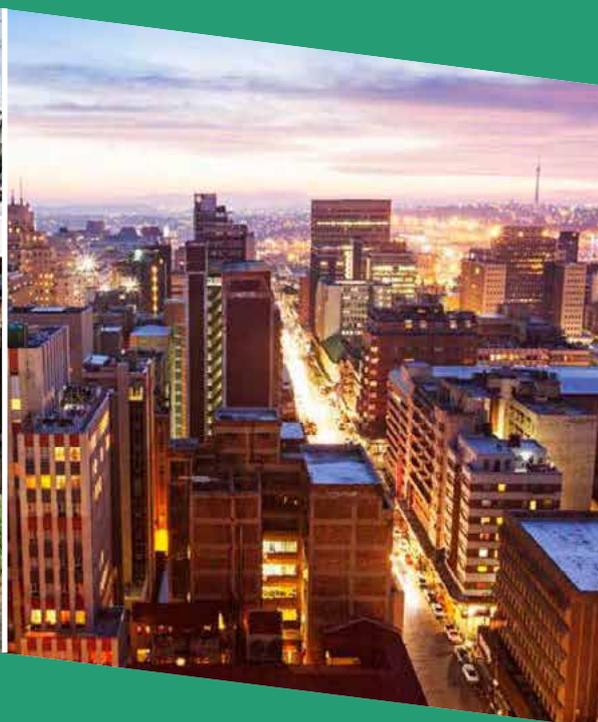
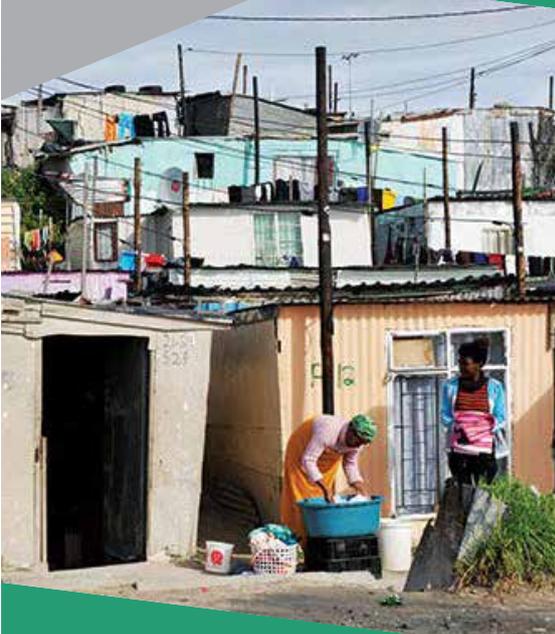


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# ESR REVIEW

Economic & Social Rights  
Review in Africa

ENSURING **RIGHTS** MAKE REAL **CHANGE**



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# Contents

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## 03 EDITORIAL

---

## 04 FEATURE

Who Should Regulate the Marketing of Unhealthy Food to Children?

---

## 10 FEATURE

Food Justice in Africa: Protecting the Right to Food in the Climate Crisis

---

## 17 FEATURE

Public Policy as an Effective Intervention against Malnutrition in South Africa: A Focus on Obesity

---

## 20 FEATURE

Food Security in the Human Rights Architecture of South Africa

---

## 26 EVENT

Expert Symposium on Social Justice, Hunger and the Constitution

# Editorial

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Welcome to the first issue of 2025 which is special edition of *ESR Review*, which looks at the right to food and nutrition through a public health lens and asks the question: What does food justice look like?

About 63 per cent of South African households are food insecure, and about 17 per cent, critically undernourished. At an individual level, that means about 20 million people struggle daily to access adequate food and nutrition. At the same time, almost 50 per cent of South African adults, and roughly 13 per cent of children under 5 years, are now overweight or obese – and this number is steadily increasing.

Addressing this double burden of malnutrition requires a public health approach, encompassing a range of integrated legislative measures, comprehensive policies, and targeted investments to effect change.

This first part of our special edition of *ESR Review* thus explores what a human rights-based approach to food and nutrition should entail, highlighting progress and ongoing challenges in South Africa's food system. The focus is on developments for improving food and nutrition access and outcomes, and the aim is to explore where progress has been made, as well as where opportunities lie to strengthen legal, policy, and regulatory measures for creating a healthier food environment.

Our first article by Petronell Kruger and Safura Abdool Karim examines who should be responsible for regulating the marketing of unhealthy food to children, considering the mandate, infrastructure, and implementation methods of different government entities.

The second article deals with the legal obligations associated with the right to food by Nastasia Thebaud-Bouillon-Njenga and Michael Addaney. In Africa in the context of the climate crisis. It reiterates the interconnectedness of climate change and food security and calls for sustainable food system transformation.

The third article by Reece Pierce-Jones weighs in on public policy as an effective intervention against child and maternal malnutrition in South Africa, focusing on obesity to illustrate the intersection of food, nutrition, and health.

Our fourth article by Paul Hoffman and Favour Funke Akanbi looks at food security within the human rights architecture in South Africa. It highlights the issue of food waste and explores challenges and legal opportunities regarding recycling and redistributing surplus food to those in need.

This edition also features an update on the Expert Symposium on Social Justice, Hunger, and the Constitution, hosted by the Centre of Social Justice at Stellenbosch University. The event drew experts together to identify ways to address South Africa's most pressing food and nutrition challenges through a social justice lens.

We hope you find this issue stimulating and useful in continuing the fight for the right to food, nutrition, and health across the globe. We also thank our authors for their insightful contributions.

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***Paula Knipe***  
**Guest Editor**

# FEATURE

## Who Should Regulate the Marketing of Unhealthy Food to Children?

*Petronell Kruger and Safura Abdool Karim*

### Introduction

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*'A looming health-care crisis': this is how Statistics South Africa described the astronomical rise in non-communicable diseases in recorded death statistics for 2023. 'Non-communicable disease' (NCD) is a term used to refer to diseases such as high blood pressure, heart disease, cancer, and diabetes that are not spread from one person to another. Risk factors like diet, pollution, reduced physical activity, and alcohol and tobacco use may contribute to these diseases. Being overweight or obese is often contributing risk factor. NCDs used to be called 'lifestyle' diseases, but this term has fallen away given that such diseases are now understood as driven largely by environmental and structural factors outside of individual control.*

Given the range of factors that drive NCDs, a suite of policy interventions is necessary to address the epidemic. Preventative policies are shown to be the more cost-effective and effective in managing NCD prevalence than curative approaches alone. A key prevention strategy which has been recommended is restricting the marketing of goods that contribute to NCDs. Major successes have already been achieved in restricting alcohol and tobacco marketing; however, unhealthy food is still a relatively unregulated space.

For decades, NCD experts and international bodies such as the World Health Organization have indicated that intervening at the childhood level has the largest policy gains and comes with relatively small implementation costs. It has also been recognised that restricting child-directed marketing promotes the best interests of the child and is aligned with both the right to health and the right to food, as it promotes healthy diets and prevents disease.

In South Africa, several studies have indicated that the majority of food advertising promotes unhealthy food (often described as food high in salt, sugar, and fat)

and that children are often either exposed to or even targeted by such promotion. This is unsurprising in the South African context, where children under 5 are twice as likely to be overweight or obese.

In recognition of this, the Department of Health has published a Draft Regulation (R3337) that developed a mechanism to address unhealthy food through restrictions on how such food can be labelled and marketed. However, the scope of the regulation and the ability of the department to engage in marketing content oversight, as well as the uncertainty of the draft regulation's being adopted into law, raises a key question: Who should regulate child-directed marketing of unhealthy food in South Africa?

This article considers the mandate and authority of different possible implementation entities, the infrastructure of such entities, and possible implementation methods for this form of regulation of the three different entities: the Department of Communications and Digital Technologies (DCDT), the Advertising Regulatory Board, and the Department of Health.

