

Concept Paper on the Strategic Focus Area: The Right to Food



2013-2014

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1. Introduction¹

The right to food is a human right recognised under national and international law, which protects the right of people to access food and feed themselves, either by producing their food or by purchasing it. The right to food is linked to one's right to life and dignity and requires that food be available, accessible and adequate for everyone without discrimination.

The right to food means that every home must have access to adequate food at all times. If a home or person does not enjoy this level of access, they are food insecure. Equally important is that the food must be shared within the family in such a way that every member of the household has access to adequate food. To produce their own food, people need seeds, water, skills and other resources. A person might also require access to capital. Under a rights based system such as ours, government must provide an enabling environment in which people can adequately produce or procure food for themselves and their families. In order to purchase food, a person must have access to an income. Part of such an enabling environment, in circumstances of food insecurity is access to social security for those people and families that do not have an income.

In South Africa, everyone should be able, without shame and unreasonable obstacles, to participate in everyday activities. This means that, amongst other things, they should be able to enjoy access to their basic needs in a dignified manner. There is no need more fundamental to living a dignified life than the right to food.

2. Legal Framework

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) obliges states *“to recognise the right of everyone to adequate food and requires active interventions on the part of states to counteract hunger.”* General Comment No. 12 of the ICESCR states that *“The right to adequate food is realised when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”*

¹ It must be noted that this concept note is for internal circulation within the Commission and is a living document, which will be edited as changes are made to the programme on the right to food during the course of the financial year.

The Convention on the Rights of the Child (1989): obliges states “to care for children and to combat disease and malnutrition through, among others, the provision of adequate nutritious foods and nutritional support programmes.”

The World Food Summit Plan of Action (1996) specifies actions that states must take to limit hunger and malnutrition and says that steps must be taken to clarify the content of the right to food and freedom from hunger.

Section 27(1)(b) of the Constitution of the Republic of South Africa Act, 108 of 1996 (the Constitution) states that “everyone has the right to have access to sufficient food and water.” This obligation is extended in Section 27(2), which provides that, “the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.”

The right to food is expanded in the Constitution in Section 28(1)(c) as a right to basic nutrition for children and in section 35(2)(e) as a right for detainees and sentenced prisoners. Section 25(4)(a) speaks of a commitment to land reform and initiatives to bring about equitable access to all South Africa's natural resources, while determining that fair compensation must be paid in the event of land being expropriated for a public purpose. Where the state takes land from people that they use to produce food for themselves, the constitutional right to food will be relevant in determining what fair compensation would be.

Important legislation and policies since 1994 include the following:

- The ANC manifesto, which mentions food security as an important policy issue.²
- The Reconstruction and Development Programme (RDP), which identified food security as a basic human need and mainstreamed food security as a priority policy objective.
- The Integrated Food Security Strategy (2002) (IFSS). The IFSS coordinates the inputs of the “Social Sector Cluster”³ into a comprehensive programme affecting virtually all spheres of government. Its vision is to eradicate hunger, malnutrition and food insecurity by 2015.⁴

²<http://www.anc.org.za/elections/2009/manifesto/manifesto.html>

³The Social Sector Cluster includes at least the following: The Departments of Health; Social Development; Public Works; Water Affairs and Forestry; Transport; Education; Housing; Provincial and Local Government; Land Affairs; Environment and Tourism; Arts, Culture, Science and Technology.

⁴ <http://www.info.gov.za/view/DownloadFileAction?id=70243>

The main outcome of these policy developments was the Integrated Food Security and Nutrition Programme (IFSNP), which was developed by departments in the social cluster and distributes responsibilities between them.⁵ Its main objective is to reduce the number of hungry and malnourished households by half by 2015. In addition, goal one of the Millennium Development Goals is to halve, between 1990 and 2015, the proportion of people who suffer from hunger.

3. The Farming Sector

In South Africa, there are an estimated 35,000 large-scale commercial farmers, predominantly of white origin, with farms of an average size of 2,500 hectares. These farmers produce 95% of all marketed outputs. Since 1994, there are approximately 200,000 black-emerging farmers. A third category of farmers comprises over 2.5 million households, mostly in the former homelands, which practice small-scale subsistence farming. While subsistence farming is restricted to very small gardens providing only 5% of the household income, it can provide poor households in some villages with savings equivalent to up to 3 months of income. There are approximately 652,000 farm workers, and even more labour tenants and farm dwellers that also rely partly or completely on agriculture for their livelihoods.⁶

4. Overview of the Mandate of the Commission

The South African Human Rights Commission (the Commission) is a constitutional body governed by Section 184 of the Constitution, which clearly underlines the mandate, functions and powers of the Commission.

