrition.

Thus the right to food imposes obligations on the state to ensure that you have access to food at all times through your own means or, if you are unable to get the food yourself, through assistance from the state.

The right to food is realised when every man, woman and child, alone or together, has physical and economic access at all times to sufficient food or a way in which to get hold of it. This right can also be defined in terms of food security. Food security exists when all people, at all times, can get enough food of the right kind and quality to live an active and healthy life.

The right to food has several key elements: food must be *sufficient*, *accessible*, *available* and *sustainable*.

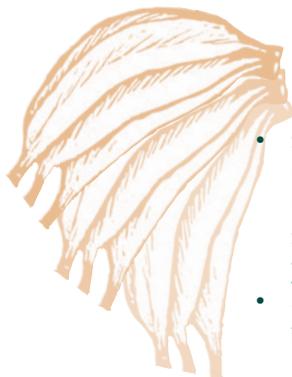
Sufficient

You will notice that our Constitution uses different words when defining the right to food. It states that everyone has the right of access to 'sufficient food', every child has the right to 'basic nutrition' and every detained person and prisoner has the right to 'adequate nutrition'. There is no important difference between the words 'sufficient', 'basic', and 'adequate'. They all simply mean that there must be enough food.

'Sufficient' means that you should have access to food that is

- enough to stop you going hungry
- nutritiously balanced in quality – has a good mixture of calories, proteins, fats, minerals and vitamins to promote your nutritional well-being and ensure that you have an active, healthy and dignified life





- safe and without harmful substances. For example, food from a rubbish bin, or food that has expired or has not been kept in the refrigerator (if it is supposed to be kept there) may no longer be safe. It may be very harmful to your health and even endanger your life.
- acceptable to different religious and cultural groups. For example, food that is not halaal is not acceptable to Muslim communities.

Accessible

'Accessible' means the food must be easy to get.

- It must be physically accessible. This means that it must be within the reach of people at all times. For example, evicting people from the land they use to produce food and making them stay in some remote place deprives them of physical access to food. Government must also ensure that vulnerable groups such as victims of conflicts or of natural and other disasters, refugees, detained persons and prisoners have physical access to food.
- Food must be affordable (or economically accessible). This means that every effort must be made to keep food prices affordable to everyone, especially the poor. Because of the recent increases in food prices, many people are no longer able to afford even the basic foodstuffs and are at risk of adopting bad eating habits which will seriously affect their health and endanger their lives.

Available and sustainable

'Available' means that there must be enough food to feed the entire population. In most countries, including South Africa, there has been a shortage of food because of the recent international credit crunch.

'Sustainable' means that food must be available at all times to feed not only the present but also future generations.

7. What responsibility and duties does this right impose?

Your responsibility (what must you do?)

In the first place, you have a responsibility to feed yourself and your family through your own means. No one is allowed to interfere with the means you use to provide food. Parents have a responsibility to provide food for their children.





The government has an obligation to ensure that it is possible for you to feed yourself through your own means. For example, it can pass laws that protect you from anyone interfering with your means of producing food. Only when you are unable to provide food to yourself (or to your children, if you are a parent) is the government obliged to give assistance.

Government obligations (what must the government do?)

Our Constitution imposes two sets of obligations on the government. Firstly, section 7(2) states that the government must respect, promote, protect and fulfil all the rights in the Bill of Rights, including the right to food. Secondly, section 27(2) imposes an obligation on the government to take reasonable *legislative and other measures*, within available resources, to realise the right of access to sufficient food progressively (over a period of time).

These obligations overlap and are linked. The obligation to *take legislative measures* means that the government must pass laws to *protect* people from acts by others (companies or individuals) that get in the way of access to food. The obligation to take other measures means that the government has a duty to adopt policies and programmes that will support and realise (*fulfil*) access to food. *Taking other measures* could also mean that the government must raise awareness about (*promote*) the right to food and the programmes it has adopted to realise this right.

In summary, all of these obligations mean simply that the government has an obligation to take steps to ensure that

- enough food is available
- food is accessible
- food is sufficient, safe and acceptable.