## The Department of Digital Technologies and Communications

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The DCDT has the mandate to regulate the digital and traditional communications sectors. It is the custodian of the Electronic Communications Act (ECA) and the Independent Communications Authority of South Africa Act (ICASA). The ECA is the primary enabling legislation for regulating the communications sector in South Africa. It contains limited oversight into the content of advertising, through, amongst others, restrictions on political advertisements. It also places the obligation on all broadcasting system licensees to adhere to the Code of Advertising Practice – a voluntary code administered by the Advertising Regulatory Board (ARB).

As will be discussed below, this voluntary code has several shortcomings. However, there is limited face value in the Code as a negative finding based on the Code, can lead to a broadcasting license being withdrawn or withheld. The implementing body – ICASA – can also make additional regulations on marketing or adjudicate on adherence to the ECA where the ARB does not have oversight. ICASA is mainly concerned with oversight of the scheduling of advertisements, not of content.

In 2020, the DCDT published the White Paper on Audio- and Audio-visual Content Services Policy framework ('White Paper'). The White Paper came in response to a need to overhaul how communications in South Africa are regulated, given, amongst others, the rise of digital media. This is important as the ECA and ICASA are geared primarily towards television, radio, and postal service regulation.

For our purposes, the White Paper contains two essential principles. First, it makes the protection of children a guiding principle for legal and policy reform. Secondly, it expressly highlights the need to take policy action to regulate the scheduling of adverts for alcohol as well as harmful food – defined as 'foods that are high in salt, sugars, saturated fats or trans-fatty acids

or that otherwise do not fit national or international nutritional guidelines'.

At first blush, the White Paper seems to be a prime vehicle to introduce comprehensive restrictions on marketing unhealthy foods and beverages to children. It is the policy document with the largest and most relevant cross-institutional impact and will overhaul bodies that are already engaging in related marketing oversight activities. However, there are some drawbacks.

The White Paper does not seem to envisage that video-sharing platform services (like YouTube) require licensing, which means that regulatory mechanisms attached to licensing – the likely tool to implement restrictions – will not impact one of the largest growing forms of media that children consume. Instead, these services are envisaged as engaging in self-regulation.

It also lacks detail on how the marketing restrictions will be implemented. Would enforcement still occur through the voluntary body, the ARB, with the understanding that the administered Code will be amended? If so, how will the amendment process be monitored to ensure adequate restrictions? If not, what type of mechanism will be used?

Finally, the DCDT has expressed concern over its ability to identify the harmful foodstuffs that should fall within the scope of restrictions. It also questioned its mandate on this issue during public submissions on the White Paper – Instead indicating its view that the Department of Health might be the more appropriate government department.



**Accordingly, a growing body of literature addresses the operationalisation of the right to food in food and nutrition policy-making (Riolo 2016; Harris et al. 2022; Wilder et al. 2020).**

## The Advertising Regulatory Board

The ARB plays a possible role in the White Paper policy overhaul (particularly in enforcement) and enjoys a standing position as the only broad marketing-content oversight body in South Africa. In short, it was set up by the marketing and communications industry as a self-regulatory mechanism. It administers the Code of Advertising Practice, a code developed based on an international model and contextualised for South African use. The Code proclaims that it is based on certain core principles, including responsibility, decency, truthfulness, and competitive fairness, and seeks to ensure that confidence in the industry is maintained. It is supplemented by subject-matter-specific codes, including the Food and Beverage Code.

Importantly, the ARB is an entirely voluntary body, with its initial members primarily being publishers. This means that the ARB has no jurisdiction over industry players (specifically the producers and sellers of unhealthy foods) who do not submit to its jurisdiction, either ad hoc or through membership. Though there are now food producers in its members, this limits its sanction powers considerably.

When an organisation is not a member of the ARB, the ARB can determine the compliance of the advertisement with the Code and publish its views to its members on whether the advertisement should be withdrawn or retained. In practice, this means a product producer can be a non-member, but when it publishes an advertisement through a media house that is a member, the ARB can technically have the advertisement withdrawn.

The weakness of this sanction becomes apparent if one considers scenarios where the advertisement is published by non-members (such as social media entities), or where the marketing is on an item's packaging. Even this small sanction power over non-members was a hard-fought battle all the way to the Constitutional Court, where the jurisdiction of the ARB had to be clarified in *Bliss Brands (Pty) Ltd v Advertising Regulatory Board NPC and Others* [2023] ZACC 19.

The ARB is also funded solely on a voluntary basis by industry (i.e., there are no membership fees). This conflict of interest and financial incentive to keep members happy creates a situation ripe for industry capture. It is also unclear what external checks and balances exist (beyond costly court review) to ensure its independence.

Moreover, as the Code stands, it does not do much at present to address concerns about marketing to children. The Food and Beverage Code does give a nod to some of the issues that underlie the need to restrict marketing to children. For example, in section 4, it provides that

“[f]ood and beverage advertising should not be so framed as to abuse the trust of consumers at whom it is directed or who are likely to be exposed to it or exploit their lack of experience or knowledge or their credulity.”

It also provides for limited restrictions on the use of cartoons or direct appeals to children under 12 years old (and not 18, as is the definition of ‘children’ in other legal instruments). In section 7, under the heading ‘social values’, the Code provides as follows:

- 1) As it is recognised that children of twelve years old and under are impressionable, food and beverage advertising should not mislead children about product benefits from use of the product. [...]
- 2) Food and beverage product advertising should not undermine the role of parents or others responsible for a child's welfare in guiding diet and lifestyle choices.
- 3) Food and beverage product advertising should not directly appeal to children of twelve years old and under to persuade their parents or others to buy advertised products for them; or suggest any negative consequences of not purchasing the product.

The Food and Beverage Code, in section 8, also places a restriction on the use of cartoons and celebrities when advertising food and beverage products that “do not represent healthy dietary choices and a healthy lifestyle, consistent with established scientific standards acceptable”. However, this is arbitrarily limited to television, excludes company-owned

characters, and expressly permits the use of such characters on packaging.

In *Fair Cape Diaries*, a decision by the ARB, the scope of sections 7 and 8 was tested. A complaint was lodged against a milkshake product that used a large image of the Barbie cartoon on the front of its packaging. The ARB provided a very limited interpretation of section 7.3. and found as follows:

“[One] cannot dissect the provisions of Clause 7.3. It clearly states that ‘Food and beverage product advertising should not directly appeal to children of twelve years old and under to persuade their parents or others to buy advertised products for them; or suggest any negative consequences of not purchasing the product’. In other words, the advertising may not tell children to persuade their parents to buy the product, or tell children that there will be negative consequences if they do not buy the product.”

This interpretation minimises the application of section 7.3. to instances where a child is expressly prompted to persuade their parents to purchase a product.

This interpretation does not allow for the sanction of ‘pester power’, a well-studied and effective marketing tool where the child is excited with the purpose of influencing the purchaser, usually a caregiver. The ARB also found that the direct prohibition of cartoons in advertisements targeted at children under 12 on television presupposed the permissibility of such cartoons in advertisements on other media.

It is noteworthy that the ARB declined to decide on the classification of the product as unhealthy. The product was a sugar-sweetened milk product that contained 36.6g of sugar per serving, or about 70 per cent of

the recommended sugar allowance for adults. This foreshadows possible problems with products that are less overtly unhealthy being deemed as falling within the scope of the relevant restrictions. This decision is currently on appeal.

## The Department of Health

In 2023, the Department of Health published Draft Regulation R3337. The key feature of the regulation is the introduction of warning labels on the front of packaged food to assist consumers in identifying whether food contains artificial sweeteners or high levels of salt, fat, or sugar. Regulation 51 provides that no marketing to children is permitted where foodstuffs carry a warning label. The scope of what is considered marketing to children is not set out.