4.1. Economic and Social Rights

Section 184 (3) is specific in respect of the Commission's requirement to monitor and assess economic and social rights (ESR). In particular, Section 184(3) requires that:

⁵[http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F2003%2F03102413461001.htm%40Gov&q=\(\(gauteng\)%3CIN%3ETitle\)+\)%3CAND%3E\(+Category%3Cmatches%3Es+\)&t=A+Motshekga%3A+Gauteng%27s+rollout+of+the+National+Food+Emergency+Scheme](http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F2003%2F03102413461001.htm%40Gov&q=((gauteng)%3CIN%3ETitle)+)%3CAND%3E(+Category%3Cmatches%3Es+)&t=A+Motshekga%3A+Gauteng%27s+rollout+of+the+National+Food+Emergency+Scheme)

⁶http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add3_en.pdf

Each year the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment.

However, such monitoring and assessment is not only for the purposes of constitutional compliance but also to ensure the advancement of social and economic rights so that the poor and vulnerable in society may enjoy the full benefits of democracy. This will include the specific objectives of:

- a) Determining the extent to which the organs of the state have respected, protected, promoted and fulfilled human rights.
- b) Determining the reasonableness of measures including legislation, by-laws, policies and programmes adopted by organs of the state to ensure the realisation of human rights in the country.
- c) Making recommendations that will ensure the protection, development and attainment of human rights.

The ICESCR is the international treaty body that addresses economic, social and cultural rights. It commits state parties to promote and protect a wide range of economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress. It obliges state parties to respect and ensure that all individuals, subject to their jurisdiction, enjoy all the rights provided for in the ICESCR, without discrimination.

4.2. Strategic Focus Area

The human tragedy of a lack of access to food was graphically illustrated by the *Sowetan* newspaper in November 2011, when it reported on the death of four siblings in the North West province, caused by hunger. They died in their quest to find their mother and sister who had left in search of food. The post mortem results revealed that the cause of death was hunger and dehydration after they had walked a distance of more than 10 km.⁷ Based on this, and other complaints received, the Commission agreed that a strategic focus area for the 2013-2014

⁷*The Sowetan*. Hunger killed them. 11 November 2011.

financial year should be on the right to food and the problems in accessing adequate nutrition from a rights based perspective.

4.3. The Commission's Prior Work on the Right to Food

In February 2009, the Commission jointly hosted a food security workshop with *inter alia*, the National Business Initiative (NBI) and the Development Bank of Southern Africa (DBSA). The workshop was held in response to the then food price increase, which created difficulties for poor people and resulted in subsequent political unrest in many parts of the world. The workshop aimed to assess the risks to long-term, sustainable food security in southern Africa due to demographic changes, energy costs, climate change, and other factors.

The workshop acknowledged that the enhancement of food security requires a broader, more systemic intervention in the value chains linking the production, manufacturing, and retail of food. It further acknowledged that all social partners have important roles to play, including the private sector, which faces a compelling business case related to the risks of economic stagnation, social unrest, trade restrictions and impacts on reputation and brand value. While there have been a range of existing initiatives on food security, it was widely acknowledged that responses were not commensurate with the scale of the challenge and there was a lack of a coordinated effort to address associated problems.

In June 2009, the Commission held public hearings on the progressive realisation of various rights, including the right to food. The hearings were attended by government and civil society. The main findings and recommendations on the right to food were as follows:

- Most of the state's food security programmes facilitate access to food through capacity-building and income generation. Though the intention of these programmes is laudable, they tend to be temporary in nature and fail to address the long term food needs of South Africans.
- Adequate coordination between government departments and between government and civil society is lacking. This is demonstrated by the variance between allocation and spending in some government departments, unfilled posts, under-skilled staff and the general inefficiency of service delivery. The state is not moving as expeditiously and effectively as possible to give effect to the right to food.

- At provincial level, programmes are not always based on clear, measurable targets and indicators, and programmes that are said to focus on food insecurity sometimes do not have indicators designed to give effect to that focus.

In July 2010, the Commission attended an Expert Consultation on the Right to Food and Water in Relation to Business, hosted by the Institute for Human Rights and Business, where the *special rapporteur* on the Right to Food, Olivier de Schutter presented. The consultation examined the competing interests of business and communities for water and food and the role that business can play in ensuring access to these rights.