What must government do to ensure that enough food is available?

- It must, in the first place, provide an environment that helps farmers produce enough food.
- It must also regulate the import and export of food, especially when we are at risk of not having enough food.
- It must ensure that people are able to use natural resources such as land and water at all times to produce food.
- It must monitor the production and supply of food so that we do not give away food to other countries when we are at risk of not having enough food in the country.





What must the government do to ensure that the available food is accessible?

- It must ensure that no one is deprived of the means of producing food such as land and water. The government can pass laws that protect people from being evicted from their land or homes which they use for producing food.
- It must take measures to enable people to produce food for themselves. It can support small farmers by providing access to land, subsidies and agricultural training and it can encourage subsistence farming by sponsoring community food gardens and household food gardens. It must also take immediate action, on its own or with international assistance, to ensure that no one goes hungry by providing humanitarian aid to everyone (in cash or kind) fairly and without discrimination.
- It should take steps to ensure that no one trying to access food is discriminated against on the grounds of race, gender, nationality or political affiliation. You should not be deprived of food because you are black, a woman or a foreigner or because you belong to an opposition political party. The government can pass laws that make it illegal for anyone (particularly food companies) to discriminate against particular groups.
- It must ensure that food is not too expensive for ordinary people. It can regulate the prices of basic foodstuffs, exempt those basic foods from value-added tax, subsidise their production or introduce price control.
- Where people are unable to either buy or produce food for themselves, the government must take steps to assist them directly. These people could be victims of natural or other disasters or the children of parents who are unable to feed them or cannot find employment or are too poor to afford food. The government can provide direct assistance by giving them money (social grants), vouchers (food stamps) to buy food or food parcels.



What must the government do to ensure that the available food is sufficient, safe and acceptable?

- It must ensure that the food that is produced has the correct balance of calories, proteins, fats, minerals and vitamins to ensure that the people live a healthy and dignified life.





- It must introduce basic standards for producing, preparing and storing food to ensure the safety of food, and it must make those standards known to the public and food companies. For example, food companies must mark the expiry date of food items clearly and remove expired food from shop shelves.
- It must put in place systems to monitor the safety and nutritional value of food.

The failure of the government to do these things can result in the violation of the right to food.

Duties of the private sector (what must private actors do or not do?)

Many people today live in the urban areas and do not produce their own food. They buy it from food companies. Therefore the duty to ensure food security cannot be left entirely to the government. Farmers, manufacturers and retailers have a big role to play.

The government simply manages the production and distribution of food to ensure that there is enough food for everyone at all times by making laws and policies about food. It also has to regulate the conduct of food companies. Manufacturers and retailers must follow and apply these laws and policies. For example, they must not conspire with one another or use unfair business practices that cause food prices to rise. They must provide food that does not harm people's health.

Other companies (such as oil companies) must not contaminate food or the resources for producing food.

8. How can your right to food be violated?



Generally, your right to food is violated if the government fails to ensure that food is available, accessible, sufficient and acceptable. If you are unable to access food simply because the government has failed to fulfil its duties, you can argue that the government has violated your right to food.



Violation as a failure to do something

Reacting to the world food price crisis, the UN Committee on Economic, Social and Cultural Rights issued a statement in May 2008. It said that the current food crisis represents a failure to meet the obligation to ensure an equitable distribution of world food supplies in relation to need. The food crisis also reflects the failure of national and international policies to ensure physical and economic access to food for all.



However, not every failure to ensure food security is the government's fault. For example, food insecurity can be caused by natural disasters such as famine or drought, or by the global food market (for instance the current rising food prices). In such cases, the government is expected to assist the people who are significantly affected by these events. The government is violating the right of these people to food if it does not provide such assistance.