However, Regulation 52 contains a specific list of marketing activities or techniques which are prohibited under the ban. The list resembles some of the marketing techniques identified by the World Health Organization as child-directed, such as depicting celebrities, cartoons, puppets, or other characters; providing gifts, tokens, and competitions using children in the promotion; abusing family values; condoning or encouraging excessive consumption; being misleading about possible benefits; or creating a sense of urgency. The list is fairly comprehensive, and the Draft Regulation is clear that children are persons under 18 (not under 12).

Since marketing is contested ground, it is unsurprising that industry actors have raised challenges to the Draft Regulation. One such challenge concerns the Department of Health’s authority to regulate marketing at all, given a perceived competing mandate assigned to the DCDT.

**“...the regulation is the introduction of warning labels on the front of packaged food to assist consumers in identifying whether food contains artificial sweeteners or high levels of salt, fat, or sugar.**

## Authority to regulate marketing

It certainly cannot be that regulating marketing is *ipso facto* exclusively within the mandate of the DCDT. Successful restrictions in other statutes, such as limiting the advertisement of tobacco, liquor, and gambling, are accepted as falling within the relevant mandate of other ministries (See Table 1).

**Table 1: Selected restrictions on marketing to children in other statutes**

Legislation/regulation	Summary of provision	Audience targeted	Strategies targeted
Section 9(1) of the Liquor Act 59 of 2003	A person must not advertise liquor or methylated spirits in a manner intended to target or attract minors.	Children	Advertisements intended to target or attract minors.
Section 3 of the Tobacco Products Control Act 83 of 1993	No person shall advertise or promote a tobacco product through any direct or indirect means, including through sponsorship and advertising.	General public	Limits direct and indirect advertisement and promotion of tobacco products. Also limits commercial communications.
Section 15(1)(b) of the Gambling Act 7 of 2004	A person must not advertise or promote a gambling activity, other than an amusement game, in a manner intended to target or attract minors.	Children	Advertisements intended to target or attract minors

However, given that the Draft Regulation is delegated legislation and hence subject to scrutiny as an administrative act, there is merit in considering whether the regulation of marketing is lawful. The Draft Regulation is proposed under the Foodstuffs, Cosmetics and Disinfectants Act. Section 15(1) of this Act gives the Minister of Health the power to make regulations on various aspects of the Act, including:

- prescribing how consumers are informed of processes or methods, or the fact of adding or removing substances to food (section 15(1)(c));
- regulating various components of the sale of food, including the prohibition of certain “foods, naming, and appliances and containers” used in its production (section 15(1)(g)-(j));
- prescribing any matter in terms of the Act “which

may be prescribed” (section 15(1)(o)); and

- prescribing any matter which the Minister may consider necessary or expedient to further the objects of the Act (section (15)(1)(o)).

We argue that the Foodstuffs, Cosmetics and Disinfectants Act allows for intervention in marketing given that section 15(1)(c) goes beyond the mere labelling of food to include any mechanism whereby consumers interact with the product or how it is sold. Section 1 of the Act provides that ‘sell’ or ‘sale’ includes advertising. This directly empowers the Minister to intervene in how food is advertised. The regulation of ‘advertisement’ read with the Minister’s broad powers regarding the means of sale and product labelling can reasonably be interpreted to cover most forms of marketing. ‘Advertising’ is defined broadly as

“[a]ny written, pictorial, visual, or other descriptive matter or verbal statement, communication, representation, or reference –

- (a) appearing in a newspaper or other publication; or
- (b) distributed to members of the public; or
- (c) brought to the notice of members of the public in any manner, and which is intended to promote the sale or encourage the use of such foodstuff, cosmetic or disinfectant; and ‘advertise’ has a corresponding meaning.”

The Act allows for other aspects that require further regulation to be dealt with by the Minister in subsequent regulation. Section 5(1) prohibits misleading advertisements in relation to a host of issues, such as the ‘composition, quality [or] nutritive value’ of the product. This explicitly empowers the Minister, and obliges the Department, to regulate and monitor health claims. The marketing restrictions as proposed in the Draft Regulation are tied directly to the nutrient composition of the food. The Minister is given broad powers to provide regulations that promote the objects of the Act (section 15(1)(o)). The Act broadly provides that its goal is to promote the sale, manufacture, and importation of food, and ‘incidental’ matters.

It is therefore not surprising that the Department of Health has already exercised this power to regulate marketing in terms of regulations enabled by the Foodstuffs, Cosmetics and Disinfectants Act, including regulating health endorsements and information claims on advertisements (GNR146), regulating claims in salt advertisements (GNR184) and providing for extensive marketing restrictions on infant and young child feeding products (GNR991).

## Conclusion

What emerges from the discussion is that while the marketing of unhealthy food is regulated to varying degrees, this regulation vests authority in a fragmented collection of entities with different powers, status, and mandates. Unlike many other countries, South Africa has not created an independent, well-resourced authority to regulate marketing, but instead has relied primarily on the industry-funded ARB and provided an

unfunded mandate to the Department of Health. This creates an environment where enforcement is both difficult and littered with conflicts of interest.

The White Paper and a mandate within the DCDT offer a potential new pathway for the regulation of marketing if its implementation could learn from the shortcomings of existing systems and create cohesion in a currently fragmented regulatory environment. The pressing issue of unhealthy food and its impact on the country’s health requires action to comprehensively address marketing and ensure that any policies adopted are enforced.

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*Dr Safura Abdool Karim is a legal consultant at Healthy Living Alliance (HEALA), Johannesburg, and a research associate at the Centre for the Aids Programme of Research in Durban, South Africa.*

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GN R146 (2010) ‘Regulations relating to the labelling and advertising of foodstuffs’ GG 32975 of 1 March 2010

GN R184 (2007) ‘Regulations Relating to Food-Grade Salt’ GG 29670 of 9 March 2007

GN R991 (2012) ‘Regulations Relating to Foodstuffs for Infants and Young Children’ GG 35941 of 6 December 2012

Statistics South Africa (2023) ‘Rising Non-Communicable Diseases: A Looming Health Crisis’ Available at: <https://www.statssa.gov.za/?p=16729>

 **South Africa has not created an independent, well-resourced authority to regulate marketing**

# FEATURE

## Food Justice in Africa: Protecting the Right to Food in the Climate Crisis

*Nastasia Thebaud-Bouillon-Njenga and Michael Addaney*

### Introduction

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*The adverse effects of climate change present a significant danger to global food security, particularly in sub-Saharan Africa (Sirba & Chimdessa 2021). The increase in the occurrence and seriousness of extreme climate events such as droughts, floods, and unpredictable weather and rainfall patterns is affecting food security and all components of the right to food in Africa (IPCC 2022). Challenges in accessing agricultural resources, protracted crises, and a lack of policies to support sustainable agricultural production (such as agroecology) inhibit the growth of climate-resilient agriculture capable of ensuring food availability and accessibility in a stable, just, and sustainable manner.*

Additionally, inadequate storage, transportation, and processing facilities have resulted in food waste and food shortages (FAO, AUC, UNECA and WFP Regional overview 2023). Gender disparities, excessive inflation, decreased crop yields, limited investment in sustainable agriculture, inadequate policy structures, insufficient infrastructure, and corruption are among the major challenges hindering food security and sustainable food availability and accessibility in Africa (Wudil et al. 2022).

The recognition and protection of the right to food in all its components (food availability, food accessibility, food adequacy, food stability, and sustainability) could foster an enabling environment for attaining sustainable food security and durably reducing hunger in Africa while protecting the environment, biodiversity, and human health. Mbazira (2004) underscored the need for effective protection of the right to food, such as by defining the right to food in the African context, giving effect to this right through legislation at the national level, and having the African Commission on Human and Peoples' Rights to monitor implementation as part of State periodic reports in accordance with the African Charter on Human and Peoples' Rights.