The actions of corporations have the potential to affect *inter alia* the implementation of the rights to food, to water, and sanitation. For example, as water users, businesses compete with individuals over a limited resource, which in areas of water scarcity can negatively impact on individual and community access to adequate water and food. Where business activities pollute water sources, such actions have clear consequences in terms of access to safe drinking water and access to food. As employers paying salaries and contractors paying fees, all businesses contribute to individuals' incomes, and thereby to the ability to access adequate food and water.

The consultation found that as companies begin to take into account the impact of their activities on the right to food and the right to water, it is important that their due diligence process fully reflects the wide range of their activities that can affect these rights. Corporations therefore need to ensure that they respect community resources, while they undertake activities which lead to jobs and improved livelihood opportunities.

The Commission continued its work in the food security sector in September 2010, when it attended an Innovation Workshop hosted by the Sustainable Food Lab. From this workshop, innovation teams were formed, which focused on primary producers; packaging; distribution in low income markets; national conversation on food security; and ways of taking the Change Lab forward. The Commission sits on the task team steering committee.

4.4. Section-Five Committee

The Commission has the power to create expert-advisory committees that have a particular focal point. The "Section-Five" committee on the right to food was established in 2010 to deal with issues of food security in South Africa. The committee was convened by the late

Commissioner Sandi Baai. The current section-five committee consists of role-players from the Commission, private companies, non-governmental organisations and academic staff. One of the major role-players is the South African Food Lab (SAFL), which is a learning institution focused on shifting dominant patterns and trends in a complex system. It supports a network of stakeholders from across the system, who are involved in ongoing action learning and innovation to create fundamental shifts toward a more equitable and sustainable food system. The SAFL is a project housed under the Food Security Initiative (FSI) at Stellenbosch University.

5. The Right to Food in Southern Africa

The United Nations identifies the food crisis as one of the primary overarching challenges facing the international community and in particular southern Africa. Attempts to address the issue of food security has led to the realisation that there is a need for collaboration between different role-players, to ensure that dynamic solutions to problems associated with the right to food are found.

Only in southern Africa is malnourishment expected to rise, and per capita food production expected to continue to fall over the coming decades, with environmental change and gender inequality playing increasingly important role relating to the availability and utilisation of food. In southern Africa, large numbers of people who live in urban informal settlements lack adequate tenure and have poor access to infrastructure and social services. The high costs associated with urban shelter, transport, health and education also undermine the ability of the chronically poor to access sufficient food.

In its response the Commission's 9th ESR Questionnaire on the Right to Food, the Department of Agriculture, Forestry and Fisheries (DAFF) provided the following main reasons for food insecurity in South Africa:

- a) **Unemployment:** because many South Africans, particularly in urban areas acquire their food by purchasing it, unemployment impacts greatly on access to food and the ability to feed oneself and one's family.
- b) **Migration:** there is a high rate of migration from rural to urban areas. Coupled with a growing population, there is a competition for scarce resources, which leads to food insecurity.

- c) **Food Prices:** evidence shows that rural consumers pay more for food than urban consumers. This poses a challenge for poor and unemployed people to access food.
- d) **Limited Dietary Diversity:** less than 50% of all South African households are consuming food from all nine food groups. As such, the price of staple foods is affected as is the inflation on certain food products.
- e) **Poor Agricultural Production:** the DAFF states that according to the General Household Survey, less than one quarter of South African households are involved in agricultural production. Therefore most households are consumers rather than producers.

South Africa has highly developed food standards that are entrenched in national legislation and policies,⁸ the foundations of which were laid during the apartheid era. However, these have failed to adequately address issues of food security and nutrition that are of particular relevance in a context of inequitable access to natural resources and variable rainfall. Furthermore, South Africa receives no major assistance from the Food and Agriculture Organisation (FAO) or World Food Programme (WFP) as it is considered a “rich” developing country.⁹

Food security is a systemic issue in South Africa. While the country is food secure at a national level in terms of aggregate food availability, research suggests that one out of every two households (52%) are at risk of hunger and about 20% of children under nine years of age are stunted.¹⁰ The problem is persistent in both urban and rural areas.¹¹ At the same time, over 50% of young women and 30% of young men are overweight or obese, which is indicative of a poor diet with a high fat context and low nutrition.¹²

Addressing the food crisis in South Africa requires appreciating the ecological underpinnings of livelihood systems and untangling the knot of ‘multiple stressors,’ which lies at the root of

⁸For example, the Agricultural Products Standards Act (act 119 of 1990), the Agricultural Products Standards Act (Act 119 1990), the foodstuffs, Cosmetics and Disinfectants Act (Act 54 of 1972), The Marketing Act (Act 59 of 1968), and the Code of Practice for Food Hygiene Management SABS 049 and a range of government notices.