Examples of violations of the right to food

The government is violating your right if

- *it does not respect your right:* The government is interfering with your access to food if it evicts you from the land you use for producing food, as the government did to the black people during apartheid. Another example is when the government stops paying you a social grant without justification.
- *it does not protect your right:* The government is violating its duty to protect you if it does not take steps to prevent others from interfering with your access to food. This can happen if, for example, it does not protect you against big companies that dump hazardous substances in your area and contaminate the water you use to produce food.
- *it does not promote your right:* The government is violating this duty if it does not provide information about existing programmes on food that you may be qualified to benefit from.
- *it does not facilitate access to food:* The government is violating this duty if it fails to provide an enabling environment for people to have access to food. An example is when it does nothing to lessen the effects of rising food prices on the poor (for instance, if it does not exempt basic foodstuffs from value-added tax).



- *it does not provide food*: The government may be violating this obligation if it fails to directly assist those who cannot feed themselves. An example is when it does not assist those who are affected by natural disasters or are generally food-insecure.
- *its food programme or policy discriminates against or excludes groups*: The government is violating the right to food if its food programme discriminates against a group of people on the basis of race, gender, nationality or political affiliation, or if it excludes people who are particularly vulnerable.

9. What laws give effect to the right to food?

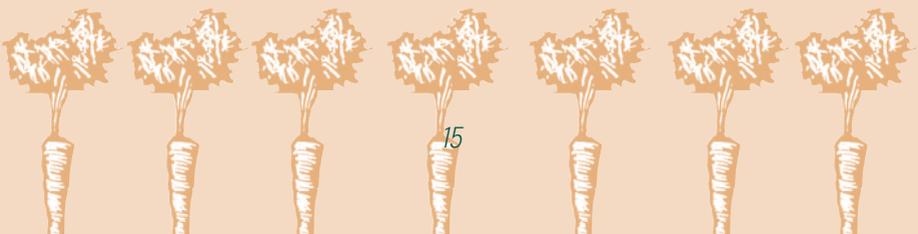
In 2002, the government started drafting a new law to manage and coordinate national food security. However, not much progress has been made yet.

Aspects of the right to food are currently protected by sections of various laws.

- *Eviction*: Several laws protect people from being evicted. These laws allow them to stay where they are and continue to use land for food production, or make sure no one stops them, without reason, from using the sea for fishing. They include:
 - o Land Reform (Labour Tenants) Act 3 of 1996
 - o Extension of Security of Tenure Act 62 of 1997
 - o Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998
 - o Marine Living Resources Act 18 of 1998 (protects the fishing rights of fishermen)

These laws require the courts to consider the fact that a person is using the land to produce food when deciding whether or not to grant an eviction order.

- *Social assistance*: The Social Assistance Act 13 of 2004 governs the provision of social grants to certain groups of people (the elderly, children and victims of natural disasters or short-term crises). The Act is aimed at ensuring that poor people or those threatened by food crises have access to food.



10. What policies and programmes give effect to your right of access to food?

The government's main food policy is the Integrated Food Security Strategy for South Africa, 2002 (IFSS). This policy aims to ensure that there is enough food in the country and that everyone in South Africa has access to food at all times. It also aims to achieve one of the Millennium Development Goals: to reduce hunger, malnutrition and food insecurity by half by 2015.

The government has set up a number of programmes to achieve the objectives of the IFSS. These programmes fulfil different aspects of the obligations imposed by the right to food.

Programmes facilitating access to food

These are the government programmes that make it possible for people to have access to the resources to produce or buy food.

Programme	What it does	How to access it
Land Redistribution for Agricultural Development (LRAD)	It provides financial assistance to small farmers from African, Coloured and Indian groups to buy land or implements for agricultural purposes.	You have to contribute money (minimum R5 000), property, livestock or labour to access the LRAD grant. Contact the Department of Land Affairs.
Community-Based Public Works Programme	It creates jobs by involving communities in public works programmes to earn money to buy food.	Contact the Department of Public Works.
Poverty Relief Programme	Many departments use this programme for their specific sector. For example, the Department of Science and Technology has an agro-processing project. These departmental programmes create jobs for, and develop skills in, communities.	These projects are intended for young people, women and persons with disabilities. Contact the Department of Social Development on its toll-free number, 0800 601011, or other departments for more information on their poverty relief programmes and how to access them.

