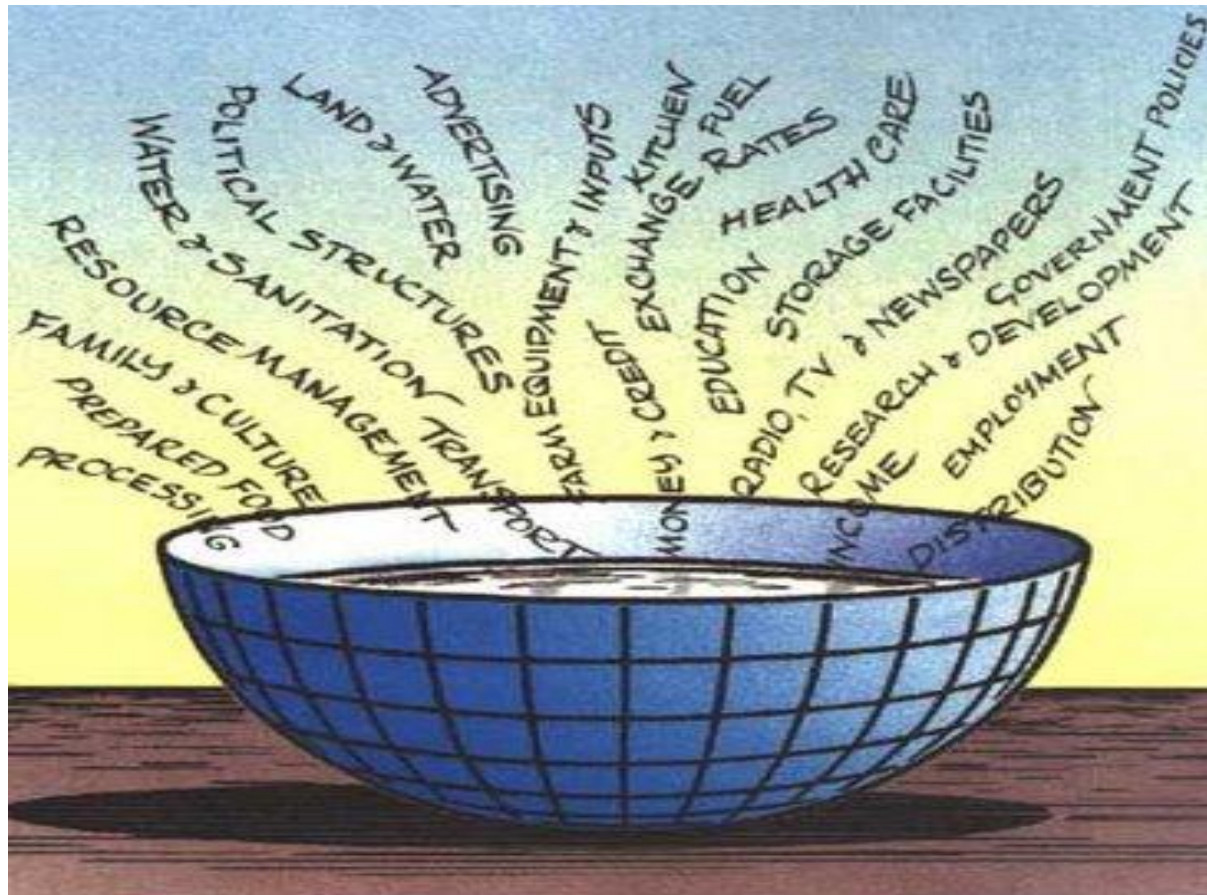


Food security and the law

Sibonile Khoza

A North-West University Seminar on Food Security

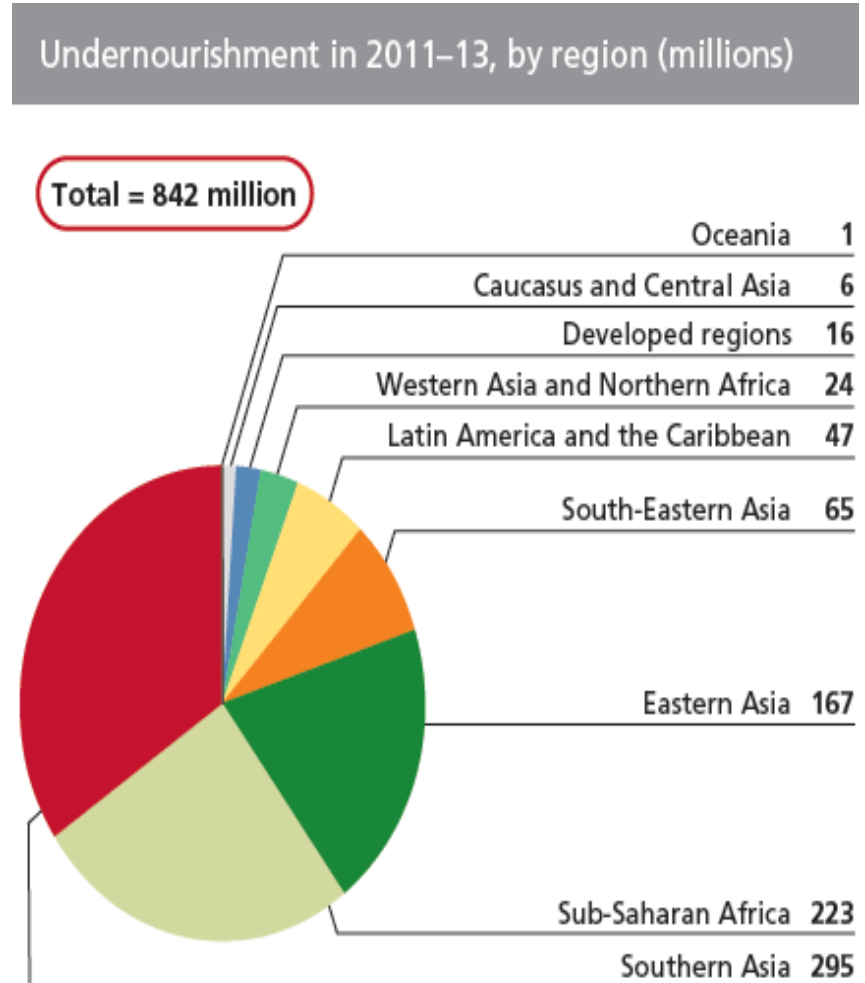
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Does SA need a food security law?

State of World Food Insecurity (FAO)

- 12% of population, 1-in-8 suffered from chronic hunger
- Developing regions have highest undernourishment (14.3%)
- Africa highest prevalence, 1-in-5 undernourished, Southern Asia and Eastern Asia follow
- Oceania, East Asia, Latin America and Caribbean doing well



State of World Food Insecurity (FAO)

- Achievements demonstrate importance of
 - social protection and nutrition-enhancing interventions,
 - policies to increase agricultural productivity and rural development,
 - diverse sources of income and long-term commitment to mainstreaming food
 - security and nutrition in public policies and programmes.
- Something right about what is done. But is it enough?

Global approaches to food security

Policy '*soft*' intervention

- Adoption of policies and strategies
- Design and roll out of programmes

Legal '*hard*' intervention

- Inclusion in constitutions or Bill of Rights
- Development of legislation/framework legislation
- Implementation of sectoral legislation (compatibility)

Policy interventions are welfare driven, short term commitments

Trend towards legislating on food and nutrition security

SA constitutional right to food

- Food rights
 - Everyone's right of access to adequate food
 - Children rights to basic nutrition
 - Prisoners and detained persons right to adequate nutrition
- Take *reasonable legislative* and *other measures* to *progressively realise* the right
- The extent of the realisation of these rights depends on available resources
- Interrelated and interdependent rights to food right also protected

SA constitutional right to food

- The right to food comprises