⁹ See <<http://www.wfp.org/countries>>; <<http://www.fao.org/>>.

¹⁰Labadarios, D., Swart, R., Maunder, E.M.W., Kruger, H.S., Gericke, G.J., Kuzwayo, P.M.N., et al. 2008. Executive summary of the National Food consumption Survey Fortification Baseline (NFCS-FB-I) South Africa. *SAfr J Clin Nutr*, 21(2):245-300.

¹¹Frayne, B., Battersby-Lennard, J., Fincham, R., Haysom, G. 2009. *Urban Food Security in South Africa: Case study of Cape Town, Msunduzi and Johannesburg*. Development Planning Division Working Paper Series No.15. DBSA: Midrand.

¹²Kruger, HS, Swart, L, Labadarios, D, Dannhauser, A, Nel JH. 2007. In Labadarios, D. National food consumption survey; fortification baseline; South Africa 2005. Chapter 4. Stellenbosch: Department of Health.

regional food insecurity, compounded by the HIV/AIDS pandemic, and climate change. Several agencies within the state, civil society and the private sector have embarked on a process to document and find solutions to this multifaceted problem. Different stakeholders in the food system have varied perspectives and interests. Challenging structural issues such as power differentials among them remains largely unexamined. Furthermore, the conceptual underpinning and empirical evidence base for perspectives and policies, vary widely and are often more implicit than explicit. This means that the various role players whose actions influence the realisation of the right to food have different understandings of the nature of the problem, which makes rational discourse among government, civil society and the food industry difficult and ultimately prevents them from collaborating effectively on finding effective and sustainable solutions. This also means that policies are implemented in an *ad hoc* manner, which limits their effectiveness.

A unifying vision of what constitutes a nourishing food system is essential to improving food security in South Africa. However at present, this is lacking. To engage more effectively on the issue of food security, a unifying vision must be discussed, established and disseminated along with modified methods for monitoring the realisation of the right to food.

6. Challenges in Achieving the Right to Food

Because of poverty, food price increases, demographic changes, energy costs, climate change and other factors, there are significant risks to sustainable food security in southern Africa.

Major considerations when researching the right to food include:

- High poverty levels (over 40%); unemployment; HIV / AIDS and other illnesses;
 - Problems in the school feeding schemes;
 - Addressing the ownership of seeds: two companies own all the seeds so farmers have to re-buy their seeds each year from these corporations, and are being pushed further into poverty;
 - Speculators who speculate on water and food and control the prices of both these commodities.
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- Recognition that rights are inter-related and interdependent;
 - The pollution of water impacts on food production;

- Chemicals being used by agricultural sectors impact on water resources and potentially endanger agricultural workers;
- The role of business is shaping the right to food in our country in many ways:
 - Land reform: three quarters of the land in South Africa is in the hands of people who previously owned the country. Of the 7% of that land that was redistributed, about 2% has been sold back to the wealthy farmers.
 - Climate change: increased flooding, drought and other extreme weather events impacts on people, particularly the poorest of the poor.
 - The establishment of research agendas at universities and other institutions are often affected by business interests in terms of who is prepared to fund such agendas.

While food companies who produce genetically modified food/organisms (GM or GMOs) use the argument that GM foods have to be cultivated to feed the world's growing population, research has shown that global food production is at an adequate level to meet the nutritional needs of the world's population. The problem however remains with distribution and food pricing that impedes access to food for poor communities around the world. As such, increasing crop yields will not assist with the alleviation of hunger and poverty unless access, distribution and political will in terms of regulating pricing are recognised. Furthermore, GM seed patents are owned by large biotechnology companies and these patents have enhanced the profitability of the GM industry but have provided few benefits for local farmers.

Nevertheless, there are GM foods available to consumers in the South African market. Although the DAFF has not conducted any studies to assess the long-term viability and impact of GMFs, it considers all GMOs safe and in line with international best practice. The DAFF indicated in its response to the Commission's 9th ESR questionnaire that all GMOs that are approved for commercial release in South Africa are considered as safe as their commercial counterparts and that potential environmental impacts are managed via a comprehensive risk assessment framework by the Department of Environmental Affairs, which will also monitor the long term environmental impacts of GMOs. The DAFF believes that concerns on GMOs noted by the public and civil society are without scientific basis.

Given the concerns that have been highlighted over the use of GM foods, and in the interest of access to information and responsible consumerism, it is necessary for the public to be

informed when food that they are using or consuming contains GM organisms and what proportion of the food is made up of GMOs. Such a right to access information, in terms of appropriate labelling of GM foods however has the potential downside in terms of adding costs to producers and consumers of such foods.