Programmes providing direct assistance with access to food

Programme	What it does	How to access it
Primary School Feeding Scheme of the School Nutrition Programme	It funds meals for children at selected primary schools in poverty-stricken areas.	Schools apply to the Department of Education for funds from this programme. Secondary schools may also apply.
Protein Energy Malnutrition scheme of the Integrated Nutrition Programme	It provides clinics and hospitals with nutrition supplements to address and prevent malnutrition. For example, infants, children and mothers of newborn babies get Vitamin A from clinics.	Go to your local health clinic.
Social grants of the Social Assistance Programme	It gives money to children (child support grant), the elderly (pension), people with disabilities (disability grant), foster children (foster care grant) and war veterans. There is also a distress grant for people facing short-term crises. These grants, given for three months, enable people to buy food.	These grants (except the foster care and distress grants) are means-tested, which means that you need to earn a certain income or, in the case of the old age pension, be above a particular age (60). Contact the Department of Social Development on its toll free number: 0800 601011

Programmes promoting access to food

This programme educates and informs about the nutritional value and safety of food.

Programme	What it does	How to access it
Community-Based Nutrition Programme	It aims to strengthen food security by improving knowledge about nutrition, supporting the care of women and children and promoting a healthy environment.	Contact the Department of Health or local clinic.

11. How do you claim and defend your right to food?



You can claim your right to food by accessing existing programmes. You can take the government to court when you think that the right has been violated. You can ensure that the government is respecting and implementing this right by participating in lawmaking and policy development. You can promote the right to food by educating others and raising awareness about the right.



Accessing existing programmes

The government has set up a number of programmes to ensure that there is food security for everyone at all times. If you need government assistance to access food, it is your responsibility to contact or visit government departments (national, provincial or local) where possible. There are many government programmes besides those included in this booklet.



Participating in lawmaking and policy development

Groups, civic organisations and individuals have a responsibility to participate in making the laws on food security.

- For example, you can advocate national food security legislation that improves access to food security by coordinating and integrating food-related laws, policies and programmes.
- You can lobby the government to prioritise food security or to make it a specific service delivery item in budgeting, planning and policy.
- You can establish a right-to-food movement or campaign on issues of food security.



Educating and creating awareness

Civic organisations (including non-governmental, community-based and faith-based organisations) have a responsibility to inform communities of their rights to food and how to claim and defend them. They must raise awareness of existing programmes through which people can access food or the means to produce or buy it.



Enforcing your right to food

- You can lodge complaints about violations of your right to food with the South African Human Rights Commission (SAHRC). The SAHRC can investigate your complaint and even, if necessary, take it to court on your behalf.



- You can approach the court directly if you believe that your right has been violated or threatened by the government, the private sector or an individual. If you are considering this option, it would be useful to find a lawyer. If you cannot afford a lawyer, you can approach legal institutions or NGOs such as the Legal Resources Centre, the Women's Legal Centre and legal aid clinics or paralegals who can assist you for free.

Contact details

Institution	Contact details
Department of Agriculture	Private Bag X250, Pretoria, 0001 Tel: 012 319 6000 Fax: 012 321 8558 www.nda.agric.za
Department of Education	Private Bag X895, Pretoria, 0001 Tel: 012 326 5911 Fax: 012 321 6770 www.education.gov.za
Department of Health	Private Bag X399, Pretoria, 0001 Tel: 012 328 4773 Fax: 012 325 5526 www.doh.gov.za
Department of Land Affairs	Private Bag X250, Pretoria, 0001 Tel: 012 319 6886 Fax: 012 321 8558 http://land.pww.gov.za
Department of Social Development	Private Bag X885, Pretoria, 0001 Tel: 012 312 7637 Fax: 012 321 2658 www.dsd.gov.za
Department of Science and Technology	Private Bag X894, Pretoria, 0001 Tel: 012 843-6300 www.dst.gov.za
South African Human Rights Commission	Private Bag X2700, Houghton, 2041 Tel: 011 484 8300 Fax: 011 484 7146 www.sahrc.org.za

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