 - Freedom from hunger (minimum)
 - Right to adequate (quality and quantity) food
- The right to food imposes
 - Personal responsibility to feed oneself and dependents
 - State obligation to create environment for people to feed themselves
 - State obligation to assist those who cant feed themselves and their dependants

SA constitutional right to food

- “Right to food”
 - The right to 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
- “Food security “
 - Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their daily dietary and food preference for an active and healthy life
- “Food sovereignty”
 - ‘the right of the people, communities and countries to define their own agricultural, fisheries, land and food policies which must be ecologically, social, economic and culturally appropriate to their particular conditions’
- Key concepts: **adequate** (sufficient, nutritious and safe), **available** (at all times), **accessible** (physical and economic access) and **acceptable** (food preference)

SA constitutional right to food

- Obligation to take *reasonable legislative* and other *measures*
 - *Are current measures aimed at realising food rights reasonable?*
 - *Is policy alone a reasonable step to realise the right to food?*
 - *Does SA need framework legislation to drive implementation of food rights?*
- General Comment 12 and Constitutional Court support adoption of **framework legislation**
- Examples of framework legislation exist: Housing Act, Health Act, Water Act

Reasonable legislative measures

- Policy and programmatic measures not unreasonable
- But 18 years of the same interventions with little progress
- Legislation needed too – it is a critical part of the rule of law
- Law and law making invoke democratic principles of: accountability, transparency, participation etc.
- Legislation create legal certainty and obligation as well as guide policy direction