7. Proposed Interventions on the Right to Food

The aim of the Commission's interventions is to assess the level of hunger and malnutrition in South Africa and to identify the gaps and problems with the delivery of food to consumers. Given the broad mandate of this aim, the Commission will employ a multi-pronged approach to data collection in order to provide a comprehensive report of the realisation of the right to food in South Africa that can be presented to government for consideration and remedial action.

7.1. Media Engagement

Following the finalisation of the programme of study and advocacy on the right to food, the Commission must engage with relevant print, radio and television media to announce the focus area for the 2013-2014 financial year, highlight the need to address the right to food as a human right and the activities that the Commission plans to undertake in the following months. This will draw attention to the activities of the Commission and highlight the need for focus and reform on the right to food to decrease hunger and promote food security in South Africa.

It is also suggested that Commissioners, the media and communications programme and the researcher programmes draft media releases and opinion pieces on the right to food, to create awareness of the right, the obligations of the state in fulfilling this right and steps that must be taken to improve access to food.

7.2. Provincial Engagements

A series of provincial engagements in the form of interactive workshops, dialogues or roundtable discussions will be held from October to December 2013. These will allow the Commission to give effect to the constitutional commitment to raise and strengthen awareness on the right to food. A fact sheet on the right to food to be read along with this document,

translated into various local languages, and will be distributed among stakeholders before and during workshops.

The engagements will provide a platform for discussion of information on the ambit of the right to food, address fundamental questions such as 'what is the meaning of the right to food', how the right is protected in law, linkage to other rights, duties and responsibilities of the state and citizens and how to access and enjoy the right. The participants will explore entry points, gaps, problems and constraints in addressing the realisation of the right to food in their respective localities and identify emerging issues.

In preparation for the dialogue, each of the Commission's provincial offices will ensure it understands the unique issues and challenges faced in their area in respect of the right to food. Provinces will review data from a range of sources on the demographics and socio-economic indicators (such as poverty levels, manufacturing industries, natural resources, commercial agriculture) to determine a provincial profile so as to focus the discussions to local needs.

Key stakeholders will include provincial government departments, municipalities, small and large scale farmers and civil society organisations that work closely with communities on these issues. Provincial government departments such as Agriculture, Forestry and Fisheries; Environmental Affairs; Water Affairs; Social Development, Health and Rural Development and Land Affairs, must be included in the event. Provincial offices will work with the Research and Human Rights Advocacy Unit (HuRAP) at national office to develop a list of provincial and local stakeholders that should be invited to particular provincial events.

The workshop/dialogues/round tables will be facilitated by the respective Provincial Managers and moderated by members of the section-five committee on the right to food where possible, to ensure a focused discussion with targeted outcomes. The provincial engagements must consider cross-cutting issues and interdependent rights, such as the right to education, health, water and sanitation and environment. There should also be a component of liaison with the agricultural and farm workers sector to assess problems that commercial farms, smallholders and workers have in producing food. It would also be important to engage with the private sector on issues of accountability on their part. Part of the focus of these engagements must be an assessment of food security at the provincial and local levels, while exploring various sustainable intervention strategies to overcome situations of food insecurity. The key output of

each workshop will be a report on the issues, options and recommendations for change and resolutions reached that can be used in future to hold various stakeholders to account.

8. The Right to Food and Intersecting Rights

The Commission, in its interventions of the right to food, must acknowledge the interdependence and indivisibility of human rights and examine the link between the realisation of the right to food and other human rights such as the right to education, health and environment. As such, Commissioners will pursue various activities aimed at mainstreaming the right to food in line with their respective strategic focus areas, details of which are provided below. Provided below are descriptions in broad strokes of the form and content that some of the interventions may take. It should be noted, that it is envisioned that additional detailed briefs will be developed to inform these interventions in greater detail following engagements with Commissioners, Research and HuRAP.

