Debate on the right to food in South Africa
Entitlements, endowments and the role of economic and social policy

Sakiko Fukuda-Parr

Introduction

Paradox of the right to food in South Africa

South Africa has strong constitutional guarantees and legal frameworks for the right to food. It is one of just 20 countries in the world with constitutions that recognise the right to food and of these, it is one of only two with provisions that are justiciable.

Despite these formal legal guarantees, the right to food is far from being realised, and measures of state performance for fulfilling economic and social rights (the SERF Index www.serfindex.org) show a poor score of 61.5 out of 100, meaning South Africa ranks 67th out of 99 countries. The right to food score is 61.7. Similarly, South Africa scores 6.4 in the Global Hunger Index for 2011, a minimal improvement from 7.0 in 1990. These trends contrast with data for Brazil, which started with a higher index in 1990 but achieved a more rapid improvement. (See figures below.)

The extent of food insecurity and recent trends are difficult to discern with confidence since there is a multiplicity of surveys using different indicators and measurement methods. For example, the 2011 General Household Survey released in June shows 13% of the population self-reporting hunger and inadequate access to food, but a significant improvement over the decade (Statistics South Africa 2012). These figures are based on subjective responses. Anthropomorphic surveys provide a more objective measure of food insecurity but there has not been a consistent series of surveys to provide reliable trend data. Surveys conducted show very high levels of stunting among children. For example, the 2008 National Income Dynamics Survey by the Southern Africa Labour and Development Research Unit, University of Cape Town, found 24% of children below five are under height for age.

This situation also serves as a stark reminder of Sen’s (1999) insistence on the importance of democratic processes, debates and agitation for public action — politics for rights-based policies — for rights to be realised. Yet this in turn raises questions about whether the agitation is targeted at public policy measures that would be effective.

To address these issues in a systematic fashion, a two-day seminar was held by the Social Development
Department of the University of Cape Town in June 2012. It brought together scholars and practitioners from the diverse fields relevant to food security including law, economics, political science, agrarian studies and social development. In addition, the seminar attracted a wide range of institutions, including several universities and research centres, non-governmental organisations (NGOs) and state institutions. Participants included leading academics and civil society advocates, three researchers from US universities as well as members of the South African Human Rights Commission (SAHRC) and the National Planning Commission (NPC).

A dozen papers were presented and participants engaged in rich debates over the two days. The seminar programme included sessions on:

- the concept of food security in the right to food perspective and key challenges in South Africa;
- findings of recent research on urban and rural food insecurity and policy options;
- economic policy options for expanding employment and incomes of vulnerable households;
- social policy approaches and choices; and
- the role and potential of litigation and social movements.

The seminar aimed to promote a systematic and rigorous debate on the role of economic and social policy for food security and the right to food. This article serves as a summary of the discussions and deliberations.

The need for a paradigm shift

The proceedings started with a discussion emphasizing that the problem of food insecurity is one of access, not supply, and the indivisibility of rights dependent on a range of economic and social factors as well as the voice of the people. It was observed that while the food industry is flourishing, food insecurity remains a challenge and is embedded in the structures of unequal power and economic resources. Discussants noted that the right to food goes beyond the individual problem of hunger to being a generic social challenge that is driven by global and national processes.

Several presentations identified the need for a paradigm shift in the way that food insecurity is addressed. Though the rights-based definition of food security as provided by the Committee on International Covenant on Economic, Social and Cultural Rights (CESR) in its General Comment 12 (UN Committee on ESCR 1999) is widely used in South Africa, it remains rhetorical. According to its CESR General Comment 12 (UN Committee on ESCR 1999), the normative content of the right to food is defined in the following way:

The right to adequate food is realized when every man, woman and child, alone or in community with others, has the physical and economic access at all times to adequate food or means for its procurement.

The international consensus definition of food security overlaps with this definition and focuses on individuals and households, their access to food, and the multiple dimensions of constraints to food security.

Other paradigms prevail that focus on national rather than individual and household level security, on production and supply rather than access, as a rural rather than a rural/urban problem, or on narrowly defined issues of dietary intake. This has led to fragmentation of institutional responsibilities to agencies with narrow mandates and epistemic communities. Moreover, it has left many gaps including lack of comprehensive and rigorous analysis on the nature, location and underlying causes of hunger, policy responses that are not always designed for improving food security, and lack of consensus definition on the measurement of food insecurity and hunger.

Characteristics of hunger

Recent surveys of food insecurity provide important insights into the characteristics and the correlates of hunger. A review of national survey data in South Africa shows that the incidence of food insecurity is reported by females rather than males (Department of Health 2003). Another review has also shown that provinces with the highest incidence of reported food insecurity are North-West and the Northern Cape, while highest levels of stunting are found in the Free State and the Northern Cape (Statistics South Africa 2011).