Nearly a decade later, the UN Special Rapporteur on the Right to Food commended the African continent's efforts to bring the right to food to life in regional and national legislative and policy frameworks, stating that "the right to food is a compass that can sit alongside existing African human rights frameworks and bring food security approaches into coherence" (OHCHR Press release 2013). Indeed, a large number of constitutions in Africa have now recognised the right to food. However, few cases have been brought before courts to realise the right to food, undermining its justiciability and its realisation at the intersection of multiple inequalities (gender, disability, migration). While there have been studies looking at food security in Africa, the relationship between food security, sustainability, and human rights standards, specifically the right to sustainable food in Africa, remains unclear.

This article guides reinforcing protection of the paramount yet fragile right to food in Africa in the context of a climate crisis that calls for a sustainable transformation of food systems. It reiterates the interconnectedness of climate change impacts and food security and analyses the legal basis on which African states have obligations to realise the right to food in the context of the climate crisis.

## Climate change and the right to food in Africa

Climate change and other intersecting factors, such as poverty, inequality, conflict, and uneven distribution of resources, are driving global hunger and malnutrition (UN High Commissioner for Human Rights 2024). The prevailing conditions are undermining the achievement of UN Sustainable Development Goal 2, on ending hunger, by 2030. An estimated 333 million people faced acute levels of food insecurity in 2023 (FAO 2023), an increase of almost 200 million people since the pre-Covid-19 era. There are projections that more than 600 million people will be affected by food insecurity in 2030 (FAO 2023) due mainly to climate change. Both sudden and slow-onset climate events, such as heatwaves, salinisation, sea-level rise, flooding, and droughts, are gradually impacting global agricultural and food systems in the context of an unequal distribution of essential resources such as land and water.

The outcome of the first global stock-take under the Paris Agreement, adopted by the Conference of the Parties to the United Nations Framework Convention on Climate Change in 2023, recognises the specific vulnerabilities of food systems to the adverse impacts of climate change and the significance of prioritising food security. The connection between climate change and food insecurity highlights the interdependence of the right to food and the right to a sustainable environment. While food security is highly threatened by climate change, especially in Africa, it is important to acknowledge that food systems (especially in high-income countries) have historically been and still are a major driver of the climate crisis.

Climate change directly and indirectly undermines food availability, accessibility, adequacy or quality, stability, and sustainability in vital ways (Mbow et

al. 2019). First, climate change manifests as changing weather patterns, including disparities in temperature and humidity and water distribution patterns. It impacts food production and storage through loss of crops, diseases, and extreme heat impacting food storage. Secondly, the impacts of climate change affect larger ecosystems, transforming long-standing biodiversity across regions globally. Climate change indirectly impacts food accessibility by exacerbating socio-economic dynamics, poverty, and existing inequalities. It impacts the sustainable and stable access to adequate and quality food, especially for people who already experience discrimination.

Indeed, the climate crisis has indirect impacts that are often overlooked during policy-making, programming, and budgeting and yet affect food access. It intersects with several systemic issues and intersectional inequalities based on gender, age, disability, migration status, and ethnicity, among others. The 'structural injustices in access to food, land, and natural resources' at the core of food systems, especially deep-rooted gender inequalities and injustices faced by small-holder and peasant farmers, are exacerbated by climate change, calling for the disruption of 'unequal power relations' (Bourke-Martignoni 2020).

Changes in weather patterns and ecosystems substantially affect all components of the right to food, namely food availability, accessibility, adequacy, stability, and sustainability. Several studies have demonstrated in detail how climate change interferes with food security (FAO 2023; Saadoun & Simet 2022). For instance, drought is one of the most recognised results of climate change as it has become increasingly common, necessitating that farmers and other food producers adopt adaptation strategies or relocate to distant places, thus affecting their ability to produce livestock and crops. Floods also impact food availability, by impacting agricultural seasons and increasing food loss, as well as accessibility, by negatively affecting

**Climate change indirectly impacts food accessibility by exacerbating socio-economic dynamics, poverty, and existing inequalities.**

the ability of people, especially people with already limited access to resources and commodities, to access sufficient quality food. In addition to droughts and floods, the increased frequency and intensity of climate-related disasters, from cyclones and tropical storms, is destroying fertile lands, and altering agricultural practices and food sources, including ancestral lands of indigenous communities. In the long term, climate change and associated extreme events will continue to impact major ecosystems and food systems.

At the continental level, many parts of Africa face malnutrition, food insecurity, and rising inequalities. In 2020, 282 million of the 811 million people who experienced undernourishment due to climate-driven shocks were from Africa (FAO, IFAD, UNICEF, WFP & WHO 2021). Moreover, about 426 million Africans lack consistent access to an adequate supply of nutritious food (FAO, ECA, and AUC 2021). Without a doubt, Africa is a significant hotspot for climate risks and is highly prone to food insecurity. Climate change will continue to reduce both crop yields and economic resources, especially in sub-Saharan Africa, posing a serious risk to the welfare of communities already living with severe socio-economic disadvantages (FAO, ECA & AUC 2021). This situation justifies the need to analyse the African human rights law framework for the recognition and realisation of the right to food to question its adequacy to respond to the climate crisis, which exacerbates existing power dynamics and inequalities.

## Climate change and the right to food in Africa

The right to food is explicitly recognised in the International Covenant on Economic, Social and Cultural Rights (article 11(1)) and General Comment No. 12, which put forward a set of state obligations. It is also recognised in implicit and explicit provisions in key African human rights instruments. While the African Charter on Human and Peoples' Rights (ACHPR) does not contain an explicit article on the right to food, the African Commission on Human and Peoples' Rights, in its *SERAC* and *CESR v Nigeria* case, recognised that the right to food was implied by

article 4 on the right to life, article 16 on the right to health, and article 22 on the right to economic, social and cultural development (ACHPR Communication No. 155/96, 2001, paras 64–66).

It argued that under African and international human rights obligations, Nigeria had to 'protect and improve existing food sources and to ensure access to adequate food for all citizens', while having the legal obligation not to negatively impact the right to food through its actions or the actions of private actors (para 65, *SERAC* case). Thus, the African Commission found a violation of the right to food of the Ogoni people by the Government of Nigeria through the destruction of food sources, its enablement of food destruction by private actors, and the creation of a climate of terror that prevented Ogoni communities to exercise their right to food (para 66, *SERAC* case). As Mbazira (2004) has argued, 'by holding that this right is implicitly protected, the Commission has cured one of the Charter's glaring weaknesses'.

 **In the long term, climate change and associated extreme events will continue to impact major ecosystems and food systems.**

While the *SERAC* case defined state obligations not to interfere with the right to food, further efforts were needed to define the positive obligations of African states in regard to the right to food. In the *by the African Commission (African Commission v. Kenya Govt)*, while not recognising a direct link between the eviction of the Ogiek community and the violation of their right to life (and therefore right to food), the decision of the African Court on Human and Peoples' Rights was framed in such a way that the documented deprivation of the right to food as a result of their eviction was characterised as instrumental in the violation of the Ogieks' right to natural resources (para 201, *Communication 006/12, African Commission v Republic of Kenya, Judgment of 2017*).

In this decision, the Court decided that Kenya ‘violated Article 21 of the Charter since the Ogieks have been deprived of the right to enjoy and freely dispose of the abundance of food produced by their ancestral lands’ (para 201). This causality effect in this decision makes it clear that both the African Commission and the African Court have derived the right to food from other enshrined rights.

Components of the right to food are also specifically protected by article 15 of the Maputo Protocol on the Rights of Women in Africa on the right to food security, which provides for the right to nutritious and adequate food as well as means of production including land, mainly recognising women’s significant role in food systems. Additionally, article 14 of the African Charter on the Rights and Welfare of the Child specifically recognises the importance of children’s right to nutrition as part of their right to health. These two instruments further enshrine the protection of the right to food in the African human rights corpus.

As a result, the African Commission’s *‘Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter’* provide a detailed framework for the realisation of the right to food (ACHPR 2011). For instance, these guidelines call for the development of policies that address issues across the food system from production to consumption, as well as specific ‘parallel measures’ to reinforce the enabling environment (nutrition, health, education, employment, and social security). The Guidelines call for “the most sustainable management and use of natural and other resources for food at the national, regional, local and household levels”, therefore integrating a sustainability and ecological component.