8.1. Gender, Basic Services¹³, Healthcare & Access to Information

The Constitution stipulates in Chapter 2, Section 9 that “*everyone is equal before the law and has the right to equal protection and benefit of the law.*”¹⁴ Human rights should be regarded as an issue that remains at the heart of all government programmes and initiatives. The Constitution further prohibits acts of unfair discrimination amongst citizens on a range of prohibited grounds. Most importantly, the right to equality touches on a very important aspect of being human and promoting human rights which includes “*equal enjoyment of all rights and freedoms*”.¹⁵

Women are excessively affected by hunger, food insecurity and poverty, as a result of gender inequality and their lack of access to social-economic rights.¹⁶ This situation is particularly difficult for rural women. Research has shown that the girl children are more likely than boys to die from malnutrition and preventable childhood diseases and that that women are more likely than men to suffer from malnutrition. In most instances, malnourished women are more likely to give birth to malnourished and underdeveloped babies¹⁷ and the generational cycle of

¹³ This includes the provision of adequate and dignified water and sanitation

¹⁴ Act of 108 of 1996.

¹⁵ Ibid

¹⁶ Ziegler, Golay, & Way ‘The Fight to the Right to Food’ (2011) 23

¹⁷ Ibid.

malnutrition continues. It is clear that children depend largely on women in order to enjoy an environment that is healthy, clean and safe for their growth. Children's right to food also takes priority for most women as their mothers.

It is important to note that the right to food plays a vital role for women as the main caregivers in a home. Women's right to the realisation of food also depends largely on access to basic services under a progressive socio-economic environment. If women are denied access land, property, housing, water and sanitation, then women are disadvantaged in society since they carry the burden of accessing food and clean water for domestic purposes.

The link between the right to food and the right to health is mostly explicit. The right to food is essential one's health and wellbeing and food is essential to the survival of all living beings. People, particularly children, require a specific level of nutrition to ensure for nourishment and development. According to the United Nations Office of the High Commissioner for Human Rights (UNOHCHR), "*when a pregnant or breastfeeding woman is denied access to nutritious food, she and her baby can be malnourished even if she receives pre- and post-natal care. When a child is suffering from diarrhoeal disease but denied access to medical treatment, it cannot enjoy an adequate nutritional status even if he or she has access to food.*"¹⁸

The right to food cannot exist if people lack access to basic services such as water. Water is essential for the preparation of food and for the cultivation of crops on a small or large scale. Livestock farming also requires large amounts of water. Currently, 70% of all freshwater apportioned for human use, is utilised for agriculture,¹⁹ and with an ever increasing population, this proportion will also increase.

The intervention on the right to food and women will comprise of a workshop comprising of a panel discussion with a presentation by a keynote speaker on the linkages between the right to food and other human rights such as the right to water and sanitation, and the disproportionate impact on women. Additional panellists will elaborate on issues relating to healthcare and the right to food, including GMOs, additional challenges around service delivery and the debates around access to information in terms of GM foods and labelling.

¹⁸ UNOHCHR and FAO. *The Right to Adequate Food*. Fact Sheet 24, 5:
<http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>

¹⁹ http://www.un.org/waterforlifedecade/food_security.shtml

8.2. Children and Basic Education

Children are particularly vulnerable to the impacts of a lack of access to adequate food as they require nutrition for growth and development and are mostly dependent on adult caregivers for the provision of this basic resource. The lack of adequate food and nutrition is arguably the most critical issue facing children in South Africa today. The lack of access to food for children will affect rights such as the right to education and health. If a child does not have access to food, the state is obliged to provide access to food or social security to access food. In South Africa, the Department of Basic Education (DoBE) has provided policy and funding for school nutrition programmes. However, the DoBE has acknowledged that there have been problems with the provision nutrition to learners, particularly in poorer provinces. Some provinces have not been able to ensure the implementation of the prescribed menus, partially because of corruption in some provinces and the lack of capacity in others.²⁰

The intervention in terms of children's rights and basic education will look at two main focus areas. Firstly, it deals with the paradigmatic distinction between the ESR of children and adults. This entails an analysis of the prioritisation of state resources as they relate to one of the population's most vulnerable and disenfranchised groups. Secondly, it will deal with the substantive content of the right to food itself, and the evolving food and nutrition needs of children from conception to the age of majority. This will consist of an examination of existing international instruments, national law and policy and importantly, the interpretation ascribed to the right of the child to food in the contemporary South African dispensation.

The intervention will take the form of a workshop with one keynote speaker addressing the overarching issues and the need to place the right of the child to food at the forefront of the agenda. The remaining panellists will each be assigned an age-range to discuss, and will canvass the interventions currently provided for, as well as existing *lacunae* in law and policy, which preclude the realisation of this fundamental right.

8.3. People with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) protects the right to access food in Article 25 (f) and Article 28. Both articles provide that the state parties should prevent

²⁰ Department of Basic Education, submission to the SAHRC in response to 9th ESR Questionnaire (2013)

discriminatory denial of health care, health services or food and recognise the right of persons with disabilities to adequate standard of living. The Commission is aware that historically, persons with disabilities have been exposed to unfair discrimination and stigmatisation.