Food security is a part of a livelihood strategy. There is evidence to show that among rural households, hunger is concentrated among smallholder and female-headed households (Statistics South Africa 2009). But the likelihood of experiencing hunger rose for farmworker households, and declined for households producing broader varieties of food. Land does not seem to be a factor.

A survey by the African Food Security Urban Network, Cape Town (2010) showed that hunger is increasingly becoming a challenge in urban areas. It further suggests higher incidence of hunger in low-income urban communities than in rural areas. Presenters noted that addressing urban food insecurity requires a better understanding of urban food markets, the informal market (which is an essential source of food), the inadequacy and inequalities of supermarket distribution systems, and rising prices. It was noted that hunger is seasonal in Cape Town, peaking in January and in June and is related to patterns of income opportunities and expenditure needs. The use of wage income for food depends on intra-household decision making and the priority given to food relative to many other demands.

Some of the discussants share the view that in South Africa, hunger is most often thought to be associated with lack of employment and inadequate incomes. But the dynamics of food security are more complex and closely related to diverse social and economic conditions. Supporting this view, a study has shown an important decline in child malnutrition since 1993 during which time there was negligible reduction in income poverty (May 2012). Thus, improving incomes is far from the only means to reducing malnutrition (a component of food security) and other social investments such as in education and healthcare as well as social grants play an important role.
According to the Constitution and international human rights law, states have obligations to fulfil the right to food.

These analyses all point to a need for consensus on definitions and the measurement of hunger and food insecurity, and further studies on the dynamics of hunger at the household levels, including intra-household decision making, and on the relationship between hunger and other socio-economic variables.

**Policy strategies**

What are state obligations to fulfil the right to food in a market economy?

According to both the South African Constitution and international human rights law, states have obligations to fulfil the right to food. This implies that states must take ‘all appropriate measures’ encompassing a broad range of policy actions. This obligation to fulfil the right to food goes far beyond the provision of food in situations of emergency shortages to a broader range of interventions to secure a more permanent right to food. The Committee on Economic, Social and Cultural Rights (CESCR) has noted that ‘every man, woman and child, alone or in community with others, has the physical and economic access at all times to adequate food or means for its procurement’ (UN CESCR 1999). Thus, states may adopt different approaches to taking measures, from a minimalist response to a thick web of constitutional guarantees, incentive policies and investment programmes (Randolph and Hertel 2012; Fukuda-Parr 2012a).

The fulfilment of the right to food has important global dimensions. This is because in an open market economy, global food prices drive national and local trends (Randolph and Hertel 2012). Moreover, the structure of the global food chain is increasingly concentrated in the hands of a few corporations. The state-centric notion of obligations for human rights is highly problematic in this context.

In South Africa the problem of food insecurity is not one of supply but of access. Moreover, as in many developing countries with widespread poverty, it is a chronic and permanent state of crisis, not one of emergency need. It therefore requires a policy response that goes beyond meeting short term needs and that can address systemic causes. Sen’s work on famines (1999, 2000) provides a useful analytical framework for assessing the drivers of hunger and the adoption of appropriate policy responses. He not only argued that hunger is a problem of access rather than supply, but he identified three categories of access or ‘entitlements’: (i) exchange for wage income; (ii) social transfers; and (iii) own production.

There is little disagreement that low wage incomes are a major cause of hunger and that expanding employment and income-earning opportunities is policy priority. Growth has not created adequate jobs for a number of reasons, including the structure of the economy, which is dominated by mining and agriculture. These sectors have been shedding jobs. Moreover, the growth in finance and business services has not generated employment for the unskilled. Further, the overall global economic downturn since 2008 has led to millions of job losses and a tighter fiscal situation (Ogude 2012). Fostering employment creation and equity are key objectives of the New Growth Path adopted in 2010, and key initiatives such as the infrastructure programme. Will these initiatives create jobs for food-insecure households, which are likely to be the poorest of the poor and the least skilled? The distributional consequences of these policy initiatives require detailed scrutiny.

Discussants at the seminar called for a more radical thinking about growth strategies, noting that the structure of the South African economy has not changed since 1994, and that jobless growth was part of deindustrialisation.

Social transfers have been the principal policy measure implemented by the state to address hunger. Studies have documented evidence of the important role that Child Support and other social grants have played in alleviating malnutrition and poverty as a whole. Discussants emphasised that while these grants are important, South Africa does not yet have a comprehensive set of social protection measures. Moreover, social grants provide targeted relief but food security requires developmental strategies.

In contrast to the widespread consensus on exchange and transfer entitlements and policy responses, the potential role of own production (subsistence) and small-scale agriculture is a neglected policy priority. Though negligible from the production perspective, small-scale and subsistence agriculture are a vital part of household food security and livelihood strategies: 23% of all households engage in production, mostly for their own consumption (Fukuda-Parr 2012b). Moreover, selling surplus food can improve household incomes. Recent findings from the National Income Dynamics Survey (Southern Africa Labour and Development Research Unit 2008) have shown that selling surplus food is an important pathway out of poverty.