General Comment No. 12 of the International Committee on Economic, Social and Cultural Rights provides a guide to understanding the components of the right to food (availability, accessibility, adequacy, and stability). While food availability is linked mainly to food production, food accessibility is realised when economic and physical access to food is guaranteed. Food adequacy implies that the food should be of a standard that meets health and nutritional needs. This is key given that recent studies point to a decrease in the nutritional value

of food as a result of climate change effects such as heatwaves (Mbow et al. 2019). Research has established that when food crops are exposed to certain carbon dioxide levels, they lose as much as 10 per cent of their diverse protein content (Medek et al. 2017).

In recent years, the latest component of the right to food – stability – has been understood to encompass sustainability, since the realisation of the right to food should not impede the right of future generations to feed themselves. This recognition emphasises the need to realise the right to access to food in a manner that respects the environment and biodiversity. State obligations regarding the right to food imply the duty to respect, protect, and fulfill.

In the context of climate change, while the duty to respect the right to food implies that governments should not interfere with the right to food, the duty to protect should ensure that the right to food is not impacted by non-state actors such as private sector companies (for instance in the context of carbon offset deals). The duty to fulfill should be understood as the government’s duty to adapt food systems to the impacts of climate change while ensuring that these systems are respectful of the environment and biodiversity.

Apart from the right to food’s recognition in key African human rights instruments, the African Commission on Human and Peoples’ Rights passed a series of resolutions in this regard in 2017, 2019 and 2022. While the 2017 resolution focused mainly on food production and food assistance, thus leaving a gap in food accessibility (ACHPR/Res. 374(LX) 2017), the 2019 resolution is more closely aligned than it with right-to-food principles, the right’s sustainability component, and the principles of food sovereignty (ACHPR/Res. 431(LXV) 2019). This resolution includes food accessibility and quality as core elements, reinforcing the importance of local and organic farming and production while looking at the impact of protracted crises on access to food; it is also in favour of the equitable management of resources, ending resource-grabbing, and regulating imports (ACHPR/Res. 431(LXV) 2019).

In 2022, the ACHPR’s resolution focused on building resilience in nutrition, giving particular recognition

to the fact that food insecurity is often first and foremost the result of protracted crises or conflicts and climate-related shocks; in view of this, the resolution urges states to adopt an inclusive approach to ending malnutrition which recognises the intersectionality of food insecurity factors (ACHPR/Res. 514 (LXX) 2022).

At the national level, the right to food can be found explicitly in several constitutions (Democratic Republic of the Congo, Egypt, Kenya, Malawi, Niger, and South Africa), implicitly in several more (Congo, Egypt, Ethiopia, Togo, and Tunisia), and, elsewhere, in directive principles of state policy recognising access to adequate food (Burundi, Ethiopia, the Gambia, Malawi, Namibia, Niger, Nigeria, South Sudan, Uganda, Tanzania, and Zimbabwe) (FAO n. d.). However, even though it is recognised in international and African human rights law, the right to food remains one of the least implemented rights of all, considering the number of people whose right to food is undermined in Africa as a result of the inability of food systems to ensure adequate food accessibility in the context of multisectoral inequalities, protracted crises, and climate change impacts.

**“ Food insecurity remains the result of inequalities of access to resources, economic opportunities, and unequal power dynamics. The recognition of the right to food on the African continent cannot be synonymous with the increase of unsustainable food production.**

In 2022, a report by the Food and Agriculture Organization (FAO), United Nations Economic Commission for Africa, and the African Union estimated that more than 342 million people were severely food-insecure, especially in West, Central, and East Africa, and that hunger had significantly

deteriorated, especially between 2019 and 2022 (FAO, AUC, UNECA and WFP Regional overview 2023). This can be attributed not only to the Covid-19 pandemic, but also to the worsening of the climate crisis and an increased number of extreme climate events, such as floods, droughts, locust invasions, and extreme heat.

We observe a disconnect between African human rights instruments, which call for the holistic and inclusive realization of all components of the right to food, including sustainability through sustainable agricultural practices, and current African Union policies on food security and agriculture, which are more focused on food productivity. The Malabo Declaration (2014) is often cited as the main commitment from African States regarding food security (2015–2025). They aim to accelerate agricultural productivity and emphasise food production and the productivity of African agriculture. The primary focus of these Declarations is placed on increasing mechanisation, productivity, and wealth creation.

Focusing solely on accelerating productivity is not consistent with the components of the right to food going beyond food availability, especially in a context where deeply rooted inequalities and climate change affect food accessibility and sustainability. Rather, this focus creates an imbalance between production, on the one hand, and sustainability, on the other. This vision of the African agricultural model and food system mainly based on productivity and mechanisation poses a potential threat to sustainable food security as it does not reflect key aspects of food accessibility and sustainability.

Beyond the Malabo Declaration, policies were passed at the African Union level on issues related to food security, giving increasing attention to climate-related issues, including the Comprehensive Africa Agriculture Development Programme (CAADP). The question remains on which agricultural model and food system are prioritised in African Union policies in order to respond to the climate and food crises through a sustainable and rights-based approach.

The post-Malabo framework will be launched by the African Union in 2025 as the Kampala Declaration and Action Plan (2026-2035). In a position statement from

a civil society consultation held in Kampala in October 2024, nearly 350 civil society organisations called for food sovereignty and equitable food systems to be recognised as core elements of the future Kampala Declaration, ensuring that Africa's food and agricultural model prioritises sustainable, inclusive, and agroecological practices that respect human rights and the environment (AFSA et al. 2024). The Declaration and action plan promote agroecological approaches that move away from dependency on corporations in the seed and input sectors, and rejected the inclusion of genetic modifications and technologies controlled by the private sector; overall, the call was for food sovereignty and just food systems that recognise the needs and rights of diverse groups and that put African food producers at the centre (AFSA et al. 2024).

## Conclusion

The risks posed by the climate crisis and intersectional inequalities are significant threats to food justice in Africa. While there has been some improvement in recognising and protecting the right to food under the African human rights system and national laws, there is a significant gap between these standards and African Union policies on food security, further impeding the realisation of food security. The African human rights system has put forward guidelines for the effective realisation of the right to food through several inclusive resolutions toward food sovereignty. However, an analysis of the agricultural model informing African policies on food security shows a focus on an agricultural model based on mechanisation, intensification of production, and corporate models which are not compatible with the sustainable realisation of the right to food in its individual and collective dimensions.

Increasing food availability without looking at food accessibility (both physically and economically), as well as food quality and sustainability, will not solve the issue in the current climate crisis. Food insecurity remains the result of inequalities of access to resources, economic opportunities, and unequal power dynamics. The recognition of the right to food

on the African continent cannot be synonymous with the increase of unsustainable food production. These challenges underscore the critical importance of investing in human-rights-based, sovereign and resilient food systems to ensure the sustainable production, accessibility, supply, utilisation, and stability of nutritious food.

This calls for effective justiciability in courts across the continent. Addressing food security issues requires a holistic approach that considers the interconnectedness of food systems, livelihoods, biodiversity, and environmental sustainability. It also means recognising the importance of efforts by smallholder farmers and peasants' organisations to redefine the right to food. Food sovereignty provides an alternative structure to the current framing of food systems and holds the potential to redefine power dynamics around food justice in Africa. The realisation of the right to food implies recognising key systemic inequalities created by the current unequal agricultural and food systems and their inadequacy to ensure access to food for the most marginalised populations.

Emphasising the human rights components of the right to food should be prioritised to make African Union policies real tools to realise the right to food and food justice across the continent. Faced with the climate crisis and systemic inequalities, the future African Union Declaration and Action plan (2026–2035) should aim to adequately realise the right to food, building on the African human rights system's ambitions while embracing an approach that values the environment, food and seed sovereignty, traditional knowledge, and the eradication of intersectional inequalities in food systems and beyond.

