

FEATURE

The Implications of Food-Parcel Corruption for the Right to Food during the Covid-19 Pandemic in South Africa

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Introduction

The right to have access to sufficient food (which is closely associated with the rights to health, water, life, trade, social security, land, and so on) is explicitly provided in section 27(1)(b) of the Constitution of South Africa. However, the outbreak of Covid-19 caused the government to place the country under a nationwide lockdown, with strict regulations and directives that curtailed a number of socio-economic rights. The affected rights included the right to have access to sufficient food. The situation culminated in widespread food insecurity, hunger and malnutrition, as evidenced by affected poor urban families and other vulnerable groups, including the homeless living in designated shelters. These groups were unable to gain access to sufficient food or to buy it because of loss of income or lack of access to the informal market. In response, the government embarked on large-scale food-parcel distribution schemes geared towards feeding 'deserving' people.

Nevertheless, the process, which involved municipal councillors, was marred by corruption allegations and became highly politicised (Government of South Africa 2020a). One of the key contributing factors that led to municipal councillors' involvement related to the impending 2021 local government elections. Local politicians began electioneering through food-parcel distribution, with some of them diverting food parcels for themselves or selling them for personal gain.

Against that background, this article sets out to ascertain the nature of the structural implications of food-parcel corruption for the right to sufficient food during the Covid-19 pandemic in South Africa. A subsidiary aim is to offer useful solutions aimed at remedying the profound impacts of these structural implications. A fundamental pillar of the solutions entails a human-rights-dimensioned response, as well as the

steadfast strengthening of anti-corruption mechanisms in food relief initiatives during emergencies caused by natural disasters.



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On 11 March 2020, the World Health Organization declared Covid-19 a pandemic. The uncontrollable spread of Covid-19 reached South Africa and preceded the declaration of a national state of disaster by the Minister of Co-operative Governance in terms of section 27 of the Disaster Management Act of 2002. On 15 March, with the objective to contain the spread of the virus, President Cyril Ramaphosa announced that the government had taken the drastic decision of placing the country under lockdown, effective from 27 March.

However, the lockdown restrictions aggravated the dire conditions of disadvantaged and marginalised groups, seriously affecting the enjoyment of socio-economic rights, including the right to have access to sufficient food. Access to food is closely linked to poverty and unemployment, and those lacking access to a disposable income, employment or social grants were more likely than others to be food-insecure (South African Human Rights Commission 2020). Even under normal circumstances, vulnerable communities without decent employment opportunities face a constant struggle for sustainable food security while relying on informal trading for survival.



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According to Statistics South Africa (2020), there are synergies between food security, unemployment, poverty and inequality. Exacerbating the challenges of poverty and inequality, the strictly imposed lockdown regulations and directives resulted in increased unemployment, loss of income, lack of access to the informal market, food prices hikes, and, ultimately, to limited access to sufficient food. Consequently, the lockdown

aggravated the pre-existing crisis of widespread food insecurity and hunger in South Africa.

The government's food relief initiative was meant to feed the needy communities. Families were eligible to receive food parcels if they were (1) child-headed households suffering from the impact of HIV and AIDS; (2) single parents with no means of income; (3) elderly persons living without help; (4) families where no one was employed; or (5) families where the one person who was working was not getting paid because of the lockdown (Humana People to People 2020). The South African Social Security Agency (SASSA) played a leading role in the distribution of food assistance through vouchers and cash transfers. As part of this effort, the Department of Social Development collaborated with the Solidarity Fund, NGOs and community-based organisations to distribute parcels across the country.

However, as a result of food parcel corruption, the needs of the poor and hungry were not met (Corruption Watch 2020). The structural implications of food-parcel corruption for the right to food during the Covid-19 pandemic exposed the weakness of the government's response in dealing with corruption during emergency situations. More generally, a number of concerns were also raised about the lawfulness of aspects of the government's response to Covid-19, particularly with respect to several fundamental rights enshrined in the Constitution (Mudau 2020). The implementation of food-parcel provision was not transparent, and anti-corruption mechanisms were virtually non-existent.