Post-apartheid policy has pursued two contradictory approaches: the roll-back of the state in agricultural policy, and state intervention in land policies (Cousins 2012). The agrarian structure is characterised by dualism – with large-scale commercial farming (35 000 farms) dominating land and production (75%), and small-scale subsistence farming dominating the numbers of farmers (two million) – and a missing middle of commercially-oriented small-scale producers. The roll-back of the state has not stimulated a competitive agricultural sector and the emergence of a small-scale farm sector. Land reform programmes have been disconnected from agricultural development initiatives that ensure access to finance, extension, veterinary
services, markets and water. Moreover, there is inadequate understanding of the small-scale farming sector and its potential; thinking about efficient small-scale farming is dominated by the large-scale model.

Social movements and litigation

Tools for palliative, reformist or radical change?

Discussants identified the essential role of human rights and social activism in South Africa’s democracy. It was noted that the Bill of Rights in the Constitution opens up democratic processes towards a thick form democracy that goes beyond elections. In this process, litigation plays an important role in bringing light and media attention to violations, and contributes to social mobilisation – this is arguably the main purpose of litigation (Brand 2012). The impacts of litigation on policy are often indirect. And sometimes the consequences of litigation on policy are ambiguous, as courts are not able to instruct the state to take specific action but rather to set in motion a process of review.

The possible potential of litigation in addressing human rights violations in the context of the right to food can be categorised into two. The first would be ‘fairness’ cases, which make claims of a ‘reformist’ change in policy. They concern existing access to government provisioning, based on the duties to respect. The second category would be ‘distributional’ cases that make claims for policy change of a more radical nature. They challenge the inadequacies in access even when there is adequate market supply.

As a component of socio-economic rights, numerous challenges arise in litigating the right to food. Perhaps the crucial issue at stake is to determine whether lack of access to food will constitute a human rights violation. The challenge, however, is that it is sometimes difficult to determine what constitutes sufficient food for the purpose of litigation. Moreover, there is no agreed quantified standard for identifying those in desperate and dire need of food. Unfortunately, however, the courts are not in the best position to clarify this situation.

It was observed that the gap in social transfers – notably for unemployed adults – that leave individuals in a desperate situation is an important way that a right to access food can be litigated. This raises further questions about the limitations of litigation. From the policy point of view, this is reductionist; state obligations to fulfil the right to food require addressing a long-term permanent crisis that requires radical solutions, not palliative or even reformist ones.

So far, there has been little social response to hunger or the right to food in South Africa. Thus, limited numbers of cases in the courts directly relate to the right to food and NGOs have not taken hunger up as a major advocacy issue, nor have there been street protests over it. A good example of an attempt to litigate the right to food is an initiative undertaken by Black Sash to take companies to court for collusion on fixing the price of bread. This is a significant and radical measure, yet the impact of the ruling against the companies has been disappointing as it is unclear whether this would change business practices while amendments to the Competition Act are still awaiting proclamation.

Examples from other jurisdictions can be helpful in understanding the paradox of hunger in South Africa. The Indian experience of the politics of the right to food campaigns (including mapping variations in hunger and social responses to it ‘in the courts’ and ‘in the streets’ in about 27 states over the last two decades) has been well documented. India is a country that has many similarities with South Africa. These include high levels of hunger, hunger as a permanent crisis driven by systemic socio-economic and political factors, a constitutional commitment to economic and social rights, a vibrant democracy and a decentralised federation of states.

But there are also striking differences between the two countries. For instance in India, there has been much more social movement response in the form of street protests and NGOs engagement (though surprisingly limited media coverage of hunger as a major social issue), and multiple court orders to implement public food distribution systems more effectively.

An on-going study has shown that the extent of hunger does not map well with the strength of social response. It also shows that the demands made during protests are reformist in nature, focusing on implementation of distribution systems and on the provisions of the draft National Food Security Act rather than on systemic change.

Conclusions

Human rights as a framework for public policy focuses sharply on priorities of human well being, equality and poverty, and on processes of participation and empowerment in contrast to policies that are designed according to conventional economic calculus, which are more concerned with aggregate national growth and integration into the global economy. It can therefore be useful in challenging prevailing policies and finding alternatives that pursue development that is more directly responsive to expanding human freedoms, specifically in reducing food insecurity of individuals and households.

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Figure 1: Food security situation: self reporting

General Household Survey 2011

Table 1: State performance in fulfilling economic and social rights – SERF index (scores for 99 countries)

<table>
<thead>
<tr>
<th>Rank</th>
<th>Country</th>
<th>Composite</th>
<th>Food</th>
<th>Health</th>
<th>Education</th>
<th>Housing</th>
<th>Work</th>
<th>Income (PPP 208)</th>
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<td>90.1</td>
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<tr>
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Source: www.serfindex.org; South Africa added from own calculation

Figure 2: International comparison: IFPRI Global Hunger Index