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**Addressing food security issues requires a holistic approach that considers the interconnectedness of food systems, livelihoods, biodiversity, and environmental sustainability.**

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# FEATURE

## Public Policy as an Effective Intervention against Malnutrition in South Africa: A Focus on Obesity

Reece Pierce-Jones

### Introduction

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*The right to health is best understood through an intersectional lens. This can be seen in General Comment 14 of the Committee on Economic, Social and Cultural Rights, based on article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which South Africa has ratified and is a signatory to. General Comment 14 states, in paragraph 4, that the right to health*

*“embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”*

Therefore, the intersection between the right to food, nutrition and health extends to socio-economic factors, which can aid legal strategies. In other words, with increased scope for legal intervention, malnutrition can be improved at an increased rate.

### Statistics

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The 2021 Lancet series, ‘Maternal and Child Undernutrition’, specifically the sub-theme, ‘Mobilising evidence, data, and resources to achieve global maternal and child undernutrition targets and the Sustainable Development Goals: An agenda for action’ provides insight into rates of maternal and child undernutrition in low- and middle-income countries (Black et al 2021 1). It was noted that these countries had slowly declining rates of undernutrition.

Recent data by the South African Child Gauge 2024 indicates that increased interventions are necessary (Hall, K. et al., 2024, 6). According to the Child Gauge, the statistics of stunted children under 5 years old was 27.7 per cent in 2016, which increased to 28.8 per cent in 2022. This remains the most common form of

malnutrition. The 2016–2022 percentage change is an increase of 5.1 per cent. The proportion of children in South Africa under the age of 5 years who were overweight was 13.3 per cent in 2016 but 22.6 per cent in 2022, a 9.3 per cent increase.



**The proportion of children in South Africa under the age of 5 years who were overweight was 13.3 per cent in 2016 but 22.6 per cent in 2022, a 9.3 per cent increase.**

Wasting, which appears as severe acute malnutrition, has seen a 33 per cent nationwide increase between 2020/2021 and 2021/2022, which climbed a further 20 per cent between 2021/2022 and 2022/2023. In 2022/2023, a worrying number of children – 15,000 – had to be hospitalised due to severe acute malnutrition.

Child and adolescent obesity are also rising in low- and middle-income countries, according to 'Child and adolescent obesity' (N Lister et al 2023 1). The effects of this were seen during the COVID-19 pandemic, when children and adolescents with obesity experienced the virus more severely, meaning that hospitalisation was required, sometimes to the point of mechanical ventilation. The report highlights the prevalence of paediatric overweight and obesity, noting that boys in South Africa fall within the 15-<22.5 per cent category and girls, in the 22.5-<30 per cent category of both overweight and obesity.

These statistics are alarming, especially in light of the Global Nutrition Targets for 2025. These targets were set in 2012 by the World Health Assembly and are made up of six points: (1.) Achieve a 40 per cent reduction in the number of children under 5 who are stunted. (2.) Achieve a 50 per cent reduction of anaemia in women of reproductive age. (3.) Achieve a 30 per cent reduction in low birth weight. (4.) Ensure that there is no increase in childhood overweight. (5.) Increase the rate of exclusive breastfeeding in the first six months up to at least 50 per cent. (6.) Reduce and maintain childhood wasting to less than 5 per cent.

It was noted in a 2014 policy brief series – that is, a decade ago – 'the world was off-track to meet all six of the World Health Assembly global nutrition targets'; in 2019, only '106 out of 109' countries were 'on track to reach one of the nine World Health Assembly 2025 nutrition targets' (WHO, 2014, 1). South Africa is still off-track to meet the targets, specifically target 4, where there has been a 9.3 per cent increase in childhood obesity.

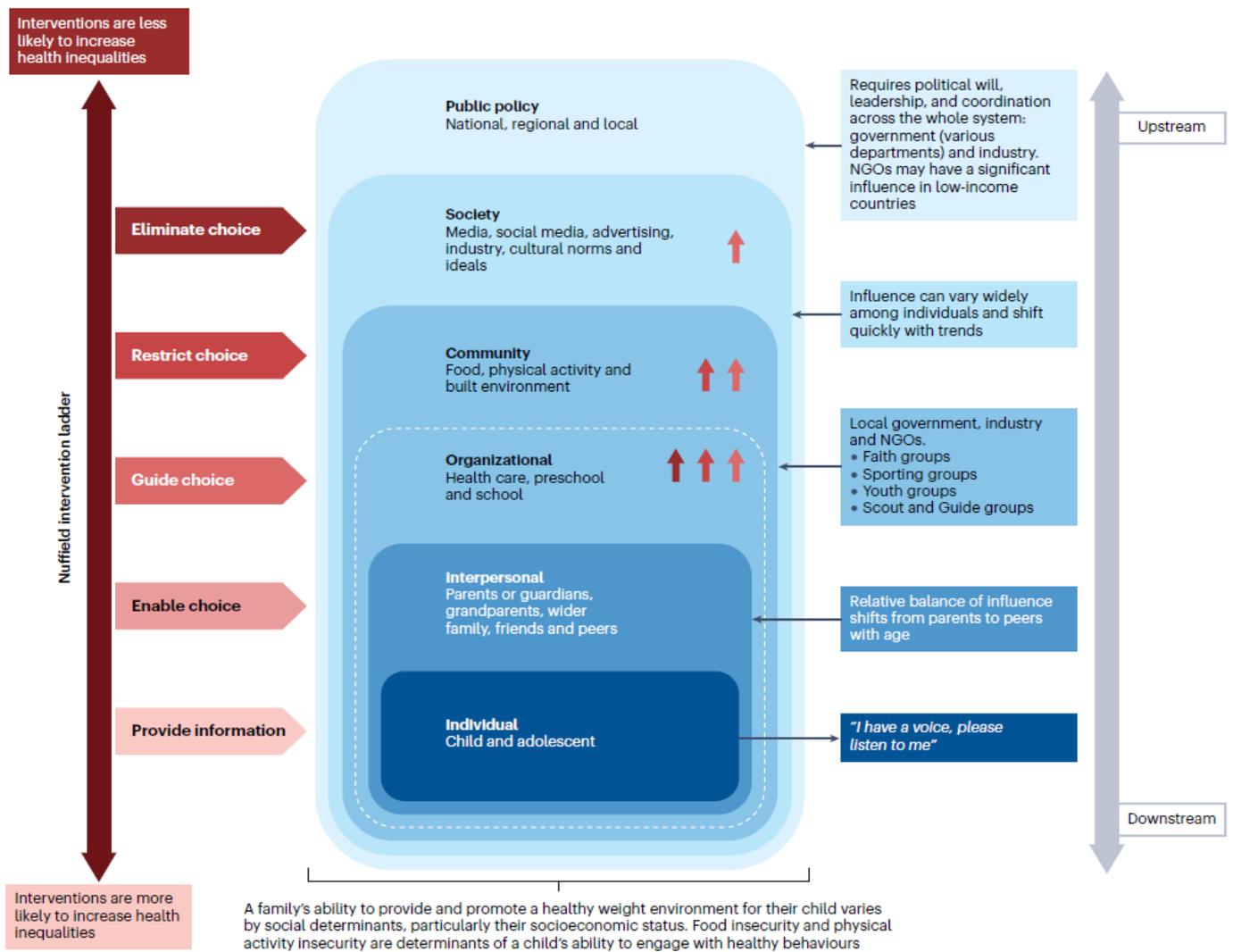
Therefore, obesity, with a 9.3% increase in children under 5 years of age with weight-for-height above two standard deviations from 2016 to 2022, presents as a form of malnutrition that is in dire need of change. This need for change has two prongs. The first is regarding the constitutional right to health, food, and nutrition of the children impacted by this. The second stems from South Africa's international obligations. The latter relates to target 4 of the 2025 Nutrition Targets. Action must be taken with short- and long-term effects. Consequently, this article discusses six possible courses of action.