The right to food: Scope and normative content

Section 27(1)(b) of the Constitution stipulates that 'everyone has the right to have access to sufficient food'. Section 27(2) places a positive duty on the state to take reasonable legislative and other measures within its available resources to progressively realise this right. Apart from extending this right to everyone, the Constitution confers additional protection to children in section 28(1)(c) by stating that 'every child has the right

to basic nutrition'. The same right is guaranteed to detainees and sentenced prisoners as stipulated by section 35(2)(e). At the international level, the right is also recognised, among others, by article 25(1) of the United Nations Declaration of Human Rights and article 11(1) of the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR). However, it has remained unclear how the right to food should be interpreted (Khoza 2004).

The right to food entails that all human beings are entitled to live in dignity, free from hunger, food insecurity and malnutrition. Ziegler (2009) contends that 'the right to food is not about charity, but about ensuring that all people have the capacity to feed themselves in dignity'. Conventionally, the right to food is thought to impose three types of state obligations – the obligations to respect, protect and fulfill. This typology of states' obligations was defined in General Comment 12 by the United Nations Committee on Economic, Social and Cultural Rights (ESCR) and endorsed by states when the Food and Agriculture Organisation of the United Nations (FAO Council) adopted the Right to Food Guidelines in November 2004.

First, the obligation to 'respect' requires that governments desist from taking any measures that arbitrarily deprive people of their right to food. Secondly, the obligation to 'protect' means that states should enforce appropriate laws and take other relevant measures to prevent third parties, including individuals and corporations, from violating the right to food of others. Finally, the obligation to 'fulfill' (facilitate and provide) entails that governments must proactively engage in activities intended to strengthen people's access to and utilisation of resources and means so as to ensure their livelihood, including food security. As a last resort, where an individual or group is unable to en-

joy the right to sufficient food for reasons beyond their control, states have the obligation to fulfill that right directly.

In the South African constitutional context, the right to food may be limited solely in terms of the limitation clause stipulated in section 36 of the 1996 Constitution, to the extent that such limitations would be deemed reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

Structural implications of food-parcel corruption for the right to food

Prior to the Covid-19 pandemic, about 13.4 million people in South Africa were reported to be food insecure (Statistics South Africa 2019); the lockdown worsened the situation when it caused an unprecedentedly high demand for food. In April 2020, the government began the food-parcel distribution scheme aimed at feeding those who suffered the most from the impact of the lockdown.

Due to their close proximity to the people, local governments are customarily responsible for the provision of basic services. As municipalities are the coalface of service, it was apparent that – in the initial alert levels of the lockdown, when no ordinary free movement was allowed – local leaders could play a leading role in food distribution. It is also important to acknowledge the significant food-parcel assistance that marginalised communities received by way of donations and contributions by non-profit groups acting independently of the government.

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However, numerous reports of food-parcel corruption emerged, with allegations that individuals belonging to political parties were selling the food parcels or unfairly distributing them to politically affiliated beneficiaries (Moche 2020). At the height of corruption during the pandemic, President Ramaphosa wrote a scathing letter to every member of the governing party, the African National Congress (ANC), and laid bare the impact of Covid-19-related corruption.

Central to these malfeasances were tenders for personal protective equipment (PPE) awarded to bidders connected with ANC leaders and cases of public servants flouting the law (Government of South Africa 2020b). Significantly, President Ramaphosa stated:

As we have seen during the Covid response, there are local ANC leaders who have used food parcels meant for the poor to buy political favours from those people in the branch or broader community who they rely on for their positions. These practices quite literally take food out of the mouths of the poor.

The President's lamentation was his second expression of dismay. His first official outcry came as early as April 2020, when he stated that 'we are deeply disturbed by reports of unscrupulous people abusing the distribution of food and other assistance for corrupt ends' (Government of South Africa 2020a).

Judging from the above, although the food-parcel distribution scheme was meant to be a measure consistent with the fulfilment of human rights, the structural implications of food-parcel corruption refract the scheme's purpose and thus constitute a violation of the right to food. Preventing food-parcel corruption would have enhanced measures geared towards fulfilling the right to food of deserving poor people. The link between corruption and palliatives to address the impact of Covid-19 shows that coordination of the food-parcel initiative lacked proper direction, transparency and accountability.