Reasonable legislative measures

- Legislation not a panacea to food security challenges
- But a legal commitment to inspire and harness action towards common goal
- Lead to better coordination and implementation of food policies and strategies
- Institutional and other mechanisms for whole-of-government and whole-of-society approach to food security

Reasonable legislative measures

- Framework law an overarching and coordinating tool for implementation of sector laws, strategies and policies
- Enhance accountability by allocating responsibilities to different actors
- Deepen ownership and legitimacy by involving all stakeholders in the development
- Set out principles for specific sectors
 - trade regulation, market systems, food prices monitoring, consumer protection, food productions, conservation, food aid schemes, as well as poverty alleviation strategies

Reasonable legislative measures

- Framework law should set benchmarks, targets and goals (BTGs)
- These BTGs are useful in monitoring progress towards realising the right
- A sticking point: how does framework law provide for benchmark, targets and goals?
 - Either directly in legislation (a radical approach)
 - Or legislative mandate for regulations
 - Or legislative mandate for policy or strategy
- Benefits: legal certainty, firm commitment and legally inspired coordination

Typical structure of framework law

- General provisions of legislation (definition, principles)
- Substantive provisions of the right (freedom from hunger, adequate food and limitations)
- Provisions on the right to non-discrimination
- Provisions on governmental obligations
- Provisions on impact assessment and monitoring
- Provisions on information, education and awareness raising

Typical structure of framework law

- Provisions on emergencies
- Provisions on international cooperation
- Provisions on multi-stakeholder institutional mechanism for coordination
- Provisions on remedies
- Provisions on implementation and financial resources for implementation

Towards food laws: Global trends

- Latin America
 - Bolivia, Ecuador, Guatemala, Venezuela, Argentina, Brazil, Honduras, Indonesia, Mexico, Nicaragua,
 - **Colombia, Panama, Peru and the Dominican Republic*
- Africa
 - Burkina Faso, Niger, Malawi, Mali, Uganda etc.
- Asia
 - India (Sept 2013)

Towards food laws: Latin America

Country	Law	Date of approval
Argentina	Emergency Law: National Food and Nutrition Program	2002–03
Brazil	Food Security Organic Law	2006
Ecuador	Food and Nutrition Security Law Organic Law of Food Sovereignty Regime	2006–09
EL Salvador	Law of Food and Nutrition Security and Sovereignty National System	2008
Mexico	Law of Agriculture and Cattle Food and Nutrition Security and Sovereignty Law of Food Security for Mexico City	2005–09
Bolivia	Legal Framework of the Bolivian Policy on the Human Right to Suitable Nutrition	2008
Nicaragua	Law of Food and Nutrition Security and Sovereignty	2009
Guatemala	Law of Food and Nutrition Security National System	2005
Venezuela	Organic Law of Agriculture and Cattle Food Security and Sovereignty	2008
Costa Rica	Legal Framework of Food and Nutrition Security	2004
Honduras	Legal Framework of Food Security and Sovereignty	2007

Towards food laws: India

- 75% of rural and 50% of the urban population are **entitled** for three years from enactment to **five kg food grains** per month
- Pregnant women and lactating mothers are **entitled** to a nutritious "take home ration" of 600 Calories and a maternity benefit of at least Rs 6,000 for six months;
- Children 6 months to 14 years of age are to receive free hot meals or "take home rations";
- The eldest woman in the household, 18 years or above, is the head of the household for the issuance of the ration card;
- The central government will provide funds to states in case of short supplies of **food grains**;

Towards food laws: India

- The current **food grain** allocation of the states will be protected by the central government for at least six months;
- The state governments will provide a **food security allowance** to the beneficiaries in case of non-supply of food grains;
- The Public Distribution System is to be reformed;
- There will be state- and district-level redress mechanisms; and
- State Food Commissions will be formed for implementation and monitoring of the provisions of the Act.

Concluding remarks

- Legal culture and rule of law to govern by laws rather than policy
 - Policies tend to be short term, flexible – laws long term and stable
- International law, Constitution and courts support legislation
- Global trends towards enacting laws on food and nutrition security
- Framework legislation necessary for coordination of complex implementation and for transparency and accountability.
- Framework law wont create new obligations with clarify roles of different stakeholders and content of the right and set benchmarks, targets and goals

Concluding remarks

- Answers to the questions posed earlier
 - *Are current measures aimed at realising food rights reasonable?*
 - *Is policy alone a reasonable step to realise the right to food?*
 - ***Does SA need framework legislation to drive implementation of food rights?***