**Therefore, obesity, with a 9.3% increase in children under 5 years of age with weight-for-height above two standard deviations from 2016 to 2022, presents as a form of malnutrition that is in dire need of change.**

## Why policy development and change?

Lister et al, in 'Child and adolescent obesity' went on to explain a scale of which interventions are less likely to increase health inequalities. This scale is known as the 'Nuffield intervention ladder' (Lister et al, 2023,10). At the bottom of the scale working upwards, meaning the intervention that has the most gaps which can lead to health inequalities is providing information at the individual level, followed by enabling choice at an interpersonal level. This is followed by guiding choices

at an organisational level, then by restricting choice on a community level, which is followed by eliminating choice on a societal level. The intervention which has the least gaps and is, therefore, least likely to increase health inequalities is public policy action taken at all levels. Therefore, policy development is the most effective strategy in terms of interventions due to its potential to reduce health inequalities.



Source: Lister, N. et al. (2023): 10

## Education

Due to the intersectional nature of the right to food and health, one of the interventions that can be utilised is education. This is discussed in multiple academic articles, one being 'Maternal and Child Nutrition' (Black et al, 2013, 1). This article series has a sub-discussion of nutrition-specific and -sensitive interventions and programmes. The latter can be understood as 'interventions or programmes that address the immediate determinants of foetal and child nutrition and development' (Black et al, 2013, 3).

Specific qualities of interventions or programmes are 'adequate food and nutrient intake, feeding, caregiving and parenting practices and low burden of infectious

diseases' (Black et al, 2013, 3). Nutrition-sensitive interventions and programmes can be understood to be 'interventions or programmes that address the underlying determinants of foetal and child nutrition and development and incorporate nutrition-specific goals and actions' (Black et al, 2013, 3). These interventions and programmes typically address 'food security, adequate caregiving resources at maternal, household and community levels, and access to health services and a safe and hygienic environment' (Black et al, 2013, 3).

These types of programmes 'can serve as delivery platforms for nutrition-specific interventions, potentially increasing their scale, coverage and effectiveness'. Examples of nutrition-sensitive interventions and programmes include early child

development, maternal mental health, schooling, social safety nets, agriculture and food security and health and family planning services.

The Lancet series shows that one of the interventions used to decrease obesity and non-communicable diseases (NCDs) is a nutrition-sensitive approach to classroom education. Similarly, The Child Gauge noted that ‘the responsibility for coordinating early childhood development (ECD) falls under the leadership of the Department of Basic Education (DBE)’. This intervention can be implemented through legal strategies due to the DBE’s mandate to develop and oversee basic education in government schools. For instance, through the development of different policies and programmes such as the National School Nutrition Programme (NSNP).

The 2021 Lancet series on ‘Maternal and Child Undernutrition’ (Black et al, 2021, 1) provides a more systematic review as it is focused on interventions in the first 1,000 days of life and found the following regarding different types of interventions, which are mostly health system dependant. If these health system interventions were ‘scaled to 90% coverage in 34 high-burden countries, [they] could potentially reduce child mortality by 15% and stunting by about 20%’.

The systematic reports also found that community-based delivery channels, specifically nutrition education and counselling, ‘are used to extend the reach, intensity and effects of nutrition interventions’ (Black et al, 2021, 1). Additionally, it was found that combining different interventions produced better results. This was seen when ‘combining home visits’ with ‘trained community health workers or peer counsellors’ and mothers, which improved infant and young child feeding practices, with ‘mother peer groups’ serving as ‘an even more effective approach’. This method was seen again when using ‘mass media and mobile technologies’ for nutrition messages. The approach here was able to ‘directly reach target audiences and support front-line workers’ (Black et al, 2021, 1). However, when exposure was combined with other consistent messages ‘through mass media, interpersonal counselling and community engagement’, improved feeding practices were noticeable (Black et al, 2021, 1).

## Mental health intervention

Another intersectional intervention suggested by the Child Gauge is parental mental health care. Notably, this same mental health intervention is seen in the nutrition-sensitive interventions and programmes discussed in the 2021 Lancet series on maternal and child nutrition. This stems from the common societal practice of women being responsible for what the household eats, especially the nutritional intake of children. Women generally prepare household meals and often have to make difficult choices between buying food that is nutritious and affordable.

The matter was discussed in the 2017 Nutrition and Food Systems document detailing a report by the High-Level Panel of Experts (HLPE) on food security and nutrition (HLPE, 2017, 79). In the Child Gauge, this mental-health effect is discussed in terms of specific consequences for the health of the child (Hall et al, 2024, 39). It is stated that ‘perinatal depression and anxiety can have intergenerational ramifications associated with, among other things, pre-term birth, low birth weight, malnutrition and suicide’ (Hall et al, 2024, 39).

Action taken to develop mental health can be seen in legal and policy developments. Examples vary from including routine screening into mandates to dismantling barriers such as combatting underfunding and staff shortages. Interestingly, a vulnerable group within this focus on mental health among parents are teenagers, due to the increased anxiety of early pregnancy. The Child Gauge suggests ‘differentiating’ mental health support ‘to cater to these needs’ (Hall et al, 2024, 39). Therefore, due to the wide scope of impact that parental mental health has on the child, the solutions vary and include those falling outside the exclusive category of the right to adequate food. This was espoused in the report by the HLPE on food security and nutrition. The report mentions that ‘the set of policies to promote the right to adequate food for women is far beyond measures of access to health care and food’.

The report notes that although access to health care and food is important, the vulnerability of parents’ mental health, specifically mothers’, stems from gender

discrimination and the lack of equality in what each parent is societally expected to provide in the familial structure. The report therefore ‘calls for actions to promote progress in removing all discriminatory provisions in the law’ (HLPE, 2017, 79).

**“...although access to health care and food is important, the vulnerability of parents’ mental health, specifically mothers’, stems from gender discrimination and the lack of equality...”**

## Nutrition-specific interventions

Nutrition-specific interventions, as discussed above, were identified in the ‘Executive Summary of the Lancet Maternal and Child Nutrition Series’ (Black et al, 2013, 3). They include:

Adolescent health and preconception nutrition, maternal dietary supplementation, micronutrient supplementation or fortification, breastfeeding and complementary feeding, dietary supplementation for children, dietary diversification, feeding behaviours and stimulation, treatment of severe acute malnutrition, disease prevention and management and nutrition interventions in emergencies.

The series explains how to build an enabling environment through different facets such as politics, governance, leadership, financial resources, and broader social, economic, political and environmental contexts nationally and globally. Examples of how to create enabling environments include using mechanisms such as food security, economic access, food utilisation, feeding and caregiving resources, and access to and use of health services as well as hygienic environments.

## Obesity-specific interventions

Lister et al in the Nature Reviews publication explain that the treatment of obesity ‘include[s] management of obesity-associated complications, a developmentally sensitive approach, family engagement, and support for long-term behaviour changes in diet, physical activity, sedentary behaviours and sleep’ (Lister et al, 2023, 2). These need to be considered when discussing policy interventions regarding obesity. Obesity prevention also ‘requires a whole-system approach, with policies across all government and community sectors systematically taking health into account, avoiding harmful health impacts and decreasing inequity’ (Lister et al, 2023, 2).

Additionally, it is noted that specific early nutritional factors affect later childhood obesity. This can be seen, for example, in the association between a ‘lower protein content in formula food’ and ‘longer breastfeeding’ periods with a lower risk of childhood obesity (Lister et al, 2023, 4). These scientific links also build the foundation of educational intervention policies being used to spread information to empower people to act.

The link between obesity-specific and education interventions is discussed in the Department of Health’s Strategy for the Prevention and Management of Obesity in South Africa 2023-2028 (Department of Health, 2023, 22). This strategy highlights the impact of education interventions on the later life choices and actions of relevant persons (Department of Health, 2023, 22). Specifically, healthcare expenditure is used as an example in the Strategy (Department of Health, 2023, 22).