In times of widespread desperation and suffering, where marginalised and disadvantaged groups needed adequate food in order to earn a livelihood, their trust in local leaders was betrayed by food-parcel corrup-

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In relation to the linkage between the emergency caused by the Covid-19 pandemic and elections, Ellena et al. (2020) submit that 'there is heightened risk of abuse of state resources and violations of political finance regulations to influence electoral outcomes'. In the South African context, it is obvious that the anti-corruption measures were caught off-guard because of the strong allegations of food-parcel corruption, confirmed by President Ramaphosa. Municipal councillors manipulated the food-relief initiative by choosing who would receive food parcels. In certain instances, 'some have been accused of only giving parcels to their relatives and members of their constituencies, thereby sowing serious divisions within communities' (Mahlangu 2020). In other cases, some councillors were accused of demanding donations and contribution from businesses, but without food parcels reaching the intended recipients. Food-parcel corruption caused food-related protests in several provinces, with there being fears that the protests could turn into national protests.

In view of the above, if there is a future declaration of a national state of disaster caused by a virus or other natural disaster, the palliatives to prevent corruption during emergencies must include strengthening anti-corruption mechanisms to ensure that food distribution processes comply with applicable and binding standards. This will assist in the fulfilment of the right to food enjoyed by everyone, including the disadvantaged and marginalised.

Call for realising the right to food during Covid-19

Mushwana (2016) correctly argues that identifying obstacles that prevent the optimal implementation of the right to food and devising corrective measures that secure its fulfilment are necessary. The Covid-19 pandemic drastically altered the common course that is often projected, desirable and pursuable in the effective implementation of the right to food. In this regard, the emphasis is on the need to take into account the nature of the novel situation caused by the Covid-19 pandemic and the stringent extraordinary legal measures that curtail access to food. Notwithstanding the above, the state is still obliged to fulfill the right to sufficient food for needy and deserving poor people.

In *Road Accident Fund v Mdeyide* 2011 (2) SA 26 (CC), the Constitutional Court held that the realisation of fundamental socio-economic rights allows people disadvantaged by their social and economic circumstances to 'become more capable of enjoying a life of dignity, freedom and equality'. In this regard, Currie and De Waal (2016: 564) argue that socio-economic rights oblige the state to fully secure for all its members of the society a basic set of social goods, including food. The report of the United Nations Special Rapporteur on the Right to Food, *Critical Perspective on Food Systems, Food Crises and the Future of the Right to Food*, insists that the elimination of hunger and malnutrition requires a holistic, coordinated and rights-based approach. In adding to this substantive assertion and while acknowledging the aggravated food-insecurity and hunger caused by the Covid-19 pandemic as well as the structural implications of food parcel corruption, it is hereby argued that the food-parcel distribution process requires a rights-based approach that is accompanied by strong anti-corruption measures.

Importantly, General Comment 12 of the Committee on ESCR (1999) states that the realisation of the right to food is accomplished when every person has 'physical and economic access at all times to adequate food or means for its procurement'. During periods of natural or other disasters, as in the context of the Covid-19 pandemic, the General Comment provides that states

still bear a core obligation to take the necessary action to mitigate and alleviate hunger, as provided for in article 11(2) of the ICESCR.

The effectiveness of the South African government's food relief initiative in cushioning the effects of Covid-19 among vulnerable groups was dealt a severe blow by its politicisation by municipal councillors, who corruptly used it for electioneering. In the early days of the pandemic, few had adequate information on emerging corruption vulnerabilities and government operations, or dared to challenge state reactions to the pandemic (Ellena et al. 2020). Those who did speak out were rapidly silenced as irrelevant or as acting inappropriately in extraordinary circumstances (Mahlangu 2020).