The right to food is interlinked with the realisation of the rights in both the Constitution and the CRPD. For example most people with disabilities are not employed yet employment secures the entitlement to exercise the right to food. Further, there is a the lack of readily available research statistics on the number of beneficiaries with disabilities in food security programmes; comprehensive research on the expenditure of the disability grant by people with disabilities; effective inter-sectoral and multi-party project implementation and monitoring capacity and enforceable legislation. It must be noted that the right to food is interlinked to the enjoyment of other rights. Factors like poverty, unemployment, lack of skills and education can impact the enjoyment of the right to food. Most people with disabilities in South Africa are living in rural areas and this is further compounded by factors such as the lack of transport, lack of adequate land tenure, high food prices, dependence on social grants and adequate access to housing.

It is envisaged that the Commission will host an indaba on the right to food for people with disabilities. The Departments of Women, Children and People with Disabilities (DPWCPD) and Social Development (DSD) will be invited to make presentations on the implementation of the CRPD and food and nutrition. The indaba will look at the issues that people with disabilities have in accessing their rights, particularly food and other basic services.

8.4. Housing and Migration

The right to housing impacts access to food at several levels. Issues of land tenure have a direct impact on the ability of households to secure adequate access to food. In addition to seeds and water, land is a key resource for households to produce their own food. Security of tenure is thus inextricably linked to food security. The lack of basic services is also directly linked to the inability of poor households to fully realise the right and sustain access to food. For example, in informal settlements, where there is no electricity, dwellers do not own refrigerators and have to shop for perishables on a day-to-day basis. This limits their ability to budget efficiently in order to progressively lift themselves out of poverty and/or ensure sustained access to food.

Discourse on land restitution often centres on the further use of land for commercial purposes. This narrative tends to paint beneficiaries, with no training or intent to use the land for commercial farming, as failures. On the other hand the politics of GM food has highlighted gaps in the mass production of food in terms of *inter alia* nutrition. As such, there is a need to engage critically with notions of modernist development approaches that cater only to big business. There is further a need to recognise and support the potential of the informal sector, small-scale food production as well as small to medium enterprises (SMMEs) to make significant contributions to food security, further recognising that the right to food extends past access to food itself, but to the right to access nutritious food.

The right to food further interfaces with the right to life. In progressively interpreting this nexus, the right to food should extend to the right to know the origins of one's food. Thus support mechanisms for smaller-scale, decentralised food production are necessary, along with commercial production.

Issues of equal access to the city also must be recognised as a catalyst to food security. Notions of pristine modernism²¹ are identifiable in the urban policies and developmental aspirations of major cities in developing countries. These fundamentally restrict the poor's access to cities, which are reserved for the affluent as well as organised business. This happens through various means of delegitimising,²² criminalising and/or invalidating of the work of and presence of the poor in cities. Informal traders and migrants often do not enjoy the recognition of their contributions to the development of countries and cities. Their presence is often framed along typologies of chaos, disorder, criminality and obstruction to commerce and civic security. For example, a recent study²³ found that the by-laws of the City of Johannesburg are essentially anti-competitive (against street traders) in nature.²⁴ This has a double impact in terms of the livelihoods and food security of informal traders themselves, and those households who access food through the informal sector.

Lastly, South Africa's trajectory cannot be divorced from migrancy and mobility. Whether cross-border or internal, a significant number of households move for greater access to income-

²¹ See critiques of the 'World Class City' model in particular reference to Joburg 2040 Strategy and the Kigali Master Plan, respectively

²² *Section 10 of the CoJ's by-laws lists restricted conduct for informal traders. These are highly exclusionary and give power of confiscation to officials who in some instances abuse their authority* See : <http://www.urbanjoburg.com/informal-trading-joburg-3/>

²³ Urban Joburg : academics engaging with and deconstructing notions of Johannesburg as a world class city see : <http://www.urbanjoburg.com/urban-joburg/>

²⁴ See: <http://www.urbanjoburg.com/informal-trading-joburg-4/>

generating activities. The question of adequate access to food for mobile persons and households thus begs consideration. Studies show that big metropolitans are retroactive to issues of migration and urban growth and the lack of transitional housing or prevalence of informal living among this group in cities is directly linked to food insecurity. Forty percent of people in Johannesburg are said to be food insecure.²⁵ In terms of the mining sector, limitations faced by migrant workers in accommodating family in their living quarters have significant effects on food security. This is in respect of supporting dual households with a single income.