**“This strategy highlights the impact of education interventions on the later life choices and actions of relevant persons (Department of Health, 2023, 22).”**

## Multisectoral intervention

Multisectoral coordination is needed in short- and long-term plans for combatting malnutrition, including obesity and overweight. Report number 12 by the HLPE on food security and nutrition notes that ‘governments must play a strong role in reshaping food systems’ and ‘need to be capable of coordinating policy interventions across sectors to deal with the multiple causes and consequences of malnutrition’ (HLPE, 2017, 114).

This report suggests that at a national level, the government needs to establish a mechanism whereby ministries can work together to achieve sustainable food systems that support nutrition-specific interventions. The suggested mechanism is endorsed by the highest political body in a state and founded on ‘effective participation of a range of stakeholders’; examples of stakeholders include United Nations organisations, funding coordinators, and researchers. Gillespie, one of the contributors to the HLPE, provided the foundation for this mechanism when it was explained that ‘sometimes, the number of agencies, actors, and sectors involved in addressing the problem leads to unnecessary competition’ (HLPE, 2017, 114). Therefore, removing the competitive approach between these stakeholders and utilising a team-based approach is more likely to create positive outputs (HLPE, 2017, 114).

However, this top-down approach generally negates vulnerable and marginalised populations. This means that for this approach to create positive outputs, power within the food system must be balanced to provide the foundation for effective teamwork. As such, the recommendation includes farmers, relevant local community leaders, and representatives of marginalised groups as part of the ‘stakeholder’ category.

## Conclusion

The findings from the above analysis are that different interventions are available, such as policies, education, mental health action, nutrition-specific interventions, obesity-specific interventions, and multisectoral interventions. Policies, however, are explained to be the most effective intervention within the Nuffield

intervention ladder. Notably, the other interventions should not be negated but rather used concurrently with policy development. Furthermore, intersectional considerations were highlighted when looking at the effectiveness of using education, policy, and obesity interventions together to combat obesity. Therefore, it can be understood that potential policy development can have a positive impact on South Africa’s obesity statistics if informed by evidence-based nutrition-specific interventions.

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# FEATURE

## Food Security in the Human Rights Architecture of South Africa

Paul Hoffman and Favour Funke Akanbi

### Introduction

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

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

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

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

### The law

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



**Importantly, the rights of children in South Africa are not subject to the same conditional language. Section 28(1)(c) guarantees that 'every child has the right to basic nutrition, shelter, basic health care services, and social services'.**

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

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

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

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

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

## The problem

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

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



**This stark contrast between food wastage and widespread hunger underscores the state’s failure to fulfil its constitutional obligations.**

## “ **Public interest litigation has been an important tool in South Africa for advancing socio-economic rights,**

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

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

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

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

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

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

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

## “ **The failure to address food wastage is particularly egregious when it comes to vulnerable children.**

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

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

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

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

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

## The solution to food wastage crises

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



**The state's inability to curtail food wastage, while failing to ensure children's access to basic nutrition, not only reflects poor governance but is a direct violation of their constitutional rights.**

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

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

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

## FoodForward SA: a case study

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

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

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

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

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

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

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



**While organisations like FoodForward SA and other non-governmental groups have made substantial contributions, the government bears the ultimate duty to fulfill its constitutional mandate.**

## Conclusion

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

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

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

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## EVENT

# Expert Symposium on Social Justice, Hunger and the Constitution

Paula Knipe

## Introduction

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*On 5 September 2024, the Centre for Social Justice at Stellenbosch University hosted an Expert Symposium on Social Justice, Hunger, and the Constitution at Bertha Retreat Boschendal, Franschhoek. Facilitated by Prof Thuli Madonsela, Director of the Centre and former Public Protector, the symposium gathered experts, including policy-makers, corporate representatives, and civil society organisations, to discuss ways to address the hunger crisis in South Africa, not just as a symptom of poverty but as a systemic failure within society.*

Prof Madonsela anchored the discussion around the concept of ubuntu, underscoring that society has a collective responsibility to ensure that no one goes hungry. This emphasis on ubuntu, a philosophy of interconnectedness, aligns with the constitutional ideal that access to food is a right, not a privilege, and must be upheld as a societal obligation. Madonsela posed thought-provoking questions throughout the symposium, asking who is responsible for ensuring the right to food is met. Does the Constitution sufficiently hold duty-bearers accountable? Have we failed the Constitution, or has it failed us?

The discourse during the symposium highlighted that despite constitutional protections under section 27 guaranteeing access to sufficient food and water, South Africa continues to grapple with high levels of food and nutrition insecurity. Deputy Minister of Justice Andries Nel's keynote address illustrated this reality, pointing to the 'dissonance between our constitutional commitments and the lived reality of people in their daily lives'. With 20 million citizens

experiencing food insecurity, and a staggering amount of food waste annually, the symposium underscored the paradox of hunger in a nation capable of meeting its people's nutritional needs. This gap between policy and practice, often termed the 'implementation gap', has become a focal point for addressing hunger in South Africa.

Speakers discussed several systemic barriers contributing to food insecurity, including socio-economic inequality, corporate control of food, and inefficient policies that contribute to waste rather than a redirection of food resources. For example, while South Africa produces enough food to sustain its population, much of it is managed by large agro-processing corporations with vested interests, resulting in high prices and limited access for those with fewer economic resources. This economic imbalance compounds issues of accessibility, as impoverished communities are often unable to afford nutritious food, furthering the cycle of hunger and poverty.



**These mechanisms could provide marginalised groups with avenues to hold the government accountable for fulfilling their right to food.**

Experts argued for a fairer redistribution of resources, urging businesses to adopt a social justice-oriented approach, as highlighted by Zinzi Mgolodela, the director of Corporate Social Justice at Woolworths, which has begun redirecting surplus food to community programmes.

The symposium's discussions also brought to light the vulnerability of certain population groups, such as children, women, and those in rural areas, who are disproportionately impacted by food and nutrition insecurity. The inadequacies of social safety nets, particularly for children not attending formal schooling or for students in tertiary education, were highlighted as urgent areas for improvement.

Moreover, the symposium highlighted the importance of sustainable practices in achieving long-term food and nutrition security. The participants advocated for food sovereignty, a model empowering communities to control their food systems. Through local food production and sustainable agricultural practices, communities could reduce dependency on large corporations and build resilience against economic shocks. However, participants noted that for small-scale farming to succeed, government support is crucial, from financial incentives and technical training to land accessibility. Sustainable approaches, participants emphasised, must form the foundation of any hunger-alleviation strategy to ensure food security that endures through generations.

Public interest litigation and law and policy 'stress tests' emerged as practical strategies to close the implementation gap in food and nutrition security frameworks. These mechanisms could provide

marginalised groups with avenues to hold the government accountable for fulfilling their right to food. Strategic litigation was highlighted as a tool to challenge the government on specific instances of failure to meet food- and nutrition-security obligations. Moreover, implementing stress tests for new laws and policies was proposed to assess their impacts on vulnerable populations, ensuring that no group bears an unequal burden due to legislative decisions that fail to consider the needs of all of society.

In closing, the symposium reiterated the need for a collaborative approach to realising the right to food as a constitutional guarantee. Moving beyond charity and temporary measures, South Africa has the potential to establish a food system rooted in justice, sustainability, and human dignity. The call to action was clear: hunger must be recognised as a constitutional imperative, with all stakeholders, from government bodies to private corporations and civil society, committing to sustained and meaningful reform through legal activism, robust policy and advocacy, and government accountability.

Through unified efforts, South Africa can work toward a just, resilient food system that truly fulfils the constitutional promise of dignity and security for all.

**More details of the event can be accessed at <https://goto.now/mt47Z>.**

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**Public interest litigation and law and policy 'stress tests' emerged as practical strategies to close the implementation gap in food and nutrition security frameworks.**

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