Conclusion

The food-parcel initiative by the government was meant to fulfill the right of access to sufficient food for all citizens during the lockdown. This would have assisted in mitigating food insecurity and hunger. However, food-parcel corruption had a major impact on the effectiveness of state responses to the Covid-19 pandemic. Given the enormous need for food, the hunger of disadvantaged and marginalised groups was not appropriately alleviated or eradicated but instead aggravated by corruption. These groups have been profoundly affected by Covid-19 and require rapid, direct assistance, without which some may find it difficult, if not impossible, to recover during the post-pandemic phase (UN Office on Drugs and Crime 2020).

The emergency response to the Covid-19 pandemic came with diminished transparency in food distribution, impacting on the ability of governmental oversight mechanisms to deter, detect and demand accountability for corruption. The length and severity of the Covid-19 crisis have undermined anti-corruption efforts by entrenching emergency measures in a way that erodes accountability measures and detracts from corruption-prevention priorities. The thriving of food-parcel corruption meant that the most affected people, the disadvantaged and marginalised groups, lack access to food.

Hence, the structural implications of this corruption constitute a violation of the right to food. The concerns raised in this article are also mindful of future circumstances where a national state of disaster could be declared. Therefore, from a human rights perspective, emergency responses must place the respect, promotion and fulfilment of human rights as central to their conception and implementation. Corruption cannot be allowed to continue unabated when the most vulnerable in society are forced to endure unbearable hunger at the expense of corrupt electioneering or personal enrichment on the back of state resources originally meant to feed the needy. The governmental response should have ensured that the intended recipients enjoyed their rights to have access to sufficient food. Lastly, the constitutional-democratic principles of human rights, responsiveness and accountability demand that the government and municipal councillors have to fulfill their legal obligations in the realisation of the right to sufficient food. The latter must desist from corrupt activities that perpetuate socio-economic vulnerabilities in society.

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References

- Corruption Watch (2020) 'Food parcel distribution falls prey to corruption'. Available at <https://bit.ly/3qfASZH>
- Currie, I & De Waal, J (2016) *The Bill of Rights Handbook*. Cape Town: Juta.
- Ellena, K (2020) 'Preventing government corruption in crises', IFES COVID-19 Briefing Series. International Foundation for Electoral Systems.
- Government of South Africa (2020a) 'Additional Coronavirus COVID-19 economic and social relief measures'. Available at <https://bit.ly/3qSL6xS>
- Government of South Africa (2020b) 'Let this be a turning point in our fight against corruption'. Available at <https://bit.ly/3zGUsRE>
- Humana People to People (2020) 'Food relief initiative during lockdown for needy communities'. Available at <https://bit.ly/3G8iWFR>
- Khoza, S (2004) 'Protecting the right to food in South Africa: The role of framework legislation', *ESR Review* 5(1) 3–5.
- Mahlangu, T (2020) 'Government to tackle food parcel corruption'. Available at <https://bit.ly/3t6OTKK>
- Moche, T (2020) 'Timeline: COVID-19 food parcels, PPE corruption timeline'. Available at <https://bit.ly/3n8eP4R>
- Mudau, P (2020) 'Has the COVID-19 pandemic exposed the fragility of South Africa's constitutional democracy?' Available at <https://bit.ly/3G9MrHe>
- Mushwana, L (2016) 'Right to food is also a human right'. Available at <https://bit.ly/31CkGle>
- South African Human Rights Commission (2018) 'The right to access to nutritious food in South Africa 2016–2017'. Available at <https://bit.ly/3qWtMbC>
- Statistics South Africa (2019) 'Towards measuring food security in South Africa: An examination of hunger and food inadequacy', Report: 03-00-14.
- United Nations Committee on Economic, Social and Cultural Rights (1999) CESCR General Comment No. 12: The Right to Adequate Food (Art. 11).
- United Nations Office on Drugs and Crime (2020) 'Accountability and the prevention of corruption in the allocation and distribution of emergency economic rescue packages in the context and aftermath of the COVID-19 pandemic'.
- United Nations Special Rapporteur on the Right to Food (21 January 2020) *Critical Perspective on Food Systems, Food Crises and the Future of the Right to Food*, UN Doc A/HRC/43/44. Available at <https://undocs.org/A/HRC/43/44>
- Ziegler, J (2009) 'What is the right to food?' Available at <https://bit.ly/3q3i0Si>