Through a mix of harnessing, formalising and regularising the informal sector, stakeholders can facilitate greater accessibility of rights to society's most vulnerable. Addressing informality (the needs of the poor) should be progressive and respectful, that is, with human dignity at its centre. Responses must be cognisant of the role of structure in compromising the viability of poor households and indeed, their ability to control their own access to food.

To look at the link between housing and food security and role of cities in food generation, a roundtable discussion will be held with experts that deal with the right to housing and urban development. The roundtable will look at level of food security in urban informal and rural areas in South Africa and programmes that can be implemented to increase and sustain access to food. Overall, it is hoped that the discussion will assist with an understanding of the relationship between access to housing and food security and provide some insight into the decision that households make about food when faced with a lack of income and secure tenure.

8.5. Natural Resources and Rural Development

Several factors underpin food security, including access to food and availability. Increasingly, the environment is seen as an important factor that must be considered when studying the realisation of access to the right to food. The environment supports agriculture in two fundamental ways. Natural resources such as fertile land and adequate supplies of freshwater are essential to the cultivation of crops and the planet's ecosystem services such as the nutrient recycling and soil stabilisation provided by forests and biodiversity supports life, the renewal of resources and the agricultural development..

²⁵ Africa Centre for Migration and Society at the meeting of the Section 5 Committee on Housing, SAHRC, 28 March 2012

From a rural perspective, where the main economic activity has historically been farming, there is a need to view food security and the right to food as beyond social security when ensuring that the poorest have enough to eat to issues around securing production opportunity to rural communities. Addressing the issue of food losses should be an important part of this discussion.

The objectives of this right to food event will be to investigate the main causes of food losses, due to poor access to markets, environmental change, or inadequate storage facilities, and what can be done to mitigate these losses, especially in rural spaces. The event will also explore the impact of food losses and food wastage on natural resources. Food production, processing, marketing, consumption and disposal have important environmental externalities because of energy and natural resources usage and associated greenhouse gas (GHG) emissions. Broadly speaking, the environmental impacts of food mostly occur during the production phase. The event will tackle questions around what the impact of food wastage is on natural resources in South Africa and where these impacts come from.

It is envisioned that the right to food event should be a community dialogue where experts (who may or may not include rural communities) will make presentations and communities will lead the discussions around the food-environment nexus that affect them. Presentations will be made on:

- the role of the environment in agriculture,
- post-harvest food losses, and
- the food loss/wastage footprint i.e. the impact on natural resources.

The event will provide a clearer picture of the many factors threatening food supplies in rural areas and the ability of these farming communities to continue generating food. It is also hoped that the event will yield a series of forward-looking recommendations on stimulating the right to food in rural communities by embracing the complexity of food production and agricultural systems including the ecological foundation.

7.3. National Human Rights Day Event, March 2014

The process described above will culminate in a comprehensive report on the right to food in South Africa with specific recommendations, which will be presented and discussed at the

Commission's Human Rights Day event in March 2014. The event will be in the form of a national conference where national key stakeholders will be invited. The national conference will be an opportunity to reflect on the intersecting rights (Commissioners') engagements as well as the provincial workshops on the right to food and to engage with the key government departments that have a bearing on the right to food. This will provide an opportunity for the Commission to present its findings and recommendations to stakeholders so as to set the agenda for a *human rights based* approach on this issue for the country.

The Commission will forward specific questions to relevant government departments regarding their mandated and actual role with regards to the realisation of the right to food. These questions will be based on the data and information collected from the provincial workshops. Government departments will be required to respond the findings and recommendations of the report. A draft of the preliminary findings and recommendations will be made available to the relevant government departments before the national hearing.

On-going monitoring of the recommendations with assistance from the section five committee will ensure that the Commission is placed in a position to appropriately establish both an appropriate diagnostic and agenda for focusing government's coordinated response from a rights based perspective in relation to the right to food in South Africa.

9. Conclusion

Noting that the focus area of right to food is quite broad, the Commission will attempt to assess progress made in South Africa on the realisation of the right to food, identify gaps in legislation and areas where the implementation of legislation is failing. The Commission also hopes to assess the level of access to information on the right to food, particularly on the price of staple food and the labelling of GM foods. It is hoped that these issues will be highlighted during the various provincial engagements, and if not, the Commission will work closely with the section-five Committee on the right to food, and associated stakeholders to highlight and document missing information. It is also acknowledged that the Commission cannot do justice to the realisation of a right in one financial year, but hopes to begin a national discussion on the right to food that will be carried forward by the Commission and relevant stakeholders and communities in the years to follow.